AGENDA

CITY COUNCIL MEETING CITY OF WHEAT RIDGE, COLORADO 7500 WEST 29TH AVENUE, MUNICIPAL BUILDING

January 28, 2019 7:00 p.m.

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Sara Spaulding, Public Information Officer, at 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL OF MEMBERS

APPROVAL OF MINUTES Study Session Notes of January 7, 2019

PROCLAMATIONS AND CEREMONIES

Appointment of District I City Council Seat Outgoing Elected Official Recognition Heart Healthy Month

CITIZENS' RIGHT TO SPEAK

- a. Citizens, who wish, may speak on any matter not on the Agenda for a maximum of 3 minutes and sign the <u>PUBLIC COMMENT ROSTER</u>.
- b. Citizens who wish to speak on an Agenda Item, please sign the <u>GENERAL</u> <u>AGENDA ROSTER</u>.
- c. Citizens who wish to speak on a Public Hearing item, please sign the <u>PUBLIC</u> <u>HEARING ROSTER</u> before the item is called to be heard.
- d. Citizens who wish to speak on Study Session Agenda Items, please sign the <u>STUDY SESSION AGENDA ROSTER</u>.

APPROVAL OF AGENDA

1. CONSENT AGENDA

- a. Motion to approve the purchase and payment of 2019 vehicle replacements and the purchase and payment for installation of lighting and auxiliary and communications equipment in a total amount not to exceed \$740,356
- Motion to approve payment to Colorado Intergovernmental Risk Sharing Agency (CIRSA) for 2019 Workers' Compensation Premium in the amount of \$294,030 and 2019 Property/Casualty Premium in the amount of \$263,529.55

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

 Resolution <u>06-2019</u> –authorizing the execution of an agreement allowing Rocky Mountain Bottle Company to participate in the Wheat Ridge Business Development Zone Program for the rebate of Building Use Tax equal to twenty five percent (25%) of total Use Tax paid in association with renovations to the company's facility through 2021

ORDINANCES ON FIRST READING

3. Council Bill <u>01-2019</u> – amending the Wheat Ridge Code of Laws to regulate the creation of Flag Lots (Case No. ZOA-18-05)

DECISIONS, RESOLUTIONS AND MOTIONS

- Resolution No. <u>07-2019</u> approving a Supplemental Budget Appropriation in the amount of \$1,309,906.04 and award and subsequent payments to Goodland Construction, Inc., of Golden, Colorado for the West 29th Avenue Realignment Project in the amount of \$2,618,096.40 with a 10% Contingency of \$261,809.64 for a total of \$2,879,906.04
- Resolution No. <u>08-2019</u> approving an Intergovernmental Agreement with the City of Arvada regarding Street Improvements at the Wheat Ridge Ward Station Area
- Resolution No. <u>09-2019</u> approving a Memorandum of Agreement with the Federal Highway Administration, the Colorado State Historic Preservation Officer, and the Colorado Department of Transportation for the Wadsworth Boulevard Widening Project for Environmental Assessment
- Motion to amend the contract for Professional Services to AECOM Technical Services, Inc., Greenwood Village, CO, for the period of January 1, 2019 – December 3, 2019 in an amount not to exceed \$1,466,966 and approve payments for ongoing Program Management Services for the Investing 4 The Future Program

CITY MANAGER'S MATTERS

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS

ADJOURN TO SPECIAL STUDY SESSION

STUDY SESSION NOTES CITY OF WHEAT RIDGE, COLORADO City Council Chambers 7500 W. 29th Avenue January 7, 2019

Mayor Starker called the Study Session to order at 6:44 p.m.

Council members present: George Pond, Janeece Hoppe, Tim Fitzgerald, Zachary Urban, Larry Mathews, Leah Dozeman

Absent: Kristi Davis (excused)

Also present: City Clerk, Janelle Shaver; City Manager, Patrick Goff; Community Development Director, Ken Johnstone; Administrative Services Director, Allison Scheck; other staff and interested citizens.

CITIZEN COMMENT ON AGENDA ITEMS

<u>1.</u> Sam Mamet – CML Executive Director

Colorado Municipal League (CML) Executive Director **Sam Mamet** introduced himself. CML, a nonprofit, nonpartisan organization with 13 employees and an executive board, provides services and resources to assist municipal officials in managing their governments. Sam has been with CML for almost 40 years, and has been Executive Director since 2005. He will be retiring at the end of March.

- He reminisced about his close relationship with Mayor Hank Stites. In his early years with the League the offices were located at 48th & Wadsworth, and he and Hank had many good talks. He also saluted the many accomplishments the City has made over the years.
- He expounded on the three main duties of CML: train, inform and lobby.
- He listed some issues that will be addressed by the legislature this session: TABOR; funding for infrastructure; local regulation of oil and gas; water issues related to the compact with Arizona, Nevada and California; and sports betting.

Comments and questions followed.

Clerk Shaver wanted Council to know that our Deputy Clerk, Robin Eaton, had recently done a webinar for CML about liquor licensing for City Clerks. He was told it had the highest participation ever for any CML webinars. Mr. Mamet confirmed that participation was "off the charts", and thanked Robin for his work on that.

2. City Council Candidate District I Presentation

Sam Mamet drew the names of the candidates to determine their order of speaking. The candidates each made a presentation which was followed by a few questions from the Council.

Anne Brinkman highlighted the many ways she has been involved in Wheat Ridge for the past 25 years – not only as a member of the Planning Commission and several special committees but also as a citizen participant in numerous projects and events. She works as a project manager. Three issues she cares about are smart growth, ensuring we receive adequate funding for maintenance of infrastructure, and improving opportunities for tax revenue.

Jahi Simbari is an aerospace engineer and the dean of graduate studies at CO School of Mines. He lived in Edgewater for 13 years before he and his wife moved here 5 years ago. He appreciates what is happening to housing prices in the area. He discussed And vs Or; he is a problem solver and likes to find alternative solutions. His goals are to listen – to citizens and other councilors, learn about the issues, and lead.

David Kueter has lived here 13 years. He believes in balance and thinks problems don't stop at the city border. Three areas that interest him are transit (public transit and pedestrian issues), land use issues, and resource allocation. He's been an attorney for 20 years - primarily in water law. He is concerned about land conservation in the face of increasing development. He feels he can hit the ground running as he has experience working with governments. He thinks it's important to balance perspectives.

3. TRAX Finance Agreement/Ward TOD Update - Ken Johnstone

The 2E bond money, approved by the voters in November, 2016, provides \$12,000,000 in funding for a number of public infrastructure projects that are intended to facilitate and catalyze private sector investment in the area surrounding the G Line station area.

Mr. Johnstone highlighted the history of the planning and vision for the TOD area and went through the list of projects that were proposed in June 2018.

- Local streets: up to \$8M
- Pedestrian bridge over railroad tracks: \$1.5M to \$4M
- Linear Park: up to \$5M
- Regional Park: up to \$5M
- Ward Road (state highway): up to \$2M

Some things have changed since June that staff believes are appropriate for use of 2E funds.

- Partnerships with owners of the pond properties have not yet emerged on hold
- The TRAX housing project has evolved and funding gaps have been identified (parking structure)
- The Hance Townhome project has identified additional drainage and utility costs.
- The pedestrian bridge and linear park designs appear feasible.
- Ward Road grade separation is not a regional priority.

Staff's current recommendations for funding priorities are:

- Professional services (design, development review, ROW consultant, construction management, etc.) \$2.5M
- ROW acquisition \$725,000
- Construction projects \$8M
- Total \$11M

Construction project include

- Hance Ranch utility/drainage \$243K
- 52nd (City portion) \$1.2M
- Tabor \$800K
- Ridge \$1M
- Linear park \$512K
- Pedestrian Bridge \$3M
- TRAX housing project \$1.2M

TRAX is a 2.2 acre site with proposed 220 market rate multifamily units. It will have a rooftop pool and other amenities. Structured parking will allow the developers to achieve higher density. The project will not make financial sense without public participation. It is proposed by staff to spend \$1.2M of 2E funds for this \$54M project. Urban Renewal is also working on a \$6.7M+ property tax TIF for the developers as their funding gap is \$9.5 M.

Staff requests two things from Council

- approval of the list of proposed 2E funded projects
- direction in financial assistance for the TRAX multifamily project

Questions and discussion followed.

Councilmember Pond questioned if \$500K is enough for the linear park. Mr. Johnstone said the park will be 30 feet wide and have a crusher fine trail, a paved bicycle path and periodic gathering places. Mr. Johnstone gave reasons why staff believes the land owners will donate the land for the park.

Councilmember Mathews expressed concern that we might be overbuilding with residential for the roads that are/will be available. Mr. Johnstone doesn't think so.

Parking spaces for the TRAX project are proposed at 1.5 spaces per unit; it will likely *not* be underground parking.

There was lengthy discussion about whether funding a parking structure for a private housing project (TRAX) is contrary to what the voters were told the 2E money would be spent on.

Councilmember Hoppe received unanimous consent to get a legal opinion on whether the ballot wording allows 2E monies to be spent on private projects.

Councilmember Hoppe received consensus to support using \$1.2M of 2E money for the TRAX project. The vote was 4-2.

Councilmember Hoppe received consensus to approve the rest of the project list. The vote was 4-2.

<u>4.</u> Staff Report(s)

Mr. Goff had two items.

- 1) He introduced Allie Scheck, the new Director of Administrative Services.
- 2) Jerry DiTullio asked that he remind Council his resignation is effective at midnight. He has offered to provide guidance for the new treasurer if asked.
 - 5. Elected Officials' Report(s)

Janeece Hoppe announced that the January 28 Council meeting will be followed by a special study session.

ADJOURNMENT: The Study Session adjourned at 9:12 p.m.

Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON January 28, 2019

Janeece Hoppe, Mayor pro tem



ITEM NO: _____ DATE: January 28, 2019

REQUEST FOR CITY COUNCIL ACTION



TITLE: MOTION TO APPOINT CANDIDATE TO DISTRICT I CITY COUNCIL SEAT, TERM ENDING NOVEMBER 25, 2019

imes	

PUBLIC HEARING BIDS/MOTIONS RESOLUTIONS ORDINANCES FOR 1ST READING ORDINANCES FOR 2ND READING

QUASI-JUDICIAL:

YES

NO NO

tur

City Manager

ISSUE:

Councilmember Monica Duran was elected to the Colorado House of Representatives on November 6, 2018 to represent Colorado in House District 24. Ms. Duran tendered her resignation to the Mayor and City Council on November 18, 2018, with an effective date of December 31, 2018 creating a vacancy in a City Council District I seat. Section 4.5 of the Wheat Ridge City Charter requires that "the remaining councilmembers shall choose by majority vote a duly qualified person from the proper district to fill such vacancy" within thirty (30) days of resignation.

PRIOR ACTION:

On October 9, 2018, City Council discussed the process for filling the vacancy created by the resignation of Monica Duran.

On December 3, the application period for the District I council member position was opened, and it was closed on December 28. Three candidates presented a verbal resume to City Council on January 7, 2019. One candidate withdrew her application on January 8, 2019.

FINANCIAL IMPACT:

None

Council Action Form – Appointment to City Council District I January 28, 2019 Page 2

BACKGROUND:

The Wheat Ridge City Charter addresses vacancies of councilmembers and other elected officials as stated below:

Sec. 4.5. Vacancies.

- (a) A councilmember shall continue to hold her office until her successor is duly qualified. A council position shall become vacant whenever any councilmember is recalled, dies, becomes incapacitated, resigns, refuses to serve, or ceases to be a resident of the city or district from which elected, or is convicted of a felony.
- (b) Within thirty (30) days after a vacancy occurs on the council, the remaining councilmembers shall choose by majority vote a duly qualified person from the proper district to fill such vacancy...

Sec. 4.4. Qualifications.

(a) No person shall be eligible to hold the office of a councilmember unless, at the time of her election, she is a registered elector, as defined by Colorado Revised Statutes, and is a resident of the district from which she is elected for a period of at least twelve (12) consecutive months immediately preceding the date of the election.

RECOMMENDATIONS:

None

RECOMMENDED MOTION:

"I move to appoint _______ to District I City Council seat, term to expire November 5, 2019."

REPORT PREPARED/REVIEWED BY:

Patrick Goff, City Manager

- 1. Jahi Simbai Application and Resume
- 2. David Kueter Application and Resume



City Council Member District I Application

This application is to fill the upcoming District I vacancy. This appointment will complete the first term of office which expires in November 2019. The position will be eligible for district-wide election in November 2019.

Contact Information				
First Name	Last Name			
Jahi	Simbai			
Address				
2690 Pierce St Wheat Ridge, CO 80214				
E-mail Address	Phone			
jahi.simbai@gmail.com	(303) 523-5332			
Occupation	Employer			
Higher Education Administration	Colorado School of Mines			

Council Member Requirements

Pursuant to <u>Sec. 4.4 of the Wheat Ridge City Charter</u>, all applicants must be a registered elector and resident of District I for a period of twelve (12) consecutive months immediately preceding appointment.

Do you live in **District** |?

Are you registered to vote at your address?

Have you lived at your address for the past 12 consecutive months?

• Yes O No

Yes O No

• Yes • No

This role requires participation in weekly City Council meetings on Monday evenings. Attendance at additional City and community engagements will be required as necessary. Are you willing and able to make this time commitment?

Yes O No

Community Involvement & Experience

If you need more space to respond to the questions, you may include one (1) additional, separate page of responses (total, not per question) and include it as an attachment when you submit your application.

Have you ever, or do you currently serve in any appointed position on a Board, Committee or Commission?

If yes, please describe:

I have served on non-profit boards in Colorado and nationally, in elected positions. Those board roles (some current) have been unpaid positions and have had a focus on higher education for students in Colorado and/or students pursuing science, engineering, technology, and mathematics (STEM) degrees nationwide.

Please describe any other community involvement, experience or interests:

Two of my primary interests are education and personal financial well-being. I have an undergraduate degree in Aerospace Engineering from the University of Colorado at Boulder, an MBA from the Leeds School of Business at the University of Colorado at Boulder, and currently serve as the Assistant Dean of the Graduate School at Colorado School of Mines. As the costs of higher education continue to rise I grow more concerned about about access for students. A good portion of my vocational work has centered on educating students about the benefits of a higher education and the steps to take to achieve a higher education degree. At the same time, I work to help students connect with professional opportunities during and after their time as a student. I know that with both an education and proper management of personal finances, individuals from many walks of life can live a healthy, happy, and productive life. One of my goals is to help grow resiliency in students (grit) and to help provide them the tools to succeed.

The idea of representing our community by serving on City Council is the driving factor for this application. On the Wheat Ridge home page it states, "Council members are deeply committed to the community and have a positive impact on the quality of life in our City." Working together with other council members, community leaders, and the community at large is an exciting and worthwhile endeavor and I would like to play a more prominent role in positively impacting the quality of life in Wheat Ridge. I have much to learn - and consider myself a quick and effective learner. At the same time, I believe I have a unique perspective that will add value to the Council and to the community.

What qualities do you possess that will make you an effective Council Member?

I have been trained as an engineer - and I believe that training has allowed me to look at presented ideas and see both the positives and drawbacks quickly. In addition, I have been trained to find solutions to drawbacks and know how to present alternatives. I have been trained in business management. I pay close attention to budgetary concerns and constraints. I have professional experience as an engineer, a tech support representative, a recruiter, and in management. I am an avid reader, I regularly present to large audiences, and I am fairly well traveled. I grew up mostly in Colorado, some on the Army base at Fort Carson, some in the Summit County area, some in Boulder, and for the past 17+ years in Jefferson County. I have a fair perspective of Colorado as a whole and I've been in Wheat Ridge for the past 4 years. In your opinion, what are the top three priorities for the City of Wheat Ridge in the next five years?

I think single-family home affordability should be a priority for Wheat Ridge. I think growth in residents and the trickle down effects of growth: traffic; schooling; public safety; etc. should be a priority .

I think community engagement should be a priority. Wheat Ridge does have several community events...are they marketed well, well attended, etc. What more can be done?

What is your long-term vision for the City of Wheat Ridge?

I enjoy living so close to downtown Denver. I enjoy leaving the hustle and bustle of Denver and coming home to a quiet, quaint community. I would like to maintain the feel of Wheat Ridge as a tight-knit, somewhat rustic town. At the same time, we need to continue to grow the amenities necessary for our citizens to thrive: employment opportunities; strong preK-12 schools; strong internet access; etc. Mixing the future with the present and past is always challenging and I would appreciate the opportunity to assist the Council in this endeavor...hopefully continuing to build upon the strong foundation laid down by others.

Additional information

Is there anything that would adversely affect your ability to serve as a member of City Council?

If yes, please explain:

🔿 Yes 🛛 💿 No

Please submit your application, along with any other relevant information (resume, references, additional response page, etc.) to Deputy City Clerk Robin Eaton at reaton@ci.wheatridge.co.us

All qualified candidates will be confirmed by email and asked to provide a 3-5 minute presentation to City Council on Monday, January 7, 2019 at 6:30 p.m.

Applications are due by Friday, December 28 at 5:00 p.m.

JAHI SIMBAI

LINKEDIN.COM/IN/JAHISIMBAI JAHI.SIMBAI@GMAIL.COM (303) 523-5332 WHEAT RIDGE, CO

PERSONAL DESCRIPTION

A passionate, well-versed professional with demonstrated expertise in cultivating student success, office management and supervision, budget management, data analysis, marketing, development, internal and external outreach, mentorship, and cultural influence.

EDUCATION

Masters of Business Administration (MBA), Entrepreneurship and Small Business Management Leeds School of Business, University of Colorado at Boulder Bachelor of Science (BS), Aerospace Engineering University of Colorado at Boulder

PROFESSIONAL EXPERIENCE

Assistant Dean, Office of Graduate Studies

Colorado School of Mines (Mines), Golden, CO, June 2013-present

- Management of the Office of Graduate Studies (OGS):
 - Supervision of graduate recruiting, admissions, and student services functions including budget administration (over \$7.5M), strategic planning and analysis, policy development and implementation
 - Hiring and supervision of eight permanent employees (5 direct reports)
 - Internal and external representative of OGS to: President's Office; Academic Affairs; Graduate Council; Graduate Student Government; Mines Foundation / Alumni Association; Office of Research and Administration; Financial Aid; Human Resources; Capital Planning; Student Life; Athletics; off-campus partners and constituents
- Mines Committees
 - President's Council on Diversity, Inclusion, and Access; Faculty and Staff Giving; Enterprise Risk Management (ERM); Campus Leadership Team/Culture of Respect; Sibson - Culture of Excellence subcommittee; Team Online; Tuition Waiver; Mines Administrative Processing Services (MAPS)

Director of Graduate Recruiting and Admissions, Office of Graduate Studies

Mines, January 2006-June 2013

- All institutional aspects of graduate recruiting and admissions, including:
 - Creation and implementation of a comprehensive recruitment and admissions plan for domestic and international graduate students; budget management
 - Supervision of two full-time employees (FTEs) (State Classified), part-time temporary employees, work-study and non work-study student employees
 - Liaising to faculty Principal Investigators (PI) for grant funded programs focusing on underrepresented graduate applicants

Associate Director, Minority Engineering Program (MEP)

Mines, October 2000-January 2006

- Leadership and Program Management
 - Managed PREP (Preparation for Engineering Program), SUMMET (Summer Minority Engineering Training), and MEC (Minority Engineering Conference) serving over 2,000 pre-collegiate students, under budget

Technical Support Representative

NCUBE, Louisville, CO, October 1999-October 2000

- Serviced business-to-business cable customers in digital ad insertion industry
- Conducted system monitoring, software upgrades, technical trouble shooting, and customer service 24x7 support through UNIX and Windows NT systems and phone center

Structural Analyst

Ball Aerospace & Technologies Corporation, Boulder, CO, June 1995-October 1999

- Static and dynamic analyses of space structures using techniques including finite element
 modeling and hand analysis
- Supported physical tests, developed analysis reports, presented results to project team
- Guest instructed high-school success course through Junior Achievements

LANGUAGES | PROGRAMS

- Spanish (basic), C++ (functional), JavaScript (basic), html, Excel (pivot tables, forms)
- Microsoft Publisher, Photoshop, Acrobat Pro, Facebook, Instagram, Twitter

PROFESSIONAL AFFILIATIONS

National Association of Multicultural Engineering Program Advocates (NAMEPA)

- National President Elect: 2018
- National Treasurer: 2010-2014
- Chair: 2008-2009 (Region D)

Council of Graduate Schools (CGS)

Western Association of Graduate Schools (WAGS)

Colorado Council of Graduate Schools (CCGS)

Colorado Educational & Services Development Association, Inc. (CESDA)

- Chair: 2004-2006
- Pre-Collegiate Chair: 2003-2004

PRESENTATIONS | AWARDS

NAMEPA National Conference - Virginia Tech University, Blacksburg, Virginia

 MEP Pathways to Graduate School - part II (presented with A. Morgan - Mines Multicultural Engineering Program Director) - September 2017

NAMEPA National Conference - Purdue University, West Lafayette, Indiana

MEP Pathways to Graduate School (presented with A. Morgan) - October 2016

WAGS Annual Conference - New Mexico Tech University, Socorro, New Mexico

10 Tips (or More) for Managing the Office - March 2016

Engineering Your Career Path - Career Center, Mines

- Go To Graduate School March 2016
- CSM-101 Freshman Success Seminar Mines

Course instruction - Fall semester 2018 (18 total semesters of instruction: Fall 2000-18)
 Aurora Academy Charter School - Aurora, CO

- Black History Month Keynote Address February 2014
- Martin Luther King, Jr. Recognition Award
 - Mines, President's Committee on Diversity: January 2009



City Council Member District I Application

This application is to fill the upcoming District I vacancy. This appointment will complete the first term of office which expires in November 2019. The position will be eligible for district-wide election in November 2019.

Contact Information				
First Name	Last Name			
David	Kueter			
Address				
5837 West 29th Ave., Wheat Ridge CO 80214				
E-mail Address	Phone			
david@kralkueter.com	720.244.1751			
Occupation	Employer			
Attorney	Holsinger Law, LLC			

Council Member Requirements

Pursuant to <u>Sec. 4.4 of the Wheat Ridge City Charter</u>, all applicants must be a registered elector and resident of District I for a period of twelve (12) consecutive months immediately preceding appointment.

	Are you registered to vote at your address?	Have you lived at your address for the past 12 consecutive months?
• Yes O No	● Yes ○ No	• Yes O No

This role requires participation in weekly City Council meetings on Monday evenings. Attendance at additional City and community engagements will be required as necessary. Are you willing and able to make this time commitment?

• Yes • No

Community Involvement & Experience

If you need more space to respond to the questions, you may include one (1) additional, separate page of responses (total, not per question) and include it as an attachment when you submit your application.

Have you ever, or do you currently serve in any appointed position on a Board, Committee or Commission?

Yes	O No
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If yes, please describe:

Parks and Recreation Commission, 2016-present

Please describe any other community involvement, experience or interests:

- Founding member of the Wheat Ridge Active Transportation Advisory Team (ATAT)
- Participant in the Transit Alliance's Citizens' Academy, 2012
- Member of RTD Light Rail Customer Panel, 2007
- Member of the Edgewater Run Club, 2012-present

See attached response.

What qualities do you possess that will make you an effective Council Member?

See attached response.

In your opinion, what are the top three priorities for the City of Wheat Ridge in the next five years?

1. Promoting economic and physical development without sacrificing the character of City neighborhoods.

2. Encouraging active and meaningful involvement from all citizens.

3. Continuing to improve transportation options and infrastructure to allow all citizens and visitors to travel safely throughout the City.

What is your long-term vision for the City of Wheat Ridge?

An economically vibrant City which is attractive to a diverse range of residents while retaining a historical character distinguishable from surrounding areas.

Additional information

Is there anything that would adversely affect your ability to serve as a member of City Council?

If yes, please explain:

○ Yes ● No

Please submit your application, along with any other relevant information (resume, references, additional response page, etc.) to Deputy City Clerk Robin Eaton at <u>reaton@ci.wheatridge.co.us</u>

All qualified candidates will be confirmed by email and asked to provide a 3-5 minute presentation to City Council on <u>Monday, January 7, 2019 at 6:30 p.m.</u>

Applications are due by Friday, December 28 at 5:00 p.m.

City of Wheat Ridge City Council Member District I Application Additional response sheet David Kueter

1. Why would you like to serve on City Council?

My interest in participating in local government first arose out of a passion for transportation issues, particularly infrastructure and policies surrounding bicycling and public transit. Ultimately, I came to realize that those issues are frequently inseverable from larger policies regarding land use, economic development, and community values, policies which are largely determined at the local level. Wheat Ridge is well situated to allow average citizens a meaningful opportunity to participate in local government while influencing issues and policies that will have a significant impact on the entire region.

2. What qualities do you possess that will make you an effective Council Member?

Over the course of my twenty year legal career, I have served as outside water counsel for numerous municipalities and other governmental entities, including: the City of Black Hawk, the City and County of Broomfield, the Town of Elizabeth, the Town of Palmer Lake, Tabernash Meadows Water and Sanitation District, and the Black Hawk – Central City Sanitation District. This has involved working with city staff (particularly in public works departments), city managers, and city councils and other governmental boards. This representation has required me to familiarize myself with complex ordinances and codes, as well as with the processes by which governmental decisions are made.

My legal practice has also demanded an aptitude for communication and negotiation. While litigation of disputes is sometimes unavoidable, resolution by compromise and agreement is usually a preferable outcome. I have extensive experience in developing consensus out of a variety of divergent interests. In situations where such consensus is not achievable, I have been a strong advocate for positions I believe are correct. I have included a copy of my professional resume with this application.

On the personal side, my wife's and my house is located directly adjacent to Ashland Reservoir. For most of the past six years, Denver Water's reservoir replacement work was occurring immediately over our back fence, generally five days a week. While this work was intrusive at times, the final result is clearly an improvement over the previous iteration of the property. This experience helped reinforce the idea that while progress frequently will result in some disruption of people's lives and property, such disruptions can be reduced or minimized by the thoughtful and deliberate actions of local government.

Background

David Kueter has over twenty years of experience in water law, water quality, real estate and land conservation. He has participated in litigation in state and federal courts, including water court appeals to the Colorado Supreme Court, and regulatory and administrative proceedings. He has also presented workshops and educational lectures regarding water law and the intersection with land conservation.

Experience

Of Counsel, Holsinger Law, LLC	since September 2018
Associate, Harvey W. Curtis and Associates	1997-2018
Contract Attorney, Allan Beezley P.C.	1996-1997
Land Exchange Intern, The Nature Conservancy	1994-1995
Summer Intern: National Wildlife Federation	1994
Conservation Easement Intern, Colorado Open Lands	1993
Education	
University of Colorado School of Law, JD	1995
Lawrence University, Appleton WI, B.A.	1991

Representative Publications and Presentations

Co-presenter: *Water Law Case Study: "What If the Ditch Goes Away?"*, Colorado Coalition of Land Trusts, Conservation Excellence 2017.

Co-presenter: *Water Law Case Study: "We Bought a Gravel Pit!"*, Colorado Coalition of Land Trusts, Conservation Excellence 2015.

Land Trust Alliance Land Trust and Water Roundtable, June 4, 2013, Denver, Colorado.

Co-presenter: *Navigating Colorado Water Courts: A Conservation Case Study*, Colorado Coalition of Land Trusts, Conservation Excellence 2013.

Land Trust Alliance Land Trust and Water Forum, September 30, 2012, Salt Lake City, Utah.

Guest Lecturer: *Land Conservation Transactions*, University of Denver Sturm College of Law, April 2007, March 2008, and March 2012.

Presenter: *Colorado's Water Rights Abandonment List*, Colorado Coalition of Land Trusts, Conservation Excellence 2011.

Co-presenter, *Water Rights Update*, Colorado Coalition of Land Trusts, Conservation Excellence 2010.

Co-presenter: *Monitoring and Enforcement of Water Right Restrictions*, Land Trust Alliance, Rally 2007.

Co-author: The Anti-Speculation Doctrine Extended to Change of Water Rights Cases: A New Dilemma for Water Rights Owners, University of Denver Water Law Review, Volume 9, Issue 2, Spring 2006.

Co-author: Water Rights Title and Conveyancing, 28 Colorado Lawyer 69, May, 1999.

Author: Land Trusts and Lobbying, Colorado Coalition of Land Trusts Spring 1998 Newsletter.

Staff Editor: Colorado Journal of International Environmental Law and Policy, 1994-1995.

Co-author: Preserving Land with Conservation Easements: A Guide for Colorado Landowners, 1993.

Community Involvement

City of Wheat Ridge Parks and Recreation Commission, 2016 - present

Wheat Ridge Active Transportation Advisory Team, founding member

Transit Alliance Citizens' Academy 2012

RTD Light Rail Customer Panel 2007



ITEM NO: <u>1a.</u> DATE: January 28, 2019

REQUEST FOR CITY COUNCIL ACTION



TITLE: MOTION TO APPROVE THE PURCHASE AND PAYMENT OF 2019 VEHICLE REPLACEMENTS AND THE PURCHASE AND PAYMENT FOR INSTALLATION OF LIGHTING AND AUXILIARY AND COMMUNICATIONS EQUIPMENT IN A TOTAL AMOUNT NOT TO EXCEED \$740,356

 PUBLIC HEARING BIDS/MOTIONS RESOLUTIONS 		ES FOR 1 ST READING ES FOR 2 ND READING
QUASI-JUDICIAL:	YES Manager	NO <u>Datuil And</u> City Manager

ISSUE:

Staff recommends the purchase of the following vehicles under the State of Colorado Price Agreements:

Five (5) 2020 Ford Police Interceptor Utility Vehicles	\$ 36,747/ea.
One (1) 2019 Mid-Size SUV	\$ 26,144/ea.
One (1) 2019 Large Dodge RAM 4x4 Pickup	\$ 26,335/ea.
Two (2) 2019 Large Ford F-150 4x4 Extended Cab Pickups	\$ 27,382/ea.
One (1) 2019 6x4 International Tandem Cab & Chassis	\$116,573/ea.
One (1) 2019 Large Ford F-350 Cab & Chassis with Dump Body	\$ 44,110/ea.
Five (5) 2019 Large Ford F-250 4x4 Crew Cab Pickups	\$ 29,319/ea.
Total Cost:	\$598,256

Staff also requests approval to purchase, install and/or relocate auxiliary equipment required for the operation of the replacement vehicles along with the installation of lighting, markings and communication equipment at a total cost of \$142,100. The total cost of the vehicles, including preparation for use is not to exceed \$740,356 as approved in the 2019 budget.

Council Action Form – 2019 Vehicle Purchases January 28, 2019 Page 2

PRIOR ACTION:

None

FINANCIAL IMPACT:

The funds for these purchases are budgeted in the 2019 Public Works Department General Fund Budget, account number 01-303-800-807, Fleet Replacement. The combined total budget for the cost of all vehicles and large equipment, including the cost of the transfer, purchase and installation of new and used equipment, lighting, communications and other miscellaneous equipment is \$851,728.

BACKGROUND:

The City vehicle and replacement policy, revised by the City Council in 2011, is utilized to determine replacement eligibility. This policy essentially provides replacement guidelines that consider long-term effective service life and costs for budgeting purposes. Among the guidelines considered are high/rising maintenance and repair costs, operating costs, excessive down-time of equipment, parts or service no longer available, poor utilization, updated legal considerations, etc. This year nine (9) existing vehicles in the fleet are programmed for replacement, plus seven (7) new additional vehicles.

RECOMMENDATIONS:

The vendor source and purchase price of equipment is through the State of Colorado and Colorado Department of Transportation purchasing contract which allows the City to attain the equipment at the best price and in accordance with bid/purchasing requirements. Staff recommends the purchase of the following vehicles this year:

- Four (4) new model year 2020, mid-size, all-wheel drive, Ford Police Patrol Utility Interceptor vehicles will be purchased from Larry H. Miller Ford of Lakewood, Colorado, to replace three (3) existing, high maintenance Chevrolet Caprice Police Patrol marked sedans, units 46, 47 and 85 and one (1) existing, high mileage Ford Crown Victoria, unit 40, in the Patrol division of the Police department.
- 2. One (1) new model year 2020, mid-size, all-wheel drive, Ford Police Patrol Utility Interceptor vehicle will be purchased from Larry H. Miller Ford of Lakewood, Colorado, as a new addition vehicle in the Patrol division of the Police department.
- 3. One (1) new model year 2019, mid-size, all-wheel drive Chevrolet Traverse SUV will be purchased from Daniels Long Automotive of Colorado Springs, Colorado to replace one (1) existing, high mileage Ford F-150 pickup, unit 4, in the Special Investigations division of the Police department.
- 4. One (1) new model year 2019, large 4x4 Dodge Ram pickup will be purchased from John Elway Chrysler Jeep Dodge Ram of Greeley, Colorado, as a new addition vehicle in the Special Investigations division of the Police department.

- 5. One (1) new model year 2019, large, extended cab, 4x4 F-150 pickup will be purchased from Sill-Terhar Motors, Inc. of Broomfield, Colorado to replace one (1) existing, high mileage Chevrolet Silverado 1500 pickup, unit 34, in the Community Services division of the Police department.
- 6. One (1) new model year 2019, large, extended cab, 4x4 F-150 pickup will be purchased from Sill-Terhar Motors, Inc. of Broomfield, Colorado as a new addition vehicle in the Community Services division of the Police department.
- 7. One (1) new model year 2019 International 7600 6x4 tandem cab and chassis will be purchased from McCandless Truck Center, LLC of Aurora, Colorado, based on the CDOT award, to replace one (1) existing, high mileage International 7500 6x4 tandem cab and chassis, unit 248, in the Operations division of the Public Works department.
- 8. One (1) new model year 2019, large, heavy duty 4x2 Ford F-350 cab and chassis with a dump body will be purchased from Spradley Barr Ford Lincoln Mercury of Greeley, Colorado to replace one (1) existing, high mileage Chevrolet heavy duty cab and chassis with a dump body, unit 296, in the Operations division of the Public Works department.
- 9. One (1) new model year 2019, large, heavy duty 4x4, Ford F-250 crew cab pickup will be purchased from Rush Medium Duty Truck Centers of Colorado, Inc. of Commerce City, Colorado to replace one (1) existing, high mileage GMC Sierra 4x2 pickup, unit 319, in the Maintenance division of the Parks department.
- 10. Two (2) new model year 2019, large, heavy duty 4x4, Ford F-250 crew cab pickups will be purchased from Rush Medium Duty Truck Centers of Colorado, Inc. of Commerce City, Colorado as new addition vehicles in the Maintenance division of the Parks department.
- 11. One (1) new model year 2019, large, heavy duty 4x4, Ford F-250 crew cab pickup will be purchased from Rush Medium Duty Truck Centers of Colorado, Inc. of Commerce City, Colorado as a new addition vehicle in the Forestry division of the Parks department.
- 12. One (1) new model year 2019, large, heavy duty 4x4, Ford F-250 crew cab pickup will be purchased from Rush Medium Duty Truck Centers of Colorado, Inc. of Commerce City, Colorado as a new addition vehicle in the Horticulture division of the Parks department.

All of the vehicles being replaced will be disposed of by public auction.

The estimated cost of auxiliary equipment, markings, decals and miscellaneous items for police, special investigations and community services vehicles is \$135,500. The estimated cost of auxiliary equipment, decals and miscellaneous items for the remaining vehicles is \$6,600. The estimated cost of auxiliary snow and ice removal equipment, lighting, hydraulics and miscellaneous items to outfit the tandem cab and chassis truck is \$100,000 and is to be

Council Action Form – 2019 Vehicle Purchases January 28, 2019 Page 4

advertised for bid at a later date. The total cost of all the auxiliary equipment, decals, marking and miscellaneous equipment requested at this time is not to exceed \$142,100.

RECOMMENDED MOTION:

"I move to approve the purchase and payment of 2019 vehicle replacements and the purchase and payment for installation of lighting and auxiliary and communications equipment in a total amount not to exceed \$740,356."

Or,

"I move to deny the approval of the purchase and payment of 2019 vehicle replacements and the purchase and payment for installation of lighting and auxiliary and communications equipment for the following reason(s): ______"

REPORT PREPARED/REVIEWED BY:

Patrick Goff, City Manager Greg Knudson, Operations Manager Jennifer Nellis, Purchasing Agent

- 1. Unit 46, 47 & 86 Police Interceptor Utility-City Spec Sheet
- 2. Unit 40 Police Interceptor Utility-City Spec Sheet
- 3. New Addition Police Interceptor Utility-City Spec Sheet
- 4. Unit 4 SIU-Mid-Size SUV City Spec Sheet
- 5. Unit 4 -Dodge RAM 4x4 Crew Cab Pickup City Spec Sheet
- 6. Unit 34 -Ford F-150 Ext Cab 4x4 Pickup City Spec Sheet
- 7. New Addition-Ford F-150 Ext Cab 4x4 Pickup City Spec Sheet
- 8. Unit 248-6x4 Cab & Chassis City Spec Sheet and CDOT Notice of Award
- 9. Unit 296-Large Ford F-350 C&C with Dump Body City Spec Sheet
- 10. Unit 319-Ford F-250 Crew Cab 4x4 Pickup City Spec Sheet
- 11. New Additions (P Maintenance)-2-Ford F-250 Crew Cab 4x4 Pickups City Spec Sheet
- 12. New Addition (P Forestry)-Ford F-250 Crew Cab 4x4 Pickup City Spec Sheet
- 13. New Addition (P Horticulture)-Ford F-250 Crew Cab 4x4 Pickup City Spec Sheet

Specifications for Three (3) Unmarked Police Department Utility Police Interceptor All-Wheel Drive (Units 46, 47 & 85)

January 28, 2019

BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #113486

Base vehicle as bid: 2020 Ford Patrol AWD Interceptor Utility: \$41, 335.00

Standard Specifications

OEM Body #: K8A Trim Level: PI Utility OEM Code: 500A Interior/Color/Code: Cloth Front & Vinyl Rear/Charcoal Black/96 Bluetooth Interface (SYNC) 4-User Configurable Latching Switches Base Body Exterior Color/Code: Agate Black/UM Fuel Type: Unleaded Gasoline

Add Factory Option(s)

43D	Dark car feature-Courtesy Lamp Disable	\$	25.00
17T	Dome Lamp-Red/White In Cargo Area	\$	50.00
92G	Glass-Solar Tint 2 nd & 3 rd Row	\$	120.00
68G	Rear Door Controls Inoperable	\$	75.00
59E	Keyed Alike – 1435x	\$	50.00
90E	Ballistic Door Panels-Driver & Passenger Front Doors	\$	3,170.00
55B	BLIS-Blind Spot Monitoring with Cross Traffic Alert	\$	545.00
76R	Reverse Sensing (Sonar with Chime)	\$	275.00
60R	Noise Suppression Bonds	\$	100.00
66A	Front Headlight Lighting Solution-Utility	\$	895.00
76D	Protector Deflector Plate-Utility	\$	335.00
Total Price of Factory Options:			5,640.00
Delet	e Factory Option(s)		
99R	3.3L V6 Direct Injection Engine	<\$ ·	-3,353.00>
758D	Complete #810 Package	<\$ ·	-6,875.00>

Total Price of Vehicle Only with Selected Factory Options: \$ 36,747.00

Specifications for One (1) Unmarked Police Department Utility Police Interceptor All-Wheel Drive (Unit 40)

January 28, 2019

BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #113486

Base vehicle as bid: 2019 Ford Patrol AWD Interceptor Utility: \$41, 335.00

Standard Specifications

OEM Body #: K8A Trim Level: PI Utility OEM Code: 500A Interior/Color/Code: Cloth Front & Vinyl Rear/Charcoal Black/96 Bluetooth Interface (SYNC) 4-User Configurable Latching Switches Base Body Exterior Color/Code: Agate Black/UM Fuel Type: Unleaded Gasoline

Add Factory Option(s)

43D	Dark car feature-Courtesy Lamp Disable	\$ 25.00
17T	Dome Lamp-Red/White In Cargo Area	\$ 50.00
92G	Glass-Solar Tint 2 nd & 3 rd Row	\$ 120.00
68G	Rear Door Controls Inoperable	\$ 75.00
59E	Keyed Alike – 1435x	\$ 50.00
90E	Ballistic Door Panels-Driver & Passenger Front Doors	\$3,170.00
55B	BLIS-Blind Spot Monitoring with Cross Traffic Alert	\$ 545.00
76R	Reverse Sensing (Sonar with Chime)	\$ 275.00
60R	Noise Suppression Bonds	\$ 100.00
66A	Front Headlight Lighting Solution-Utility	\$ 895.00
76D	Protector Deflector Plate-Utility	\$ 335.00
Total	\$5,640.00	
Delet	e Factory Option(s)	
99R	3.3L V6 Direct Injection Engine	<\$ -3,353.00>
758D	Complete #810 Package	<\$ -6,875.00>

Total Price of Vehicle Only with Selected Factory Options: \$36,747.00

Specifications for One (1) Marked Police Department Utility Police Interceptor All-Wheel Drive (New Addition to Fleet)

January 28, 2019

BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #113486

Base vehicle as bid: 2020 Ford Patrol AWD Interceptor Utility: \$41, 335.00

Standard Specifications

OEM Body #: K8A Trim Level: PI Utility OEM Code: 500A Interior/Color/Code: Cloth Front & Vinyl Rear/Charcoal Black/96 Bluetooth Interface (SYNC) 4-User Configurable Latching Switches Base Body Exterior Color/Code: Agate Black/UM Fuel Type: Unleaded Gasoline

Add Factory Option(s)

43D	Dark car feature-Courtesy Lamp Disable	\$	25.00
17T	Dome Lamp-Red/White In Cargo Area	\$	50.00
92G	Glass-Solar Tint 2 nd & 3 rd Row	\$	120.00
68G	Rear Door Controls Inoperable	\$	75.00
59E	Keyed Alike – 1435x	\$	50.00
90E	Ballistic Door Panels-Driver & Passenger Front Doors	\$ 3	3,170.00
55B	BLIS-Blind Spot Monitoring with Cross Traffic Alert	\$	545.00
76R	Reverse Sensing (Sonar with Chime)	\$	275.00
60R	Noise Suppression Bonds	\$	100.00
66A	Front Headlight Lighting Solution-Utility	\$	895.00
76D	Protector Deflector Plate-Utility	\$	335.00
Total	\$	5,640.00	
Delet	e Factory Option(s)		
99R	3.3L V6 Direct Injection Engine		-3,353.00>
758D	Complete #810 Package	<\$ -	6,875.00>

Total Price of Vehicle Only with Selected Factory Options: \$ 36,747.00

Specifications for one (1) Police Department (Special Investigation Division) Mid-Size SUV (Replacement for Unit 4)

January 28, 2019

BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #121803

Base vehicle as bid: 2019 Chevrolet Traverse LS SUV: \$26,144.00

Standard Specifications

OEM Model: INV56 OEM Code: 1LS Exterior Color: G9K Satin Steel Metallic Interior: Matching cloth Fuel Type: Unleaded

Total Price of Vehicle:

\$26,144.00

Specifications for one (1) Police Department (Special Investigation Division) 4x4 Crew Cab Pickup (Replacement for Unit 4)

January 28, 2019

BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #121829

Base vehicle as bid: 2019 Dodge RAM 1500 4x4 Pickup: \$19,143.00

Standard Specifications

OEM Model: DS6L98 OEM Code: 22B Trim level: Tradesman Exterior Color: See factory options list Interior: Matching Fuel Type: Unleaded

Total Cost of Factory Options:

Factory Options

099	DS6L98	Crew cab/standard 5'7" bed	\$ 3	3,821.00
216	EZH	5.7L V8 Hemi engine	\$ ´	1,836.00
243	DMH	3.92 axle ratio	\$	95.00
284	AJH	Power & remote keyless entry package	\$	735.00
320	CKE	Matching floor carpeting	\$	110.00
468	XMF	OEM spray-in bedliner	\$	200.00
599	UA1	AM/FM Uconnect 3.0 w/Bluetooth	\$	195.00
	PAR	Exterior color: maximum steel metallic	\$	200.00

Total Price of Vehicle & Selected Factory Options:\$26,335.00

\$ 7,192.00

Specifications for one (1) Police Department (Community Services Division) 4x4 Extended Cab Pickup (Replacement for Unit 34)

January 28, 2019

BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #113513

Base vehicle as bid:2019 Ford F-150 XL Extended Cab 4x4 Pickup: \$22,917.00

Standard Specifications

OEM Model: F1E OEM Code: 100A Exterior Color: White Interior: Matching cloth Fuel Type: Unleaded

Factory Options

Total Cost of Factory Options:			\$ 4, 465.00
530	85A	Power windows, locks & mirrors package	\$ 1,170 .00
098 468	Y1E 96W	Extended cab 4 door long bed (163" WB) OEM spray-in bedliner	\$ 2,700.00 \$ 595.00
~~~			

Total Price of Vehicle & Selected Factory Options:	\$27,382.00
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Specifications for one (1) Police Department (Community Services Division) 4x4 Extended Cab Pickup (New Addition)

#### January 28, 2019

#### BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #113513

Base vehicle as bid:2019 Ford F-150 XL Extended Cab 4x4 Pickup: \$22,917.00

#### **Standard Specifications**

OEM Model: F1E OEM Code: 100A Exterior Color: White Interior: Matching cloth Fuel Type: Unleaded

#### Factory Options

Total Cost of Factory Options:			\$ 4, 465.00
530	85A	Power windows, locks & mirrors package	\$ 1,170 .00
098 468	Y1E 96W	Extended cab 4 door long bed (163" WB) OEM spray-in bedliner	\$ 2,700.00 \$    595.00
000			<b>A A ZA A A</b>

Total Price of Vehicle & Selected Factory Options:	\$27,382.00
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Specifications for one (1) Public Works Department. – 2019 International Cab & Chassis (Replacement for Unit 248)

#### January 28, 2019 BASED ON COLORADO DEPARTMENT OF TRANSPORTATION AWARD #311001623

Base vehicle as bid: 2019 International HV513 SFA Cab & Chassis:	\$107,688.00
<u>Standard Specifications</u> Exterior Cab Paint Color - White	
Chassis Color - Black	
Option Addition(s)	
Air ride rear suspension	\$ 2,788.00
Transmission TCM mounted in cab	\$ 196.00
Cross member in front frame extension	\$ 154.00
Hood hatch	\$ 660.00
Michelin tires	\$ 1,663.00
Parking brake alarm	\$ 68.00
Wiper control	\$ 48.00
Test exterior lights	\$ 48.00 \$ 68.00
Heated windshield	\$ 708.00
Over the air programming	\$ 310.00
Winged instrument panel	\$ 333.00
Front tires with steel rims	\$ 1,889.00
Total Option Additions:	\$ 8,885.00
Total Price:	\$116,573.00



#### NOTICE OF AWARD COLORADO DEPARTMENT OF TRANSPORTATION

AWARD NUMBE	R 311001623	Re: Invitation For Bid # IFB 19-030 MM RFX - 7001063
(THIS IS NOT A PURCHASE ORDER, SEE NOTE		Period Covered: 9/19/18 through 9/30/19
BELOW)		FOUR possible renewal options remaining
VENDOR NO. VENDOR NAME: ADDRESS: CONTACT: PHONE:	1000188 McCandless Truck Center LLC 16704 E. 32 nd Avenue Aurora, CO 80011 Ron Wasinger 303 365 5387	INVOICE TO: Invoice address on Purchase Order for Colorado State Agencies, Institutions and political subdivisions
FAX NO:	303 739 2556	MATERIAL GROUP NUMBER:
EMAIL	rwassinger@mctrux.com	07051- Trucks over one ton capacity
DELIVERY:	95 - 110 Days	Class 8 Cab and Chassis Trucks

This award is for the purchase of class 8 trucks and options per the specifications, terms and conditions of solicitation number IFB 19-030 MM and this award.

Make, Model and Price of Units Awarded, Before Options:

Tandem Axle:	
International HV 513	\$107,688.00
Tandem Axle Road Tractor	
International LT 625	\$162,886.00

See attached pages for details and approved options:

**Conditions of Award:** Award is made to above referenced vendor for supplying the commodity/service specified above and on any attached supplementary pages per bid specifications to be ordered on an "as needed" basis, with FOUR (4) one year renewal periods, at CDOT option. This award is in year FIVE of 5 possible years total. Prices shall be firm through the first 12 months of award. Requests for any proposed price changes after the first 12 months must be submitted along with supporting documentation, to CDOT Purchasing, a <u>minimum of sixty (60) days</u> prior to the proposed effective date of such change. A new award notice will be issued for each additional renewal year that CDOT selects. EITHER PARTY MAY CANCEL ON 30 DAYS WRITTEN NOTICE.

IN ACCORDANCE WITH SECTION 24-110-201, CRS, THIS AWARD WILL BE FOR A COOPERATIVE PURCHASING AGREEMENT ("AGREEMENT") AVAILABLE FOR USE BY THE CONTRACTING STATE AGENCY, OTHER STATE AGENCIES, STATE INSTITUTIONS OF HIGHER EDUCATION, POLITICAL SUBDIVISIONS (E.G., CITIES, COUNTIES, SCHOOLS) AND ELIGIBLE NON-PROFIT AGENCIES ON THE TERMS, CONDITIONS AND RATES SET FORTH IN THE AGREEMENT. EACH AGENCY OR ENTITY ORDERING GOODS OR SERVICES UNDER THE AGREEMENT WILL BE RESPONSIBLE FOR ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ITS ORDERS. AGENCIES OR ENTITIES MAY PLACE ORDERS UNDER THE AGREEMENT USING A COMMERCIAL CREDIT CARD, PURCHASE ORDER OR CONTRACT, AS DEEMED APPROPRIATE BY THE ORDERING AGENCY OR ENTITY.

NOTE: THIS AWARD IS A NOTICE OF INTENT TO PURCHASE ONLY. VARIOUS CDOT PERSONNEL AS NEEDED WILL ORDER MATERIALS. MATERIAL ORDERED BY CDOT THAT COST \$5000.00 OR MORE PER ITEM, OR AGGREGATE, MUST BE ORDERED VIA PURCHASE ORDER. OTHER COLORADO STATE AGENCIES, INSTITUTIONS OR POLITICAL SUBDIVISIONS MAY ORDER MATERIALS BASED ON THIS AWARD. AGENCIES OTHER THAN CDOT ORDERING MATERIAL BASED ON THIS AWARD MUST ORDER VIA THEIR OWN PURCHASE ORDER SYSTEM. CDOT WILL ONLY BE RESPONSIBLE FOR MATERIAL ORDERED AND RECEIVED BY IT. <u>NO</u> QUANTITIES ARE GUARANTEED AS A RESULT OF THIS AWARD. QUANTITIES ORDERED WILL BE BASED UPON ACTUAL REQUIREMENTS.

	Approved By:
Phone: 303 512 5511 Email: MikeL.Moore@state.co.us	Michael Moore
	Michael Moore, CPPB, Purchasing Agent

	Approved Options	\$\$\$
1.	Additional Operator's manual.	78.00
2.	Additional Parts manual. (hard copy or CD-ROM) Please specify CD	650.00
3.	Additional Service Manual. (hard copy or CD-ROM) Please specify - Not Avail.	N/A
4.	Driveline retarder. Shall attach literature specifying, make, model, performance of unit, and changes or effects on electrical system and cooling system.	16,856.00
5.	<ul> <li>Front suspension with auxiliary front air spring to keep the vehicle level and stable for applications such as snow wing plows where unequal side-to-side loading occurs. Also called "load Leveling" spring.</li> <li>Install air bag on right front spring and install airlines, with manual switch mounted in dash.</li> <li>Required to raise the right (or left) front corner minimum of 3".</li> </ul>	1,752.00
6.	Dual electric horns in lieu of air.	N/C
7.	Auto Chains per axle - Deduct	-3,958
8.	Portable diagnostic tool, internet capable, with XP operating system, current virus protection and a 3-year warranty.	5,962.00
9.	Diagnostic software and connection cabling to match truck specifications.	3,941.00
10.	Arm rests for passenger seat.	N/A
11.	Heated front fender mounted 8-inch convex mirrors.	419.00
12.	The rear suspension Air Ride, Hendrickson Primaax, HAS 60 or equal. Shall have Inboard shocks. Suspension shall not interfere with the use of pavers, chippers or shoulderingmachines. Gauge inside cab and dump valve.	2,788.00
1.1	<b>Options</b> – Specific To Tractor With 5th Wheel	\$\$\$
13.	Remote winch control	2,983.00
14.	18-speed auto shift transmission.	9,368.00
15.	Electric controls for tarp system – mounting and plug style to be determined with requesting CDOT region prior to final order.	754.00
16.	Winch Deduct	- 8,850.00
17.	20-ton winch in lieu of standard.	13,565.00
18.	Axle load gauge for air suspension.	138.00
19.	Frame mounted tire chains rack	348.00

	Additional Options	\$
1	Hydraulic retarder for Allison automatic transmission	\$9,654.00
2.	Transmission TCM mounted in cab	\$196.00
3.	Premium cab upgrade for standard cab	\$668.00
4.	"C" Channel frame reinforcement	\$1,788.00
5.	11.25" x 4.00" x .500" 120,000 PSI strength steel frame	\$2,200.00
6.	Exterior sun visor	\$298.00
7.	Air application gauge	\$93.00
8.	Air compressor braided discharge line	\$94.00
9.	Bug deflector	\$366.00
10.	6 Channel ABS system	\$1,011.00
11.	Crossmember in front frame extension for mounting pump	\$154.00
12.	Hood hatch	\$660.00
13.	Wheel guards	\$56.00
14.	Programmable PTO features	\$374.00
15.	Michelin tires ilo standard	\$1,663.00
16.	Air ride passenger seat	\$588.00
17.	Parking brake alarm that sounds when brake is not set	\$68.00
18.	Wiper control (goes to slower speed after park brake is set)	\$48.00
19.	Test exterior lights	\$68.00
20.	Heated windshield	\$708.00
21.	60 Month Allison Extended Coverage	\$1,470.00
22.	Over the Air Programming	\$310.00
23.	Shock absorbers for HMX suspension	\$878.00
24.	Optional winch cable lengths and sizes upon request	
25.	All available options in Electronic Price List Less	20%

.

# OPTIONAL ALTERNATORS

		\$
0008GHU	{Delco Remy 28SI} Brush Type, 12 Volt 200 Amp. Capacity, Pad Mount, with Remote Voltage Sensor	NC
0008GWY	{Leece-Neville 14931PAH} Brush Type, 12 Volt 320 Amp. Capacity, Pad Mount	897
0008GXB	{Leece-Neville AVI160P2003} Brush Type; 12 Volt 240 Amp. Capacity, Pad Mount, with Remote Sense	97
0008GXC	{Leece-Neville AVI160P2007} Brush Type; 12 Volt 210 Amp. Capacity, Pad Mount, with Remote Sense	68
0008GXE	{Leece-Neville AVI160P2012} Brush Type; 12 Volt 190 Amp. Capacity, Pad Mount, with Remote Sense	368
0008GXK	{Leece-Neville BLP4006HN} Brushless, 12 Volt 325 Amp. Capacity, Pad Mount, with Remote Sense	954

# OPTIONAL SUSPENSIONS

Feature	Description		
		\$	
0014ULT ⁱ	{Hendrickson HAS-460-55} 55" Axle Spacing; 46,000-lb Capacity, 9.5" Ride Height, With Shock Absorbers Mounted Inboard	NC	
0014ULU ⁱ	{Hendrickson HAS-402-55} 55" Axle Spacing; 40,000-lb Capacity, 9.5" Ride Height, With Shock Absorbers Mounted Inboard	-286	
0014UNX ⁱ	{Hendrickson PAX-460-55} 55" Axle Spacing; 46,000-lb Capacity, 9.0" Ride Height, With Shock Absorbers Mounted in Standard Location	+862	
0014UHK ⁱ	{Hendrickson RT-463} Walking Beam Type 54" Axle Spacing; 46,000-lb Capacity With Bronze Center Bushings	-488	
0014UHL ⁱ	{Hendrickson RT-463} Walking Beam Type; 60" Axle Spacing, 46,000-lb Capacity With Transverse Torque Rods and Rubber Center Bushings	-108	
0014ULX ⁱ	{Hendrickson HMX-400-54} Walking Beam Type 54" Axle Spacing; 40,000-1b Capacity, With Rubber End Bushings, Transverse Torque Rods, Less Shock Absorbers	-281	
0014ULY ⁱ	{Hendrickson HMX-460-54} Walking Beam Type 54" Axle Spacing; 46,000-lb Capacity, With Rubber End Bushings, Transverse Torque Rods, Less Shock Absorbers	BASE	
0014ULZ ⁱ	{Hendrickson HMX-460-60} Walking Beam Type 60" Axle Spacing; 46,000-lb Capacity, With Rubber End Bushings, Transverse Torque Rods, Less Shock Absorbers	+313	

\$\$ Base Unit		equired Information: Heavy Duty Tandem Axle Make And Model			
107,688.0	00		INTERNATIONAL HV SERIES		
GVWR	"CA"	Engine Make Model Transmission Make Model			
66,000	131.5	International A26	Allison 4500 RDS	4.10	
<u>\$</u> \$	Available GVWR		Comments		
		Available per request depend	ling on application		
\$\$	Available "CA"		Comments		
		Every 2" from 102" CA			
\$\$	Available Engines		Comments		
723	450 hp	1700 lb. ft. torque			
1119	475 hp	1700 lb. ft. torque			
2158	500 hp	1750 lb. ft. torque			
\$\$	Available Transmissions		Comments		
-10284	_	RTLOF-18919 18 Speed ma	nual with lube pump		
-4835		FO-18E318B-MXP 18 speed			
-2887		FO-18E318B-VXO 18 spee	d fully automated manual		
			4500 RDS AUTOMATIC		
\$\$	Available Axle Ratios		Comments		
N/C		4.10; 4.30; 4.56; 4.89; 5	3.38; 5.63; 6.14		

SS Base Unit		Make And Model				
162,886		INTERNATIONAL LT625				
GVWR	"CA"	Engine Make Model	Transmission Make Model	Axle Ratio		
59,220 lb.	146"	Cummins X15	Eaton RTLO-18918B	4.10		
<b>SS</b>	Available GVWR		Comments			
		Dependent on tire and whe	eel selected			
\$\$	Available "CA"		Comments			
		Every 2" from 124"				
<i>\$\$</i>	Available Engines		Comments			
980	525 hp	1850 lb./ft torque				
2317	565 hp	1850 lb./ft torque				
7407	565hp		es upgrade to RTLO-20918B			
		Manual transmission				
\$\$	Available Transmissions		Comments			
4301			-Speed Manual, with Double O			
10.004			-20E318B-MXP} 18-Speed Fu	ıllv		
10.374		Automated Manual: with	Aluminum Clutch Housing			
\$\$	Available Axle Ratios		Comments			
N/C		3.73; 3.91; 4.10; 4.30				

CO Departmen	RADO nt of Transportation thway Operations t	Equipm	ent Request Fo	orm (Chassis)		
Date of Request:	10/22/2018					
Fiscal Year:	FY19					
Qty of Units Requested:		Base Price Each: \$1	07,688.00	Tota	l Cost Each Unit:	\$116,573.00
Award #:	311001619	Bid #: IFB 19	-030 MM	Purcha	se Requisition #:	
Vendor: I	McCandless Truck Int	ernational Ve	endor No: 1000188		Commodity #:	
Requested Class Code:		Description:				
Replacement or Trade-in Notes:						

Region	Section	Qty	Comments (replacement number	s)	WBS
_					
Item	Qty	0	Options Requested	Price Each	Total Price
1	1	Air ride rear sus	pension	\$2,788.00	\$2,788.0
2	1	Transmission T(	CM mounted in cab	\$196.00	\$196.0
3	1	Cross member i	n front frame extension	\$154.00	\$154.0
4	1	Hood hatch		\$660.00	\$660.0
5	1	Michelin tires il	o standard	\$1,663.00	\$1,663.0
6	1	Parking brake a	larm that sounds when park brake is not set	\$68.00	\$68.0
7	1	Wiper control (	goes to slower speed after park brake is set	\$48.00	\$48.0
8	1	Test exterior lig	hts	\$68.00	\$68.0
9	1	Heated windshi	eld	\$708.00	\$708.0
10	1	Over the air pro	gramming	\$310.00	\$310.0
11	1	Winged instrum	ent panel	\$333.00	\$333.0
12	1	425/65R22.5 Fr	ont tires with 22.5x12.25 steel rims	\$1,889.00	\$1,889.0
13				\$0.00	\$0.0
14				\$0.00	\$0.0
15					\$0.0
16					\$0.0
17					\$0.0
18					\$0.0
19					\$0.0
20					\$0.0
21					\$0.0
22					\$0.0
23					\$0.0
24					\$0.0
25					\$0.0
26					\$0.0
27					\$0.0
28					\$0.0
29					\$0.00
					\$8,885.00

Requested by:

Approved by:

New Asset ID #:

Total Cost All Units: \$0.00

Coding 400-0247-010-100-4002-6230-1N

Specifications for one (1) Public Works Department (Operations Division) Heavy Duty Crew Cab & Chassis with Dump Body (Replacement for Unit 296)

#### January 28, 2019

## BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #113842

Base vehicle as bid: 2019 Ford F-350 4x2 Cab & Chassis: \$25,991.00

## **Standard Specifications**

OEM Model: F3G OEM Code: 640A Exterior Color: White Interior: Matching Vinyl (see factory options list)

Fuel Type: Unleaded

### **Factory Options**

098	W3G/179	Crew cab 60" cab to axle	\$ 3,005.00
133	76C	Exterior back up alarm	\$ 140.00
311	AS	40/20/40 Vinyl seats	<\$ -50.00>
430	430	PKG: towing/rcvr hitch	\$ 45.00
443	443	PKG: Strobe light	\$ 433.00
470	470	PKG: hydraulic liftgate	\$ 3,995.00
481	481	PKG: dump bed body-dual rear wheels	\$10,551.00

Total Cost of Factory Options: \$18,119.00

Total Price of Vehicle & Selected Factory Options:	\$44,110.00
----------------------------------------------------	-------------

Specifications for one (1) Parks Department (Maintenance Division) 4x4 Crew Cab Pickup (Replacement for Unit 319)

### January 28, 2019

## BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #121843

Base vehicle as bid: 2019 Ford F-250 XL Crew Cab 4x4 Pickup: \$28,521.00

## **Standard Specifications**

OEM Model: W2B OEM Code: W2B Exterior Color: White Interior: Matching cloth Fuel Type: Unleaded

#### **Factory Options**

122	W2B	Short bed (160" WB)	<\$	-205.00>
430	W2B	PKG: towing/receiver/hitch	\$	0.00
443	UPFIT	PKG: Strobe light (ECCO 8970A)	\$	408.00
468	85S	Spray-in bedliner	\$	595.00
Total	Cost of Fact	ory Options:	\$	798.00

Total Price of Vehicle & Selected Factory Options: \$29,319.00

Specifications for one (2) Parks Department (Maintenance Division) 4x4 Crew Cab Pickups (2 New Additions)

### January 28, 2019

## BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #121843

Base vehicle as bid: 2019 Ford F-250 XL Crew Cab 4x4 Pickup: \$28,521.00

## **Standard Specifications**

OEM Model: W2B OEM Code: W2B Exterior Color: White Interior: Matching cloth Fuel Type: Unleaded

#### **Factory Options**

122	W2B	Short bed (160" WB)	<\$	-205.00>
430	W2B	PKG: towing/receiver/hitch	\$	0.00
443	UPFIT	PKG: Strobe light (ECCO 8970A)	\$	408.00
468	85S	Spray-in bedliner	\$	595.00
Total	Cost of Fact	ory Options:	\$	798.00

Total Price of Vehicle & Selected Factory Options: \$29,319.00

## Specifications for one (1) Parks Department (Forestry Division) 4x4 Crew Cab Pickup (New Addition)

### January 28, 2019

## BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #121843

Base vehicle as bid: 2019 Ford F-250 XL Crew Cab 4x4 Pickup: \$28,521.00

## **Standard Specifications**

OEM Model: W2B OEM Code: W2B Exterior Color: White Interior: Matching cloth Fuel Type: Unleaded

#### **Factory Options**

122	W2B	Short bed (160" WB)	<\$	-205.00>
430	W2B	PKG: towing/receiver/hitch	\$	0.00
443	UPFIT	PKG: Strobe light (ECCO 8970A)	\$	408.00
468	85S	Spray-in bedliner	\$	595.00
Total	Cost of Fact	ory Options:	\$	798.00

Total Price of Vehicle & Selected Factory Options: \$29,319.00

Specifications for one (1) Parks Department (Horticulture Division) 4x4 Crew Cab Pickup (New Addition)

#### January 28, 2019

## BASED ON 2019 STATE OF COLORADO PRICE AGREEMENT #121843

Base vehicle as bid: 2019 Ford F-250 XL Crew Cab 4x4 Pickup: \$28,521.00

## **Standard Specifications**

OEM Model: W2B OEM Code: W2B Exterior Color: White Interior: Matching cloth Fuel Type: Unleaded

#### **Factory Options**

122 430 443	W2B W2B UPFIT	Short bed (160" WB) PKG: towing/receiver/hitch PKG: Strobe light (ECCO 8970A)	<\$ \$ \$	-205.00> 0.00 408.00
468	85S	Spray-in bedliner	\$	595.00
Total	Cost of Fact	ory Options:	\$	798.00

Total Price of Vehicle & Selected Factory Options:\$29,319.00



ITEM NO: <u>1b.</u> DATE: January 28, 2019

## **REQUEST FOR CITY COUNCIL ACTION**



TITLE: MOTION TO APPROVE PAYMENT TO COLORADO **INTERGOVERNMENTAL** RISK SHARING AGENCY **COMPENSATION** (CIRSA) WORKERS' FOR 2019 PREMIUM IN THE AMOUNT OF \$294,030 AND 2019 **PROPERTY/CASUALTY PREMIUM IN THE AMOUNT OF** \$263.529.55

<ul> <li>PUBLIC HEARING</li> <li>BIDS/MOTIONS</li> <li>RESOLUTIONS</li> </ul>		CES FOR 1 ST READING CES FOR 2 ND READING
QUASI-JUDICIAL:	YES	NO NO
Administrative Services Di	rector	City Manager

#### **ISSUE:**

The Colorado Intergovernmental Risk Sharing Agency (CIRSA) provides property/casualty and workers' compensation coverage for the City of Wheat Ridge. Each year the City of Wheat Ridge completes a CIRSA renewal application process for both property/casualty and workers' compensation coverage in June and the premium amount is based on the information provided in the applications. The pool billing amount is then reduced if the City is eligible for credits offered by CIRSA. The annual payments due for 2019 are \$294,030 for workers' compensation and \$263,529.55 for property/casualty.

#### **PRIOR ACTION:**

CIRSA premiums are budgeted line items in the 2019 adopted budget, General Government – Central Charges account.

## **FINANCIAL IMPACT:**

For 2019, the City received a total of \$24,717 in credits between the two policies due to the proactive work of the employee Safety Committee in accident prevention and overall loss control efforts.

Council Action Form – CIRSA Annual Premium Payments January 28, 2019 Page 2

## **BACKGROUND:**

Each year the City of Wheat Ridge completes a CIRSA renewal application process for both property/casualty and workers compensation coverage and the premium amount is based on the information provided in the applications. The pool billing amount is then reduced if the City is eligible for credits offered by CIRSA.

For 2019 the City received loss control audit credits of \$17,912 for workers' compensation and \$6,805 for property/casualty. The adjusted workers' compensation payment for 2019 is \$294,030, which reflects a premium decrease of \$10,506 paid in 2018. The adjusted property/casualty payment for 2019 is \$263,529.55, which reflects a \$32,390.55 increase in premium paid in 2018.

## **RECOMMENDATIONS:**

Staff recommends payment of the CIRSA annual premiums.

## **RECOMMENDED MOTION:**

"I move to approve payment to CIRSA for 2019 workers' compensation premium in the amount of \$294,030 and the 2019 property/casualty premium in the amount of \$263,529.55."

Or,

"I move to deny the payment to CIRSA for workers' compensation and property/casualty premiums for the following reason(s) ______."

## **REPORT PREPARED/REVIEWED BY:**

Allison Scheck, Administrative Services Director Patrick Goff, City Manager

- 1. Invoice #W19055 Workers' Compensation Pool billing for 2019
- 2. Invoice #190226 Property /Casualty Pool billing for 2019

# **ANNUAL INVOICE**



City Of Wheat Ridge Attn: Laura McAvoy 7500 West 29th Ave. Wheat Ridge CO 80033 Date: January 01, 2019 Invoice #: W19055

Member ID: 13100

DESCRIPTION	COVERAGE DATES	AMOUNT DUE
Workers' Compensation Coverage: (see breakdown of annual contribution attached)	01/01/2019-01/01/2020	\$311,942.00
2018 Loss Control Audit Credit		(\$17,912.00)
	TOTAL	\$294,030.00

This invoice constitutes your Workers' Compensation Pool billing for 2019. Based on your selection when you accepted your quote, you opted to pay your contribution premium in full. Payment is due on January 1, 2019. Payments received in our office after February 15 will be charged interest at the current Prime Rate.

Delinquencies are subject to CIRSA Bylaws, Article VIII (1) (a) and Article XV.

This invoice includes all exposure changes reported to us from the time your renewal quote was calculated, August 16, 2018, to the time the invoice was calculated, December 27, 2018. Any changes between August 16 and December 27, including but not limited to the addition or deletion of payroll, or amendment of a class code, are reflected in this invoice. Any changes after December 27 will be included in your payroll audit performed in February 2020.

#### **PAYMENT OPTIONS:**

Pay On-Line by EFT:

Pay On-Line Website Address:

https://www.cirsa.org/billpay

Bank Name: Wells Fargo Bank N.A. Account Name: CIRSA WC Routing Number: 102000076 Account Number: 1018076885

#### Pay by Check Mailing Address:

CIRSA P.O. Box 910543 Denver, CO 80291-0543

Workers' Compensation Pool Allocation of 2019 Annual Contribution

Wh	eat Ridge			
Description	Rating Category	Allocated Payroll	Allocated Annual Contribution \$311,942	Rate per \$100 of Pay
Asphalt Works and Drivers	1463	\$0	\$0	\$100 011 ay
Photography	4361	\$0 \$0	\$0 \$0	
Traffic Light & Control Repair	5190	\$0	\$0	
Parking Meter Maintenance & Voting Machine Repair	5190	\$0 \$0	\$0 \$0	
Carpentry including Interior Carpentry Finish or Trim	5437	\$0 \$0	\$0 \$0	
Streets, Roads, Bridge Construction and Repair	5506	\$500,000	\$22,540	\$4.51
Street Lighting and Traffic Signal Construction or Repair	6325	\$123,000	\$3,056	\$2.48
Marina - Sale or Repair of Boats or Engines or Operation of Boat	6826	\$125,000	\$0	\$2.10
Ambulance Driver-Paid	7370	\$0	\$0	
Drivers N.O.C. including Parking Meter Readers, Library				
Bookmobile	7380	\$0	\$0	
Transportation - All Transit Bus Workers including Drivers	7382	\$0 \$0	\$0 \$0	
Airport or Helicopter Operations - Ground Crew	7403	\$0 \$0	\$0 \$0	
Gas - All Employees including Meter Readers	7502	\$0 \$0	\$0 \$0	
Waterworks Operations - All Operations	7520	\$0 \$0	\$0 \$0	
Electric - including Meter Readers	7539	\$0 \$0	\$0 \$0	
Sewer Disposal Plant Operations - All Operations	7580	\$0 \$0	\$0 \$0	
Garbage Works including Reduction, Incineration & Land Fill	7590	\$0 \$0	\$0 \$0	
Firefighters & Chief	7710	\$0 \$0	\$0 \$0	
Firefighters - Paid and Unpaid Volunteers	7711	\$0 \$0	\$0 \$0	
Search, Rescue, Disaster and Ambulance Teams - Paid and Unpaid	//11	30	\$0	
Volunteers,	7719	\$0	\$0	
	//19	\$0	\$0	
Police Officers, Chief, District Attorney, Investigators with Police				
Power, Sheriff's Posse, Jail Employees, Traffic Controllers, Armed	7720	¢7 110 000	¢1(2,2(0	¢ <b>2</b> 20
Guards, Airport Security Personnel	7720	\$7,110,000	\$163,268	\$2.30
Paid Police Volunteers, Reserves and Teams	7720.1	\$0 \$0	\$0 ©0	
Unpaid Police Volunteers, Reserves and Teams	7720.2	\$0	\$0	
Garage used for Municipal Vehicles and Mobile Equipment	0200	¢101.000	¢2 120	¢1.70
Maintenance	8380	\$121,000	\$2,130	\$1.76
Field Engineers & Surveyors	8601	\$0	\$0	
Case and Social Workers, Claim Adjusters, Loss Control	9742	¢0.	¢0	
Representatives	8742	\$0	\$0	
Clerical or Office Employees, including Librarians, Museum	0010	\$00 <b>5</b> 000	<b>\$750</b>	¢0.00
Professionals and Judges	8810	\$805,000	\$758	\$0.09
Paid Elected Council, Trustees, Officials and Treasurers	8810.1	\$140,400	\$53	\$0.04
Paid Appointed Boards, Commissions and Treasurers	8810.2	\$49,600	\$19	\$0.04
Unpaid Elected Council, Trustees and Officials	8811	\$0	\$0	<b>*</b> ****
Appointed Boards & Comm Unpaid	8811.1	\$982,800	\$370	\$0.04
Animal Control	8831	\$0	\$0	
Child Day Care	8868	\$56,000	\$237	\$0.42
Building Management and Maintenance	9015	\$175,000	\$5,057	\$2.89
Fairground, Amusement Park, Ice and Roller Skating Rink	9016	\$0	\$0	
Golf Courses	9060	\$0	\$0	
Restaurant and Food Service Employees including Musicians and				
Entertainers	9082	\$0	\$0	÷-
Parks and Recreation including Swimming Pool Employees	9102	\$2,707,000	\$63,181	\$2.33
Theater - All Employees Except Actors, Musicians and Entertainers	9154	\$0	\$0	
Ski Trail Maintenance Operation	9180	\$0 \$0	\$0 \$0	
Cemetery	9220	\$0 \$0	\$0 \$0	
Street Cleaning & Snow Removal	9402	\$0 \$0	\$0 \$0	
Refuse & Garbage Collection including drivers	9402 9403	\$0 \$0	\$0 \$0	
Not Otherwise Classified - Field and Office	9403 9410	\$3,864,053		\$1.33
rior Oniorwise Classified - Field and Office	2410	\$5,004,055	\$51,275	\$1.55

\$16,633,853 \$311,942

# **ANNUAL INVOICE**



City Of Wheat Ridge Attn: Laura McAvoy 7500 West 29th Ave. Wheat Ridge CO 80033 Date: January 01, 2019 Invoice #: 190226

Member ID: 13100

DESCRIPTION	COVERAGE DATES	AMOUNT DUE
Property/Casualty Coverage:	01/01/2019-01/01/2020	
Property Damage		\$79,350.07
Police Professional Liability		\$57,653.09
Public Officials E&O Liability		\$54,646.35
Auto Liability		\$44,595.18
Auto Physical Damage		\$15,872.33
General Liability (including separately rated exposures)		\$18,217.53
Total Property/Casualty Coverage:		\$270,334.55
2018 Loss Control Audit Credit		(\$6,805.00)
	TOTAL	\$263,529.55

This invoice constitutes your Property/Casualty Pool billing for 2019. Based on your selection when you accepted your quote, you opted to pay your contribution premium in full. Payment is due on January 1, 2019. Payments received in our office after February 15 will be charged interest at the current Prime Rate.

Delinquencies are subject to CIRSA Bylaws, Article VIII (1) (a) and Article XV.

This invoice includes all exposure changes reported to us from the time your renewal quote was calculated, August 16, 2018, to the time the invoice was calculated, December 27, 2018. Any changes between August 16 and December 27, including but not limited to the addition or deletion of buildings, mobile equipment and automobiles, are reflected in this invoice. Any changes after December 27 will be billed or credited separately.

#### **PAYMENT OPTIONS:**

Pay On-Line by EFT:

#### Pay On-Line Website Address:

https://www.cirsa.org/billpay

Bank Name: Wells Fargo Bank N.A. Account Name: CIRSA Routing Number: 102000076 Account Number: 1018076908

#### Pay by Check Mailing Address:

CIRSA P.O. Box 910543 Denver, CO 80291-0543



ITEM NO: 2. DATE: January 28, 2019

## **REQUEST FOR CITY COUNCIL ACTION**



TITLE: RESOLUTION NO. 06-2019 RESOLUTION A AUTHORIZING THE EXECUTION OF AN AGREEMENT ALLOWING ROCKY MOUNTAIN BOTTLE COMPANY TO PARTICIPATE IN THE WHEAT RIDGE **BUSINESS DEVELOPMENT ZONE PROGRAM FOR THE REBATE OF BUILDING USE TAX EQUAL TO TWENTY FIVE PERCENT** (25%) OF TOTAL USE TAX PAID IN ASSOCIATION WITH **RENOVATIONS** THE **COMPANY'S** FACILITY TO **THROUGH 2021** 

<ul> <li>➢ PUBLIC HEARING</li> <li>☐ BIDS/MOTIONS</li> <li>➢ RESOLUTIONS</li> </ul>		FOR 1 ST READING FOR 2 ND READING
QUASI-JUDICIAL:	YES	NO NO

**City Manager** 

#### **ISSUE:**

The Rocky Mountain Bottle Company (RMBC) has submitted a request for a rebate of use tax associated with a multi-phase, multi-million dollar renovation project, totaling approximately \$120 million, at their plant located at 10619 W. 50th Avenue in Wheat Ridge. The Business Development Zone (BDZ) Program allows City Council to enter into agreements to rebate certain fees related to new development or redevelopment.

Total use tax generated from all phases of the RMBC project is estimated at \$2,520,000. RMBC is currently investing \$56.2 million for Phase I of the project and has paid a total of \$1,180,200 in use tax at the rate of 3.5%, of which, 0.5% is restricted to the 2E Fund. Future phases of the project are valued at approximately \$63.8 million, which will generate an additional \$1,339,800 in use tax at the rate of 3.5%.

Staff recommends that City Council consider the approval of a use tax rebate equal to twentyfive (25%) of the use tax, at the rate of 3.0%, for all phases of the RMBC renovation project. The use tax rebate for Phase I will total \$252,900 and the use tax rebate for all future phases will total \$287,100 for a total use tax rebate of \$540,000.

## **BACKGROUND:**

Section 22-85 of the Wheat Ridge Municipal Code established the BDZ Program wherein existing Wheat Ridge companies or companies relocating to the City can request inclusion into the Program that provides for a rebate of use-tax and other fees based upon new construction or redevelopment. The BDZ Program was adopted by City Council for the following reasons:

- 1. The health, safety and welfare of the city are in large part dependent upon the continued encouragement, development and expansion of opportunities for employment in the private sector.
- 2. There currently exists in the city businesses or vacant land which require new development or revitalization to overcome unemployment, underemployment, net outmigration of the population, diminution of tax revenues, chronic economic distress and blighting influences, deterioration of business districts, etc.
- 3. Creating new development, redevelopment or expansion opportunities for the businesses within the City will increase the likelihood that new improved businesses will generate more municipal sales and use tax revenues.

The BDZ Program allows the Council to enter into an agreement to rebate certain fees related to new development or redevelopment. These eligible city fees, charges and taxes are limited to use tax on furniture and fixtures associated with the development, use tax on building materials, building permit fees and zoning fees. The Program allows for a rebate up to 75% based upon the following investment amounts:

- \$250,000 \$499,999 up to 25%
- \$500,000 \$999,999 up to 50%
- \$1,000,000 Higher up to 75%

## PROJECT DESCRIPTION

RMBC will be making a substantial investment at their facility in Wheat Ridge starting in 2018. The last significant investment in the facility was in 2011. Given the capital-intensive nature of the business, this investment project is of critical importance to the viability of the plant and retention of jobs.

The redevelopment includes taking two of the plants three furnaces out of service and replacing them with one larger furnace equipped with new oxy-fuel technology that will lower emissions and maximize energy efficiency. The existing furnaces are reaching the end of their useful lives and must be rebuilt to continue operating safely and efficiently. In addition, there would be investment in forming machines, lehrs and surface treatment equipment, batch distribution and weighing equipment and inspection equipment. The new equipment utilizes enhanced technology, which is expected to improve reliability and productivity. The project costs are

estimated at about \$92 million plus \$25 million for the lease of equipment that improves energy efficiency and reduces emissions.

A second phase of investment is being considered to start in 2019 that would add additional capacity at the facility for a new product at a cost of about \$6 million and a third phase slated for 2020 that would add new technology for production monitoring and quality inspections at a cost of about \$5.5 million. A fourth phase would include rebuilding the third furnace in 2021 at an estimated cost of \$10.5 million. Combined these various projects total about \$114 million with a maximum cost of \$120 million (excluding the oxy-fuel system lease) in investment in the facility to upgrade equipment needed to remain competitive and improve the viability of the plant for the future.

### **Company Information**

RMBC is a glass container manufacturing joint venture (JV) between Owens-Illinois, Inc. ("O-I") and MillerCoors ("MC"). RMBC traces its roots back to the Columbine Glass Company, which was founded in 1970 producing about 450,000 bottles per day at the same site being used today. After being purchased by Coors container business and entering into a partnership with Anchor Glass Container, the JV was formed in 1995. O-I purchased the glass container assets of Anchor Glass Container in 1997 and has been the JV partner since that time, partnering with MC since 2008. RMBC is part of both the O-I manufacturing network and the MC enterprise.

O-I is the world's largest glass container manufacturer and preferred partner for many of the world's leading food and beverage brands. O-I had revenues of \$6.9 billion in 2017 and employs more than 26,500 people at 78 plants in 23 countries. With global headquarters in Perrysburg, Ohio, O-I delivers safe, sustainable, pure, iconic, brand-building glass packaging to a growing global marketplace. O-I's principal markets for glass container products are in Europe, North America, Latin America and Asia Pacific. In North America, O-I has 19 glass container manufacturing plants in the U.S. and Canada, and one other joint venture. O-I has the leading share of the glass container segment of the U.S. rigid packaging market, however it faces strong competition from other forms of rigid packaging such as aluminum and plastic containers, as well as non-rigid packaging alternatives. Low cost is a key strength in competing successfully in the rigid packaging market, since glass is more expensive than the alternatives (i.e.: glass is 30% higher in cost than aluminum cans).

Locally, RMBC is one of the largest private employers in the City of Wheat Ridge and part of the targeted industry cluster of Beverage Production in Jefferson County, which has a significant local economic impact. At the state-level, the Company is part of the Food & Agriculture industry, which is designated a key industry for the state of Colorado and a critical driver of the state's overall economy. The facility is approximately 400,000 square feet, on 17.5 acres, and includes a recycling facility which processes cullet (recycled glass) used in the manufacturing process. The plant currently makes six (6) different bottle types and about 3.5 million bottles per day for over 30 varieties of beer. The bottles are shipped primarily to MC brewery locations in California, Colorado, Texas and Wisconsin. The breweries are in close proximity to O-I glass plants, which also supply bottles to the breweries.

### **Employment**

The facility has 226 full-time permanent employees. Total annual payroll exceeds \$23,000,000, with average annual wages per job of about \$100,000 (well above the Jefferson County average wage of \$57,824). These are high-quality jobs contributing to the economic vitality of the City and region.

It is anticipated that about 15-18 new full-time permanent jobs will be created at the facility by the end of 2019, at an average annual wage of about \$100,000. In addition, it is anticipated that a significant amount of local labor will be used to complete the renovation project. This includes local millwrights, masons, electricians, etc. It is estimated that the portion of the project costs associated with local labor could be in the range of \$15 - \$17 million.

### **RECOMMENDATION:**

RMBC is an existing business in the City that requires new investment to remain operational and competitive in a capital-intensive business. If investment is not made to rebuild, upgrade and improve the furnaces and production equipment, the operation cannot remain viable. RMBC pays a significant amount of local property and sales/use tax (through direct pay and via vendors including utility providers) and employs many people in the City. These projects will help ensure the retention of the city's tax base and high-quality jobs for its residents, while generating additional tax revenue from the new investment in 2018-2021 and beyond.

In addition, the almost \$25 million in direct payroll generated by the plant annually and paid to local labor hired for furnace construction and equipment installation will support retail sales and associated tax revenue in the City as employees and laborers spend their earnings (induced economic impacts). Suppliers of RMBC similarly contribute to the local economy and tax base as a result of the glass plant operations by making their own purchases of goods and hiring workers (indirect economic impacts).

Participation in the program will help the RMBC plant compete internally for limited allocation of capital dollars. Plants that can implement a project in the most cost-effective manner are best positioned to secure funding from the JV partners. Facility financial metrics impact which plants receive new investment, including ROI, cost structure and profitability. Economic incentives favorably impact these metrics by reducing operational costs and improving ROI. In this case, a favorable use tax rebate from the City is particularly important to reduce project costs given the challenging market conditions and to offset competitive operating cost disadvantages impacting the facility ROI.

Staff recommends that City Council consider the approval of a use tax rebate equal to twentyfive (25%) of the use tax, at the rate of 3.0%, for all phases of the RMBC renovation project. The use tax rebate for Phase I will total \$252,900 and the use tax rebate for all future phases will total \$287,100 for a total use tax rebate of \$540,000, but not to exceed \$900,000, for the following reasons:

- 1. The project will assist a major employer in Wheat Ridge and Jefferson County
- 2. The project will retain jobs and may increase employment
- 3. The project will provide a more efficient facility thus reducing power consumption resulting

in fuel savings

4. The project will create cleaner air by reducing contaminants released (see Attachment 4 & 5)

## **RECOMMENDED MOTION:**

"I move to approve Resolution <u>06-2019</u>, a resolution authorizing the execution of an agreement allowing Rocky Mountain Bottle Company to participate in the Wheat Ridge Business Development Zone Program for the rebate of building use tax equal to twenty five percent (25%) of total use tax paid in association with renovations to the Company's facility through 2021."

Or,

"I move to postpone indefinitely Resolution  $\underline{06-2019}$ , a resolution authorizing the execution of an agreement allowing Rocky Mountain Bottle Company to participate in the Wheat Ridge Business Development Zone Program for the rebate of building use tax equal to twenty five percent (25%) of total use tax paid in association with renovations to the Company's facility through 2021, for the following reason(s): ______."

## **REPORT PREPARED/REVIEWED BY:**

Steve Art, Economic Development Manager Patrick Goff, City Manager

- 1. Resolution <u>06-2019</u>
- 2. Agreement to Participate in the Business Development Zone Program
- 3. BDZ Code of Laws
- 4. Letter from RMBC, dated January 23, 2019
- 5. RMBC Consent Decree

### CITY OF WHEAT RIDGE, COLORADO RESOLUTION NO. <u>06</u> Series of 2019

TITLE: RESOLUTION NO. <u>06-2019</u> – A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT ALLOWING ROCKY MOUNTAIN BOTTLE COMPANY TO PARTICIPATE IN THE WHEAT RIDGE BUSINESS DEVELOPMENT ZONE PROGRAM FOR THE REBATE OF BUILDING USE TAX EQUAL TO TWENTY FIVE PERCENT (25%) OF TOTAL USE TAX PAID IN ASSOCIATION WITH RENOVATIONS TO THE COMPANY'S FACILITY THROUGH 2021

**WHEREAS**, the City has adopted as a portion of the Wheat Ridge Code of Laws ("Code") Chapter 22, Article I, Division 5, "Business Development Zone" (the "Program"), to encourage, in part, continued development and expansion of opportunities for employment in the private sector in the City; and

**WHEREAS**, Rocky Mountain Bottle Company (RMBC) has applied to participate in the Program and a public hearing was posted and conducted; and

**WHEREAS**, RMBC is the owner and operator of 17 plus acres of land and improvements thereon within the City and known as the "Owner," and is the operator of a business that employs residents of Wheat Ridge and surrounding communities; and

**WHEREAS**, Owner has begun renovations and has submitted use tax payments of \$1,180,200; and

**WHEREAS**, Owner plans to invest approximately \$120,000,000 in improvements and equipment (the "Project"); and

**WHEREAS**; the Project currently employs 226 primary jobs and will add an additional 15-18 new jobs paying up to \$100,000 annually; and

**WHEREAS**; the Project spurs reinvestment through renovation, thus enhancing and preserving its economic viability in the City; and

**WHEREAS**, cost-sharing at the rate prescribed herein will serve to aid the expansion of Owner in that it will alleviate a portion of the costs associated with the expansion.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wheat Ridge, Colorado, as follows:

A Business Development Zone Program Agreement is hereby approved with RMBC wherein an amount of 25% of use-tax, at a rate of 3.0%, will be rebated to RMBC for renovations through 2021 in an amount estimated at \$540,000, but not to exceed \$900,000.

**DONE AND RESOLVED** this 28th day of January 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

#### **AGREEMENT TO PARTICIPATE IN THE**

#### CITY OF WHEAT RIDGE BUSINESS DEVELOPMENT ZONE PROGRAM

This Agreement to Participate in the City of Wheat Ridge Business Development Zone Program (this "Agreement") is made and entered into as of the 28th day of January, 2019, by and between Rocky Mountain Bottle Company, hereinafter referred to as the "Owner" and the CITY OF WHEAT RIDGE, COLORADO, 7500 W. 29th Avenue, Wheat Ridge, Colorado 80033 hereinafter referred to as the "City," collectively the "Parties," and each individually, as a "Party."

WHEREAS, the City has adopted as a portion of the Wheat Ridge Code of Laws ("Code") Chapter 22, Article I, Division 5, "Business Development Zone" (the "Program"), to encourage, in part, continued development and expansion of opportunities for employment in the private sector in the City; and

WHEREAS, Owner has applied to participate in the Program; and

WHEREAS, Owner is the owner and operator of leased space and improvements thereon within the City and known as the "Rocky Mountain Bottle Company ("RMBC")," which is a glass container production facility; and

WHEREAS, pursuant to Code Sec. 22-86, the City Council has designated the real property leased by RMBC as a "Wheat Ridge Business Development Zone"; and

WHEREAS, Owner plans to construct new equipment and plant improvements in a 17+ acre site by December 31, 2021; and

WHEREAS, Owner's plans and new equipment and plant improvements will lead to increased employment from their current 226 to 15-18 new employees; and

WHEREAS, while such an increase in employees with an average salary of \$100,000 will indirectly impact City services through increased sales tax opportunities will not directly impact City revenue; and

WHEREAS, the Program allows the City to provide for the sharing of certain categories of fees, taxes and other business development-related charges for new development within the business development district ("Eligible City Fees, Charges and Taxes" as defined in Code Sec. 22-87 (2)) to the extent allowed by an agreement with a business owner; and

WHEREAS, cost-sharing at the rate prescribed herein will serve to aid the expansion of RMBC in that it will alleviate a portion of the costs associated with the expansion.

NOW, THEREFORE, in consideration of the foregoing, and the covenants, promises, and agreements of each of the Parties hereto, to be kept and preformed by each of them, the Parties agree as follows:

1. <u>Recitals</u>. The Recitals set forth above are incorporated in this Agreement by reference

2. <u>Term.</u> The term of this Agreement shall commence on May 1, 2018 and shall terminate upon full refund by the City to Owner of eligible City fees, charges and taxes as set forth in Paragraph 7 or December 31, 2021(the "Term"). Notwithstanding the foregoing, it is an express provision of this Agreement that this Agreement shall expire and be of no further force and effect upon the occurrence of the earlier to occur of: (1) expiration of the Term or (2) payment of the maximum amount to be shared as set forth in Paragraph 7 (whether or not the Term has expired), or (3) determination by the City of Owner's default, as provided in Paragraphs 13 or 15.

## 3. <u>The Project.</u>

The project proposed by the Owner through which it desires to participate in the Program consists of the following, generally shown in **Exhibit A**. The foregoing shall be collectively referred to herein as the "Project," and is more fully described below at Paragraphs 4 and 8.

4. <u>**Representations of Owner**</u>. Pursuant to Code Sec. 22-86, Owner hereby represents to the City the following:

- a. <u>Improvements justifying Project approval.</u>
  - i. <u>Estimated cost</u>. The cost for the Project including the improvements described above is estimated to be approximately One hundred and twenty million dollars \$(120,000,000) of which use tax shall be remitted to the City.
- b. <u>Expected incremental future tax revenue.</u> Owner operates a glass container production facility. Any incremental future use tax revenue will be directly generated by this Project. Benefits to the community which may generate future use tax indirectly have been identified by the Owner as follows:
  - i. Short-term positive impact during construction: Prior to the completion of the Project, the tenant improvement phase will employ additional personnel in the construction phase.
  - ii. Long-term positive impact by addition of staff: With increased facilities and ability to increase services, Owner will employ more permanent staff. Specifically, it is estimated that permanent staff will be added to the facility. It is anticipated that at the completion of the Project, 15-18 full-time employees will be hired with an average salary of \$100,000.
  - iii. The completion of the project will provide for a cleaner environment through the installation of materials which operate cleaner and more efficiently.

## 5. <u>Personal agreement; non-transferable; no third party beneficiaries</u>

The cost-sharing of Eligible City Fees, Charges and Taxes as approved herein shall constitute a personal agreement between the City and Owner. The terms of this Agreement do not run with the land. The obligations, benefits and/or provisions of this Agreement may not be assigned in whole or in any part without the express authorization of the City Council. No third party shall be entitled to rely upon or enforce any provision hereof.

## 6. Agreement not to constitute debt or obligation of the City

Nothing herein shall be construed to constitute a debt or obligation of the City. Notwithstanding any other provision of this Agreement to the contrary, the Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). This Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the City and other applicable law.

## 7. <u>Cost-sharing</u>

- a. <u>Estimated Eligible City Fees, Charges and Taxes</u>. The following are estimates of the Eligible City Taxes which are the subject of the cost-sharing herein and attached as **EXHIBIT A**.
- b. <u>Expected Incremental Future Sales and Use Tax Revenue</u>. The Expected Incremental Future Sales and Use Tax Revenue, as such term is defined in Code Sec. 22-87 (2), is estimated to be \$4,200,000.
- c. <u>Cost-sharing</u>. Pursuant to Code Sec. 22-88, cost-sharing of the Eligible City Fees, Charges and Taxes may be granted up to the Expected Incremental Future Use Tax Revenue. However, it is anticipated that the Incremental Use Tax Revenue received from the Project is currently projected to be \$3,980,690. *Notwithstanding the foregoing*, and in reliance upon the representation of Owner of the benefits to the City of the Project, the City and Owner agree to the cost-sharing for the Eligible City Fees, Charges and Taxes as follows:

100% of the Eligible City Use Taxes shall be due and paid to the City by Owner based upon review and approval by the City of properly documented requests for the same. Upon receipt thereof, the City shall refund 25% of such Eligible City Taxes back to the Owner payments to their overall Tax charge described in Paragraph 2 herein. In no event shall the City be obligated to refund more than 25% of eligible City Fees, Charges and Taxes received by it.

## 8. <u>Legal challenge</u>

In the event of legal challenge to the Program as applied to Owner, any costs scheduled to be shared-back to Owner shall be escrowed until resolution of the dispute.

### 9. <u>Waiver of Code requirements</u>

To the extent any requirements of Code Secs. 22-85 through 22-94 have been waived, such waiver has occurred pursuant to Code Sec. 22-91 whereby the City Council has found by a majority vote that such waiver is in the public's interest and will provide a substantial benefit to the City.

### 10. <u>No joint venture</u>

Pursuant to Code Sec. 22-93, nothing herein shall be construed to create a joint venture between the City and Owner. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in the Program, and the City shall never be liable or responsible for any debt or obligation of any participant, including the Owner, in the Program.

### 11. Use of funds

Pursuant to Code Sec. 22-89, Owner expressly acknowledges and agrees that any Eligible City Fees, Charges and Taxes refunded to the Owner under this Agreement, up to the amount agreed upon by the City Council pursuant to this Agreement may only be used for the purpose of the Project, as described in Paragraph 12, on Owner's Property within the underlying Business Development Zone.

#### 12. <u>Uses enumerated</u>

Pursuant to Code Sec. 22-90, the uses to which the Eligible City Fees, Charges and Taxes may be put by the Owner shall be strictly limited to those which are approved by the City Council and which relate directly to the Project within the City, which Project is anticipated to indirectly generate more municipal sales and use tax revenues for the City in the future. Uses hereby expressly approved by City Council are as follows:

a. Investment into new equipment and plant improvements in an amount not to exceed \$120,000,000.

#### 13. <u>No Covenant to construct or to operate</u>

The intent of this Agreement is to provide for Owner's participation in the Program, in the event that Owner completes the Project. Notwithstanding any provision in this Agreement to the contrary, Owner shall have no obligation under this Agreement to complete the Project. In the event Owner fails to complete the Project, this Agreement may be terminated at the option of the City.

#### 14. <u>Remedies</u>

The Owner waives any constitutional claims against the City arising out of a breach of this Agreement. The Owner's remedies against the City under this Agreement are limited to breach of contract claims. In no event shall the City be liable for any form of damages, including without limitation: exemplary, punitive or consequential damages, including economic damages and lost profits.

#### 15. <u>Termination</u>

In the event Owner fails to comply with one or more of the terms of this Agreement, City may, in its sole discretion, terminate this Agreement.

#### 16. <u>Indemnification</u>

To the fullest extent permitted by law, Owner agrees to indemnify and hold the City harmless from any damage, liability or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by the Owner's negligent acts, errors or omissions in the performance this Agreement and those of its sub-contractors, sub-consultants or anyone for whom the Owner is legally liable. To the extent permitted by the Colorado Constitution and statutes, the City agrees to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions arising from this Agreement. These defense and indemnification obligations shall survive the expiration or termination of this Agreement. The Parties acknowledge that the provisions of this Paragraph are not intended to waive or alter any of the rights and defenses afforded to the City under the common law, the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et. seq.* or any other law.

#### 17. <u>Severability</u>

If any part, term or provision of this Agreement or the Program is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid, and the Parties shall cooperate to cure any legal defects in the Agreement or the Program. Should the sharing of Eligible City Fees, Charges and Taxes pursuant to this Agreement be judicially adjudged illegal, invalid or unenforceable under the present or future laws effective during the Term of this Agreement by a court of competent jurisdiction in a final, non-appealable judgment, the Parties shall utilize their best, good faith efforts to restructure this Agreement or enter into a new agreement consistent with the purposes of this Agreement. Should the Parties be unsuccessful in their efforts, the Agreement shall terminate without penalty or recourse to either Party.

#### 18. <u>Governing law; venue</u>

The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either Party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be proper and exclusive in the district court for Jefferson County, Colorado.

#### 19. <u>Notices</u>

All notices required or permitted under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid, to be addressed to the Parties set forth below. All notices so given shall be considered effective upon the earlier of the actual receipt or seventy-two (72) hours after deposit in the United States Mail with the proper address. Either Party by notice so given may change the address to which future notices shall be sent:

Notice to the City:	City Manager City of Wheat Ridge 7500 W. 29 th Ave. Wheat Ridge, CO 80033
Copy to:	City Attorney City of Wheat Ridge 7500 W. 29 th Ave. Wheat Ridge, CO 80033
Notice to the Owner:	Wheat Ridge, CO 80033
Copy to:	[INSERT CONTACT] Address

#### 20. <u>Entire agreement – amendments</u>

This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto. This Agreement may be amended only by written agreement between the Owner and the City acting pursuant to City Council authorization.

#### 21. <u>Effective date</u>

This Agreement shall be effective and binding upon the Parties upon the date first set forth above.

IN WITNESS WHEREOF, Owner and City have each caused this Agreement to be executed by their authorized representatives.

#### OWNER

		By: Name: Title:	
State of Colorado	)		
County of Jefferson	)	SS.	
The foregoing Agreement was	acknowled	ged before me this day of _	, 2011, by
	as		of RMBC, LLC

WITNESS MY HAND AND OFFICIAL SEAL. My Commission expires: _____

NOTARY PUBLIC

## **CITY OF WHEAT RIDGE**

By: _____ Name: Bud Starker Title: Mayor

ATTEST:

Name: Janelle Shaver Title: City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

## EXHIBIT A

## RMBC Project Profile - Revised December 3, 2018

Attachment 1

Investment Summary – Potential Plant Investment, 2018-2021

Description	Est. Cost	Sub-Total	Timing
Phase 1 - A/B Furnace Project			2018-2019
Cold End Inspection			
Abatement System			
Batch House			
Furnace Demolition and Misc. Repairs			
Furnace Rebuild			
Building Repairs and Alterations			
Lehr and Surface Treatment			
Forming Machines			
Infrastructure & Utilities			
Gen Contractor Services			
Engineering Services			
Contingency			
		\$91,743,000	
Transformation Project			
Forming machine conversion	\$2,800,000		
Inspection machine guarding	\$1,906,000		
Misc. replacement equipment	\$1,300,000		
		\$6,006,000	
Phase 2 - Quality Project A			2020
New quality equipment	\$3,200,000		
Inspection machine guarding	\$980,000		
Misc. replacement equipment	\$1,300,000		
		\$5,480,000	
Phase 3 – C Furnace Project			2021
C Tank Rebuild	\$8,000,000		
New quality equipment	\$1,290,000		
Misc. replacement equipment	\$1,200,000		
		\$10,505,000	
Total Purchases:		\$113,734,000	2018-2021
Maximum Costs:		\$120,000,000	2018-2021

Notes:

1. Equipment leases entered into as part of the Project are eligible for the BDZ cost-sharing.

2. The Maximum Costs allowance takes into account the potential for increased cost/revised project budgets.

#### Sec. 22-85. - Program established.

• There is hereby established within the city the "Wheat Ridge Business Development Zone" program.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02)

#### Sec. 22-86. - Legislative declarations.

- The city council hereby finds and declares:
  - (1) That the health, safety and welfare of the people of this city are in large part dependent upon the continued encouragement, development and expansion of opportunities for employment in the private sector in this city;
  - (2) That there currently exists in this city businesses or vacant land which require new development or revitalization opportunities to overcome conditions of unemployment, underemployment, net out-migration of the population, diminution of tax revenues, chronic economic distress and blighting influences such as, but not limited to, deterioration of business districts, deterioration of public infrastructures, traffic and drainage problems or sudden severe economic dislocations;
  - (3) That by creating new development, redevelopment or expansion opportunities for businesses within the city the city council will increase the likelihood that new and improved businesses will generate more municipal sales and use tax revenues for the city in the future.
- (b) It is therefore declared to be the policy of the city, in order to provide incentives for private enterprises to expand or for new businesses to locate in the city, to develop a program which empowers the city council to designate portions of the city as a "business development zone" and to provide for the abatement of certain categories of fees, taxes and other business development-related charges for new development or redevelopment within such districts.
- (c) The city council has enacted this <u>division 5</u> of article I of <u>chapter 22</u> of the Code of Laws as a joint benefit to the public at large and to private owners for the purposes of reducing blight in our business districts and of providing the city with increased sales and use tax revenues generated upon and by properties improved as a result of this program and allowing owners and proprietors opportunities to improve properties which generate sales activities and create

additional employment opportunities, which improvements make those properties more competitive in the marketplace and further provide to owners and proprietors additional contingent sources of revenues for upgrading such properties.

(d) The city council specifically finds and determines that creation of this "business development zone" division and the exercise of the powers enumerated herein are consistent with and promotes the public health, safety and general welfare of the citizens of Wheat Ridge.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1993-947, § 1, 12-13-93; Ord. No. 1272, § 1, 12-9-02; Ord. No. <u>1553</u>, § 2, 8-11-14)

#### Sec. 22-87. - Definitions.

- As used in this division, the following phrases shall have the following meanings unless the context clearly indicates another meaning:
  - (1) The phrase eligible city fees, charges and taxes shall mean and shall be limited to use tax on furniture and fixtures associated with the initial development or redevelopment "project," use tax on building materials, building permit fees and zoning fees.
  - (2) The phrase expected incremental future sales and use tax revenue shall mean the amount of the additional sales and use tax revenue, as projected by the city, expected to be generated during the council-designated time period from the time of completion of the "project" over and above the sales and use tax fees generated on the premises in the twelve (12) months preceding the application described in <u>section 22-88</u>.
  - (3) The phrase owner or proprietor shall mean the record owner, tenant or operator of an individual business or, in the case of a shopping center, the owner of the real property upon which more than one business is operated.
  - (4) Project shall mean the specific development or redevelopment expenditures which relate both to the abatement of "eligible city fees, charges, and taxes" and "expected incremental future sales and use tax revenues."

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02)

#### Sec. 22-88. - Participation.

• Participation in the business development zone program shall be based upon approval by the city council, exercising its legislative discretion. Any owner or proprietor of an established, proposed or newly purchased business, or the owner or proprietor of an existing business which wishes to expand and invest at least two hundred fifty thousand dollars (\$250,000.00) in private improvements in the project, may apply to the city for inclusion within the program. Abatement or sharing of eligible city fees, charges, and taxes shall, upon approval of the agreement by the city council, be granted according to the following rebate schedule:

Amount of Investment in Project	Eligible City Fees, Charges and Taxes Rebate
\$250,000.00 to \$499,999.00	25%
\$500,000.00 to \$999,999.00	50%
\$1,000,000.00 or higher	75%

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02; Ord. No. 1553, § 2, 8-11-14)

## Sec. 22-89. - Approval of agreement; use of funds generally.

• Approval by the city council of an agreement implementing the provisions of this division shall entitle the applicant to share in the eligible city fees, charges and taxes up to the amount agreed by the city council; provided, however, that applicant may use such amounts only for the purpose of developing or redeveloping the business within the approved business development zone, which purposes shall be specifically enumerated in the agreement provided for in section 22-92 hereof.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02; Ord. No. 1553, § 2, 8-11-

#### Sec. 22-90. - Uses enumerated.

• The uses to which the eligible city fees, charges and taxes may be put by an applicant shall be strictly limited to those which are approved by the city council and relate directly to the development or redevelopment of businesses within the city, which developed or redeveloped businesses will generate more municipal

sales and use tax revenues for the city in the future. Priority shall be given to businesses who agree to utilize the eligible city fees, charges and taxes for the public or public-related purposes identified <u>section 22-78</u> of this Code of Laws.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02; Ord. No. <u>1553</u>, § 2, 8-11-14)

## Sec. 22-91. - Criteria for approval of agreement.

- Approval of a BDZ agreement shall be given by the city council, at a public hearing held as a portion of a regularly scheduled city council meeting, notice of which has been published in a newspaper of general circulation at least seven (7) days prior to the hearing. The council's approval of a BDZ agreement shall be based upon the identified need or value the business offers to the community in terms of sales and use tax generation, investment in the community or increased employment based upon the following criteria:
  - The amount of expected incremental future sales and use tax revenue which can reasonably be anticipated to be derived by the city through the expanded or new business;
  - (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for city residents, etc.;
  - (3) The amount, if any, of city expenditures which may be deferred based upon public improvements to be completed by the applicant;
  - (4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the city;
  - (5) The agreement required by section 22-92 hereof having been reached, which agreement shall contain and conform to all of the requirements of such section.
- (b) Approval of any agreement shall be made by motion adopted by a majority of the entire city council.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1993-947, § 2, 12-13-93; Ord. No. 1272, § 1, 12-9-02; Ord. No. <u>1553</u>, § 2, 8-11-14)

**Editor's note**— Ord. No. <u>1553</u>, adopted Aug. 11, 2014, repealed former §§ <u>22-91</u> and <u>22-92</u> and renumbered §§ <u>22-93</u>—22-96 as <u>22-91</u>—22-94 as set out herein. The historical notation has been retained with the amended provisions for reference purposes. Former §§ <u>22-91</u> and <u>22-92</u> pertained to increments, sharing of funds and the capital improvement fund, respectively, and derived from Ord. No. 888, § 1, adopted Jan. 13, 1992, and Ord. No. 1272, § 1, adopted Dec. 9, 2002.

#### Sec. 22-92. - Agreement required.

- Each agreement shall be subject to approval by the council solely on its own merits. Approval of one agreement shall not require, or be deemed precedent for, approval of any other agreement. Agreements shall be executed by the owner and the city, and the agreement shall, at a minimum contain:
  - (1) A list of those improvements which justify applicant's approval, and the amount which shall be spent on such improvements;
  - (2) The maximum amount of expected incremental future sales and use tax revenue;
  - (3) A statement that this is a personal agreement which is not transferable and which does not run with the land;
  - (4) A statement that this agreement shall never constitute a debt or obligation of the city within any constitutional or statutory provision;
  - (5) The base amount which shall consider the use taxes generated by the property in question, or a similar property within the city in the event of a new business;
  - (6) That any expected incremental future use tax revenue shall be escrowed in the event there is a legal challenge to this business development zone program;
  - (7) A statement that the obligations, benefits and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the city council, and further that no third party shall be entitled to rely upon or enforce any provision hereof;
  - (8) Any other provisions agreed upon by the parties and approved by the city council.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02; Ord. No. <u>1553</u>, § 2, 8-11-14)

**Note**— See the editor's note to  $\underline{\S 22-91}$ .

## Sec. 22-93. - No joint venturer; liability.

• The city council has enacted this business development zone as a joint benefit to the public at large and to private owners for the purposes of providing the city with increased tax revenues generated upon and by properties improved as a result of this program; public improvements being completed by private owners through no debt obligation being incurred on the part of the city, and allowing applicants an opportunity to improve properties which generate sales and other business activities. Notwithstanding any provision hereof, the city shall never be a joint venturer in any private entity or activity which participates in this business development zone program, and the city shall never be liable or responsible for any debt or obligation of any participant in this business development zone.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02; Ord. No. <u>1553</u>, § 2, 8-11-14)

**Note**— See the editor's note to  $\underline{\S 22-91}$ .

## Sec. 22-94. - TIF.

• If the applicant, owner or proprietor business is located in an urban renewal area in which all or a portion of sales tax revenues have been pledged as part of a tax increment financing program, he or she shall be ineligible for participation in this business development zone program.

(Ord. No. 888, § 1, 1-13-92; Ord. No. 1272, § 1, 12-9-02; Ord. No. <u>1553</u>, § 2, 8-11-14)

**Note**— See the editor's note to  $\underline{\$ 22-91}$ .



January 23, 2019

Wheat Ridge City Council City of Wheat Ridge 7500 W. 29th Ave. Wheat Ridge, CO 80033

Dear Mayor Starker and Wheat Ridge City Council members:

I'm writing this letter on behalf of Rocky Mountain Bottle Company ("RMBC") to provide, as requested, information about Consent Decree 1:17-cv-1554 (the "CD"). To demonstrate RMBC's transparency on this matter, attached is a full copy of the CD for your review.

The CD arose out of an alleged environmental violation occurring in 2012. *See* CD Ex. A. RMBC denied the allegations in the Notice of Violation, but ultimately voluntarily entered into the CD to avoid litigation and to further the public interest. CD at p. 2. As part of this voluntary resolution, RMBC agreed to install and operate certain pollution control technology and to implement other measures to achieve emission reductions at the Wheat Ridge facility. CD at p. 2.

RMBC is committed not just to compliance with the CD, but also to being a good environmental steward generally, as demonstrated by the following:

- Every RMBC employee is trained annually on environmental awareness, which includes the requirements of our air permit;
- RMBC has hired environmental consultants from Mostardi Platt to help ensure compliance and develop best practices;
- RMBC has invested significant capital in installing a state-of-the-art glass furnace emissions control device;
- RMBC has installed and operates continuous emissions monitoring systems;
- RMBC has achieved CERMs certification; and
- RMBC makes semi-annual emission reports to CDPHE.

In summary, this renovation and expansion project is important to RMBC. RMBC is making a substantial investment in our existing Wheat Ridge facility, which will not only help ensure RMBC's future success, but it will also help maintain and strengthen the local economy. RMBC's Wheat Ridge facility currently employs 226 people who have an average annual salary of \$100,000, and it is anticipated that this project will create 18 net new jobs.

I look forward to discussing this with you next week.

Sincerely,

Bill Dillaman RMBC General Plant Manager

# **ATTACHMENT 4**

1 0 6 1 9 W E S T 5 0 T H A V E W H E A T R I D G E , C O L O R A D O 8 0 0 3 3 P H O N E: 3 0 3 4 2 5 7 8 4 1 • F A X: 3 0 3 4 2 5 7 8 8 6

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA and STATE OF COLORADO,	)
Plaintiffs,	) )
v.	)
ROCKY MOUNTAIN BOTTLE COMPANY, LLC.	)
Defendant.	)

Civil Action No. 1:17-cv-1554

CONSENT DECREE

**ATTACHMENT 5** 

## TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	3
II.	APPLICABILITY	3
III.	DEFINITIONS	4
IV.	COMPLIANCE REQUIREMENTS	.11
V.	CIVIL PENALTY	.19
VI.	PERMITS	.20
VII.	EMISSION CREDIT GENERATION	.22
VIII.	REPORTING REQUIREMENTS	.23
IX.	REVIEW AND APPROVAL OF SUBMITTALS	.26
X.	STIPULATED PENALTIES	.27
XI.	FORCE MAJEURE	.32
XII.	DISPUTE RESOLUTION	.35
XIII.	INFORMATION COLLECTION AND RETENTION	.38
XIV.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	.40
XV.	COSTS	.42
XVI.	NOTICES	.43
XVII.	SALES OR TRANSFER OF OPERATIONAL OR OWNERSHIP INTERESTS	.44
XVIII.	. EFFECTIVE DATE	.46
XIX.	RETENTION OF JURISDICTION	.46
XX.	MODIFICATION	.46
XXI.	TERMINATION	.47
XXII.	PUBLIC PARTICIPATION	.48
XXIII.	. SIGNATORIES/SERVICE	.48

XXIV. INTEGRATION	49
XXV. APPENDICES	49
XXVI. JUDGMENT	49

WHEREAS, concurrently with the lodging of this Consent Decree, Plaintiffs, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Colorado ("Colorado"), on behalf of the Colorado Department of Public Health and Environment ("CDPHE") have filed a Complaint in this action seeking civil penalties and injunctive relief from the Defendant, Rocky Mountain Bottle Company, LLC ("RMBC"), for alleged violations of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, with respect to emissions of nitrogen oxides ("NOx"), and sulfur dioxide ("SO2"), at its container glass manufacturing facility in Wheat Ridge, Colorado ("Facility");

WHEREAS, the Complaint alleges that RMBC violated and/or continues to violate the Prevention of Significant Deterioration ("PSD") provisions in Part C of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492, the Non-attainment New Source Review ("Non-attainment NSR") provisions in Part D of Subchapter I of the CAA, 42 U.S.C. §§ 7501-7511f, the permitting requirements of CAA Subchapter V ("Title V"), 42 U.S.C. §§ 7661-7661f, regulations implementing those CAA provisions, and the federally enforceable Colorado state implementation plans ("SIP");

WHEREAS, the Complaint alleges that RMBC made major modifications to the Facility without obtaining the required CAA permits and without complying with the CAA's PSD and Non-attainment NSR requirements regarding the installation of pollution control technology, emission limits, monitoring, recordkeeping, and reporting;

WHEREAS, EPA issued a Notice of Violation on February 1, 2012, with respect to the Facility, attached as Appendix A hereto;

#### Case 1:17-cv-01554 Document 2-1 Filed 06/26/17 USDC Colorado Page 5 of 71

WHEREAS, EPA provided RMBC and Colorado with actual notice of the alleged violations, in accordance with Sections 113(a)(1) and (b) of the Clean Air Act, 42 U.S.C.§§ 7413(a)(1) and (b);

WHEREAS, RMBC has denied and continues to deny the violations alleged in the Complaint and in the Notice of Violation;

WHEREAS, Colorado is a co-Plaintiff in this matter, and Colorado is alleging analogous violations of Colorado's SIP and/or other state rules and regulations incorporating and implementing the aforementioned federal CAA requirements;

WHEREAS, EPA has selected glass manufacturing facilities (including container glass) as a national CAA enforcement priority;

WHEREAS, the United States, Colorado, and RMBC anticipate that the installation and operation of pollution control technology and other measures required by this Consent Decree will achieve reductions of emissions from the Facility, thereby improving air quality;

WHEREAS, the objectives of the United States in entering into this Consent Decree are to further the purposes of the CAA as described in CAA Section 101, 42 U.S.C. § 7401, to protect public health, public welfare, and the environment, to have RMBC perform the actions described below, and to ensure that RMBC achieves and maintains compliance with the CAA, applicable state law, and the terms and conditions of this Consent Decree and applicable CAA permits;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and has jurisdiction over the Parties. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims asserted by Colorado. Venue lies in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because RMBC resides and is located in, RMBC's headquarters and principal place of business are located in, and RMBC conducts business in, this judicial district. For purposes of this Consent Decree or any action to enforce this Consent Decree, RMBC consents to venue in this judicial district and to this Court's jurisdiction over this Consent Decree, any such action to enforce the Consent Decree, and over RMBC.

2. For purposes of this Consent Decree, RMBC agrees that the Complaint states claims upon which relief may be granted pursuant to the Clean Air Act and pursuant to the laws of the State of Colorado under the Court's supplemental jurisdiction.

## II. <u>APPLICABILITY</u>

3. The obligations of this Consent Decree apply to and are binding upon each Party and its successors, assigns, or other entities or persons otherwise bound by law.

4. Until this Consent Decree has terminated pursuant to Section XXI (Termination) below, RMBC shall provide a copy of this Consent Decree to all officers, employees, and agents

whose duties include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. Notwithstanding any retention of third parties to perform any work required under this Consent Decree, RMBC shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree.

5. In any action to enforce this Consent Decree, RMBC shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, unless RMBC establishes that such failure resulted from a Force Majeure event and RMBC has complied with all the requirements of Section XI of this Consent Decree.

## III. <u>DEFINITIONS</u>

6. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "24-hour Block Average" shall be calculated by averaging all valid onehour emissions data outputs (concentration or pounds) for a given Operating Day and using the daily glass production rates (in tons) on that Operating Day where applicable;

b. "30-Day Rolling Average" shall be expressed as pounds of pollutant emitted per ton of glass produced calculated in accordance with the following formula and subparagraphs (i) and (ii) below:

$$30 - day \ average \ \frac{lb \ E}{ton} = = \frac{COD_E \ (lbs) + P29D_E (lbs)}{COD_{Prod} \ (tons) + \ P29D_{Prod} (tons)}$$

Where:

30-Day average (lb E/ton) = the 30-Day Rolling Average.  $E = Emissions of NO_X or SO_2$ . COD = Current Operating Day where the relevant 30-Day Rolling Average is theapplicable limit and the CERMS measures at least one full hour of emission data. $<math>COD_E = The \text{ daily emissions as measured by a CERMS on the COD, in pounds.}$   $COD_{Prod} = Daily glass production on the COD, in tons of glass.$  P29D = The Previous 29 Operating Days where the relevant 30-Day Rolling AverageEmission Rate is the applicable limit and the CERMS measures at least one full hour ofemission data. $<math>P29D_E = The sum of the daily NO_X or SO_2$  emissions as measured by a CERMS during the P29D, in pounds.  $P29D_{Prod} = The sum of the daily glass production during the P29D, in tons of glass.$ 

(i) A new 30-Day Rolling Average shall be calculated for each new

Operating Day where the 30-Day Rolling Average Emission Rate is the applicable standard and

the CERMS measures at least one full hour of emission data. Any Operating Day where the

newly calculated 30-Day Rolling Average exceeds the limit is a separate one-Day violation; and

(ii) As specified in Paragraphs 7-10 of this Consent Decree, certain

Days may be excluded from the 30-Day Rolling Average;

c. "Abnormally Low Production Rate Day" shall mean any Operating Day

where glass production at any Furnace is at or below 35% of permitted production (or design production, where there is no permitted production) as determined on a daily basis (as defined in the then-current Title V permit) for at least one continuous hour;

d. "Calendar Year" shall mean the period commencing on January 1 and ending on December 31 of the same year;

e. "CDPHE" shall mean the Colorado Department of Public Health and Environment and any of its successor departments or agencies;

f. "CERMS" or "Continuous Emission Rate Monitoring System" shall mean, for obligations involving NO_X or SO₂ emissions and/or emission rates under this Consent Decree, the total equipment required to sample, condition (if applicable), analyze, and provide a written record of such emissions and/or emission rates, expressed on a continuous basis. Such equipment includes, but is not limited to, sample collection and calibration interfaces, pollutant analyzers, diluent analyzer (including oxygen monitor), stack gas volumetric flow monitors, and data and recording and storage devices;

g. "CERMS Certification" or "CERMS re-Certification" shall mean the certification as specified in 40 C.F.R. § 60.13, and in accordance with 40 C.F.R. Part 60 Appendices B and F;

h. "CERMS Certification Event" shall mean any Furnace Startup or First Control Device Startup;

i. "Cold Repair" shall mean the process of stopping glass production, stopping the flow of fuel, fully cooling down a Furnace, replacing some or all of the refractory in the Furnace, the crown, and/or the regenerators (if applicable), and re-starting the Furnace by firing fuel and starting the production of glass. A Cold Repair, for the purposes of this Consent Decree, does not include any refractory repairs conducted when the Furnace is still hot. A Cold Repair also does not include emergency repairs in which the Furnace is cooled to ambient temperature to conduct the repairs, or repairs to a Furnace that temporarily ceased Operation

due to economic reasons, provided the repairs in either instance do not include the replacement of more than 30 percent of the refractories in the Furnace;

j. "Combined Stack" shall mean the stack through which all emissions from Furnaces B and C are passed. If one of the Furnaces is not Operating, then the "Combined Stack" emissions are represented by the remaining Operating Furnace for the purpose of demonstrating compliance with any limit;

k. "Complaint" shall mean the complaint filed by the United States and Colorado in this action;

l. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXV (Appendices), below);

m. "Continuous Operating Year" shall mean a Calendar Year during which a Furnace Operates on every Day of that Calendar Year;

n. "Control Device" shall mean Scrubber System, Particulate Device, or similar add-on air pollution control device;

o. "Control Method" shall mean a method used to reduce the creation of emissions from a Furnace, such as Oxyfuel;

p. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time for determining reporting deadlines under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day. The Day starts at 12:00 am and ends at 11:59 pm;

q. "Defendant" or "RMBC" shall mean Rocky Mountain Bottle Company, LLC;

r. "Effective Date" shall have the definition provided in Section XVIII (Effective Date);

s. "Emissions Credit(s)" shall mean an authorization or credit to emit a specified amount of NO_X, SO₂, or PM that is allocated or issued under an emissions trading or marketable permit program of any kind established under the CAA or a SIP;

t. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

u. "Facility" shall mean RMBC's container glass manufacturing facility located at 10619 West 50th Avenue, Wheat Ridge, Colorado;

v. "First Control Device Startup" shall mean the initial startup of a Control Device, and shall represent the period of time from the Control Device's commencement of operation until operation of the device is stable and the device has achieved normal operating conditions; however, this period shall not exceed thirty (30) Days;

w. "Furnace" means an emissions unit comprised of a refractory-lined vessel in which raw materials are charged and melted at high temperature to produce molten glass;

x. "Furnace Startup" shall mean the period of time during which a Furnace's refractory is heated from ambient temperature to the temperature at which glass is normally produced. A Furnace Startup shall last no more than 30 Days and includes the slow heating of the Furnace refractory, initially with portable burners and transitioning to main burners once the Furnace reaches a temperature at which they can commence operation. Furnace Startup also

includes the initial filling of the furnace, following the heat-up, with cullet and/or raw materials, to a level at which production launch can commence;

y. "Hot Spot Temperature" shall mean the highest temperature of the Furnace sidewall between the tuck stone (approximately 18" above the glass line) and the crown skew (where the Furnace crown meets the Furnace sidewall) (also referred to as the Furnace "breastwall refractory");

z. "Maintenance" shall mean activities necessary to keep the Control Devices in normal operating condition, as described in Paragraph 13;

aa. "Malfunction" shall mean, consistent with 40 C.F.R. § 60.2, any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, but shall not include failures that are caused in part by poor maintenance or careless operation;

bb. "Month" shall mean a calendar month;

cc. "New Source Review" or "NSR" shall mean the PSD and Non-attainment NSR provisions in Parts C and D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, applicable federal regulations implementing such provisions of the CAA, and the corresponding provisions of federally enforceable SIPs and Colorado law;

dd. "NO_X" shall mean the sum of oxides of nitrogen in the flue gas, collectively expressed as NO₂;

ee. "Operate," "Operation," "Operating," and "Operated" shall mean any time that fuel is fired in a Furnace;

ff. "Operating Day" shall mean any Day during which fuel is fired into a Furnace;

gg. "Oxyfuel Furnace" shall mean a Furnace in which the gas that provides the oxidant for combustion of the fuel is composed of greater than or equal to 90 percent oxygen.

hh. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral;

ii. "Particulate Device" and "PD" shall mean a control device that usesfiltration technology to reduce Particulate Matter emissions, including, but not limited to,electrostatic precipitators, baghouses, and ceramic filter systems;

jj. "Parties" shall mean the United States on behalf of EPA, the State of Colorado on behalf of CDPHE, and RMBC;

kk. "RMBC" shall mean Rocky Mountain Bottle Company, LLC;

II. "Scrubber System" shall mean a type of system known sometimes as a sorbent injection system which involves the addition of an alkaline material into the gas stream to react with the acid gases. The acid gases react with the alkaline sorbents to form solid salts.

(i) Semi-dry Scrubber System – The system described above with the sorbent in an aqueous phase which improves collection efficiency.

 (ii) Dry Scrubber System – The system described above with no moisture added in the reaction chamber or reaction area.

mm. "Section" shall mean a portion of this Consent Decree identified by an uppercase roman numeral;

nn. "State" shall mean the State of Colorado, on behalf of CDPHE;

oo. "Ton" or "tons" shall mean short ton or short tons (equal to 2000 pounds);

pp. "United States" shall mean the United States of America, acting on behalf of EPA;

## IV. <u>COMPLIANCE REQUIREMENTS</u>

7. <u>Combined Stack</u>. Beginning on March 31, 2019, whenever any Furnace is Operated, all stack gases from that Furnace must pass through the Combined Stack and be measured by the CERMS. If one of the Furnaces is not Operating or is operating during the first seven (7) days of a Furnace Startup, then the "Combined Stack" emissions are represented by the remaining Operating Furnace for the purpose of demonstrating compliance with any limit.

8. NO_X Emission Limits, Controls, and Compliance Schedules

a. <u>NO_x Emission Controls</u>: By no later than March 31, 2019, RMBC shall no longer Operate Furnace A, and shall only Operate Furnaces B and C as Oxyfuel Furnaces.
 RMBC shall install, maintain and Operate each Oxyfuel Furnace such that the gas that provides the oxidant for combustion of the fuel is at least 90 percent oxygen.

b. <u>Final NO_x Emission Limit (30-day Rolling Average)</u>: Beginning no later than March 31, 2019, RMBC shall emit no more than 1.1 lb NO_x/ton on a 30-day Rolling Average from the Combined Stack as measured using a NO_x CERMS except:

(i) <u>Abnormally Low Production Rate Days</u>. RMBC may exclude
 Abnormally Low Production Rate Days from the 30-day Rolling Average. During each Day
 excluded from the 30-day Rolling Average, a NO_X CERMS shall be used to demonstrate
 RMBC's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{XAbn} = 1.1 \frac{lb \ NO_X}{ton} \times P$$

Where:P = Combined maximum production capacity for all<br/>furnaces Operating during the Abnormally Low Production<br/>Rate Day (tons/day).

#### (ii) <u>Furnace Malfunction and Furnace Maintenance</u>. RMBC may

exclude Operating Days during a Furnace Malfunction or Furnace Maintenance from the 30-Day Rolling Average. During each Day excluded from the 30-day Rolling Average, a NO_X CERMS shall be used to demonstrate RMBC's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{XMaint,Malf} = 1.1 \frac{lb NO_X}{ton} \times P_{norm} + 2.4 \frac{lb NO_X}{ton} \times P_{Maint,Malf}$$

 $\begin{array}{ll} \underline{W} here: & P_{norm} = The \mbox{ production from any Furnace not experiencing} \\ a \mbox{ Furnace Malfunction or Furnace Maintenance event, if} \\ any (tons/day) \\ P_{Maint,Malf} = The \mbox{ production capacity for all furnaces} \\ experiencing \mbox{ a Furnace Malfunction or Furnace} \\ Maintenance \mbox{ event (tons/day)}. \end{array}$ 

## (iii) <u>NOx Limit during the 1st through 30th day of Furnace Startup</u>. For

the Furnace Startup period (Days 1-30), RMBC must pass all Furnace exhaust through the Combined Stack and through all Control Devices that are not undergoing a First Control Device Startup but shall exclude the emissions from all Furnaces from the 30-day rolling average. During the Day(s) excluded from the 30-day rolling average, except for Day(s) which are Abnormally Low Production Rate Day(s) covered by the NOx limit in subparagraph 8.b(i), a NO_X CERMS shall be used to demonstrate RMBC's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{X \, Startup} = 1.1 \frac{lb \, NO_X}{ton} \, x \, Normal \, Prod + 2.4 \, \frac{lb \, NO_X}{ton} \, x \, Startup \, Prod$$

Where:Normal Prod = Production of Furnaces that are Operating<br/>and not undergoing Furnace Startup.<br/>Startup Prod = Production of Furnaces that are undergoing<br/>Furnace Start Up.

- 9. SO₂ Emission Limits, Controls, and Compliance Schedules.
  - a. <u>SO₂ Emission Control Devices</u>: Beginning no later than March 31, 2019,

RMBC shall pass all stack gases from each Operating Furnace (except during a Control Device Malfunction; or during Control Device Maintenance) through a continuously operating Scrubber System. While the Scrubber is operating, RMBC shall continuously operate it according to all applicable vendor recommendations in order to minimize emissions.

b. Final SO₂ Emission Limit (30-day Rolling Average): Beginning no later

than March 31, 2019, RMBC shall emit no more than 0.8 lb SO₂/ton on a 30-day Rolling Average from the Combined Stack as measured using a SO₂ CERMS except:

(i) Abnormally Low Production Rate Days. RMBC may exclude

Abnormally Low Production Rate Days from the 30-day Rolling Average. During each Day excluded from the 30-day Rolling Average, a SO₂ CERMS shall be used to demonstrate RMBC's compliance with the following pound per day SO₂ limit on a 24-hour Block Average:

$$SO_{2Abn} = 0.8 \frac{lb SO_2}{ton} \times P$$

Where:P = Combined maximum production capacity for allFurnaces Operating during the Abnormally Low Production<br/>Rate Day (tons/day).

(ii) <u>First Control Device Startup, Control Device Malfunction and</u>

Control Device Maintenance. RMBC may exclude Operating Days with First Control Device

Startup, Control Device Malfunction, or Control Device Maintenance from the 30-Day Rolling Average. During each Day excluded from the 30-day Rolling Average, a SO₂ CERMS shall be used to demonstrate RMBC's compliance with the following pound per day SO₂ limit on a 24-hour Block Average:

$$SO_{2\frac{W}{Q}control \ device} = 2.5 \frac{lb \ SO_{2}}{ton} \times P$$

- Where:P = Combined maximum production capacity for all<br/>furnaces Operating during the First Control Device Startup,<br/>Control Device Malfunction or Control Device<br/>Maintenance Day (tons/day).
  - (iii) <u>SO₂ Limit during the 1st through 30th day of Furnace Startup</u>. For

the Furnace Startup period (Days 1-30), RMBC must pass all Furnace exhaust through the Control Device but shall exclude the emissions from all Furnaces from the 30-day rolling average. During the Day(s) excluded from the 30-day rolling average, except for Day(s) which are Abnormally Low Production Rate Day(s) covered by the SO₂ limit in subparagraph 9.b(i), a SO₂ CERMS shall be used to demonstrate RMBC's compliance with the following pound per day SO₂ limit on a 24-hour Block Average:

$$SO_{2 \ Startup} = 0.8 \frac{lb \ SO_2}{ton} \ x \ Normal \ Prod + 2.5 \ \frac{lb \ SO_2}{ton} \ x \ Startup \ Prod$$

Where:Normal Prod = Production of Furnaces that are Operating<br/>and are not undergoing Furnace Startup.Startup Prod = Production of Furnaces that are undergoing<br/>Furnace Startup.

10. <u>CERMS - Installation, Calibration, Certification, Maintenance, and Operation.</u> RMBC shall install, calibrate, certify, maintain and operate a NO_X and SO₂ CERMS on the Combined Stack in accordance with the provisions of 40 C.F.R. § 60.13 that are applicable to CERMS, and with Part 60 Appendices B and F, including the applicable performance specification tests of 40 C.F.R. Part 60, Appendix B. The CERMS must be installed and certified no later than ninety (90) Days after this Consent Decree is lodged with the Court.

a. The CERMS shall continuously monitor and record the hourly NO_X and
 SO₂ emission rates in pounds per hour ("lb/hr") from the Combined Stack during each
 Operating Day.

b. The CERMS shall measure emissions after the Control Devices, unless emissions bypass any Control Devices, and then the emissions must be measured after any operating Control Devices, but prior to being emitted to the atmosphere.

c. At the end of each Operating Day, the data acquisition and handling system shall divide the total daily emissions in pounds per day from the Combined Stack for valid CERMS hourly data by the total tons of glass produced/pulled during the Operating Day for all Operating Furnaces (reduced proportionally based on the valid CERMS data hours) to describe the pound per ton emission rate for the Operating Day. The resulting number shall be recorded in units of pounds of pollutant per ton of glass produced/pulled for the applicable Operating Day.

d. RMBC must comply with all monitoring, recordkeeping, and reporting requirements in 40 C.F.R. § 60.13, and 40 C.F.R. Part 60, Appendix B (Performance Specifications 2, 3 and 6).

e. <u>CERMS Certification and CERMS re-Certification Events</u>. RMBC shall not perform CERMS Certifications or CERMS re-Certifications during Abnormally Low Production Rate Days, Furnace Startup, a First Control Device Startup, Malfunction, or Maintenance. By no later than the first Operating Day after any CERMS Certification Event concludes, a new CERMS Certification or CERMS re-Certification shall be performed for the Combined Stack. If a CERMS Certification Event occurs, the requirement to demonstrate compliance continuously with the final NO_X or SO₂ emission limits required hereunder will be suspended until CERMS Certification or CERMS re-Certification is complete but no more than ten (10) Days (provided that the seven-day test required for CERMS Certification in 40 C.F.R. Part 60 is commenced on the first Operating Day following the conclusion of the CERMS Certification Event).

11. <u>Good Air Pollution Control Practice</u>. At all times, including during Abnormally Low Production Rate Days, a Furnace Startup, a First Control Device Startup, Malfunction, and Maintenance, RMBC shall maintain and operate all Furnaces, all Control Devices and Methods, and any other associated air pollution control equipment in accordance with 40 C.F.R. § 60.11(d).

12. <u>Alternative Control Technologies</u>. At any time prior to termination of this Consent Decree, RMBC may request approval from EPA and CDPHE to implement other control technology for NO_x or SO₂ than what is required by this Consent Decree. In seeking such approval, RMBC must demonstrate that such alternative control technology is capable of achieving pollution reductions equivalent to the technology required in Paragraphs 8 and 9. RMBC must also demonstrate that it can achieve monitoring equal to or better than what is

required in Paragraph 10. Approval or denial of such a request will be made by EPA after consultation with CDPHE.

### 13. <u>Maintenance</u>.

a. <u>Scheduled or Preventive Furnace Maintenance</u>. Any Operating Day that is excluded from the applicable 30-day Rolling Average Limit because of Maintenance being performed on a Furnace, is subject to the following restrictions and must comply with the following requirements: Scheduled or preventive Furnace Maintenance shall not exceed ninetysix (96) Operating hours annually and shall be conducted only when any downstream Control Devices are operating.

b. <u>Scheduled or Preventive Maintenance on Control Devices</u>. Any Operating Day that is excluded from the applicable 30-day Rolling Average because of Maintenance being performed on a Control Device, is subject to the following restrictions and must comply with the following requirements: Scheduled or preventive Maintenance of Control Devices shall occur and shall be completed while the Furnace(s) connected to the Control Device(s) is not operating, unless any Furnace connected to the Control Device is scheduled to have a Continuous Operating Year. During a Continuous Operating Year, scheduled or preventive Maintenance on the Control Devices may be conducted while the Furnace(s) connected to the Control Device(s) is Operating; however, Maintenance lasting greater than twenty-four (24) consecutive hours shall occur only during Abnormally Low Production Rate Days. All Control Device Maintenance occurring during a Continuous Operating Year must also be performed in accordance with the following requirement:

## (i) Bypassing a Control Device for the purpose of preventive

Maintenance on the Control Device shall not exceed six (6) Days per Calendar Year. Bypass of one Control Device required as a result of bypassing another shall count towards the six (6) Day limit.

## 14. <u>Recordkeeping.</u>

a. For each Operating day, RMBC shall record the following (including calculations and supporting data and information):

- (i) The mass emission rate of NO_x and SO₂ in lb/hr;
- (ii) The tons of glass produced or pulled from each Furnace;
- (iii) The mass emission rate of NO_X and SO₂ in lb/ton;
- (iv) The calculated 30-day Rolling Average for NO_X and SO₂ in lb/ton,

For any Operating Day(s) that RMBC excludes from the relevant

unless emissions during that Day are excluded from the 30-day Rolling Average;

and

(v)

- 30-day Rolling Average, it shall record: 1) the date; 2) the relevant exception pursuant to which RMBC is excluding the emissions generated during that Operating Day (or Days) (i.e. Abnormally Low Production Rate Day, Furnace Startup, Control Device Startup, Malfunction, or Maintenance); and 3) a calculation of the applicable emission limit (in pounds of NO_X and/or SO₂ per day) according to the equations listed above in Paragraphs 8 and 9.
- b. <u>Recordkeeping During Furnace Startup</u>. In addition to the recordkeeping requirements listed above, RMBC must also keep the following records during Furnace Startup:

(i) The amount of sulfur added to the batch materials for that Furnace in lb/ton of total batch material (including cullet);

(ii) The total natural gas usage in that Furnace (in million standard cubic feet); and

(iii) Any Hot Spot Temperature (measured at least once per shift).

## V. <u>CIVIL PENALTY</u>

15. Within thirty (30) Days after the Effective Date of this Consent Decree, RMBC shall pay the following amounts as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court at the rate specified in 28 U.S.C. § 1961 as of that date:

- a. \$237,500 to the United States, and
- b. \$237,500 to the State of Colorado.

16. RMBC shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to RMBC, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Colorado, 1225 17th Street, Suite 700, Denver, CO 80202, (303) 454-0100. At the time of payment, RMBC shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XVI of this Decree (Notices); by email to CINWD acctsreceivable@epa.gov; and by mail to:

EPA Cincinnati Finance Office 26 Martin Luther King Drive Cincinnati, Ohio 45268 This transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in <u>United States, et al. v. Rocky Mountain Bottle Company, LLC</u>, (D. Colorado), and shall reference the civil action number and DOJ case number 90-5-2-1-10146.

RMBC shall pay the civil penalty due to CDPHE by certified, corporate or cashier's check made payable to the Colorado Department of Public Health and Environment and delivered to the attention of Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530.

18. RMBC shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal or Colorado income tax.

### VI. <u>PERMITS</u>

19. Where any compliance obligation under this Consent Decree requires RMBC to obtain a federal, state, or local permit, RMBC shall submit complete applications two hundred (200) Days before beginning actual construction of the Control Device or Control Method to obtain any pre-construction permits or modifications required to install and operate Control Devices, Control Methods, and CERMS required under Section IV (Compliance Requirements). Operating permit applications, other than minor modifications, will be submitted within twelve (12) months of startup as required by Colorado Regulation 3, Part C, Section III.B.2. RMBC will not begin actual construction prior to obtaining any required federal, state, or local permits. RMBC shall cooperate with EPA and the relevant state and/or local permitting agencies by submitting to the applicable agency, within fifteen (15) business days of any request, all available information that is necessary for the permit application that the applicable agency seeks following its receipt of these permit applications. RMBC may seek relief under the provisions of Section XI of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit required to fulfill such obligation, if RMBC has submitted complete applications, and complete responses to requests for additional information, within the timeframes specified in this Paragraph. If RMBC fails to submit a timely permit application, or a timely response to any request for additional information, RMBC shall be barred from asserting a claim under Section XI (Force Majeure) of the Consent Decree that is based on delays in receiving necessary permits.

20. Using the procedures set forth in Section XVI (Notices), RMBC shall provide EPA with a contemporaneous copy of each application for a federally enforceable permit necessary to implement the requirements of this Consent Decree that is filed after the Effective Date, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity. If, as of the Effective Date, RMBC has received any permit necessary to implement the requirements of this Consent Decree and such permits have not already been submitted to EPA prior to the Effective Date, then no later than thirty (30) Days after the Effective Date, RMBC shall submit copies of such permits to EPA using the procedures set forth in Section XVI (Notices).

21. If not included as part of the permit applications described above, by no later than one year after each compliance deadline for the final emission limits specified in Section IV (Compliance Requirements), RMBC shall also apply for either: 1) a federally enforceable permit issued either by EPA or pursuant to the applicable SIP, or 2) an amendment to the applicable SIP. The application shall request that the federally enforceable permit or SIP Amendment

incorporate and require RMBC's compliance with the following requirements specified in Section IV (Compliance Requirements) of the Consent Decree:

a. Any applicable final emission limits required by Paragraphs 7, 8(b)-(d), and 9(c) hereof, as well as the specified method of measuring and calculating emissions and averaging periods;

b. Requirements to install, calibrate, certify, maintain, and operate NO_X and SO₂ CERMS pursuant to Paragraph 10;

c. Requirements to Operate in accordance with 40 C.F.R. § 60.11(d) pursuant to Paragraph 11; and

d. Any recordkeeping requirements associated with the Furnaces Control Devices, and Control Methods pursuant to Paragraph 14.

22. This Consent Decree shall not terminate until the requirements set forth in Paragraph 21 are incorporated into a federally enforceable permit or SIP Amendment for the Facility.

#### VII. EMISSION CREDIT GENERATION

23. RMBC may not use, purchase, or otherwise obtain Emission Credits in order to comply with the requirements of this Consent Decree. For any and all actions taken by RMBC to comply with the requirements of this Consent Decree, any emission reductions shall not be considered a creditable contemporaneous emission decrease for the purpose of obtaining netting reductions and offsets under the Clean Air Act's PSD and Nonattainment NSR programs respectively. However, nothing in the Consent Decree shall preclude RMBC from using, selling or transferring Emissions Credits that may be generated as a result of:

a. Activities that reduce emissions from the Facility before the Effective Date, except for activities undertaken before the Effective Date to comply with any requirement of Section IV (Compliance Requirements) of the Consent Decree.

b. Achievement and maintenance of emission rates (including through permanent closure of a Furnace) at the Facility below the emission limits required by Section IV (Compliance Requirements) so long as RMBC timely reports the generation of such surplus Emissions Credits in accordance with Section VIII (Reporting Requirements) of the Consent Decree. For purposes of this Paragraph, surplus NO_X and/or SO₂ Credits are limited to the tons of NO_X and/or SO₂ that RMBC removed from its emissions that are in excess of the emissions reductions required by Section IV (Compliance Requirements) of the Consent Decree.

24. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by EPA or a state as creditable contemporaneous emission decreases for the purposes of attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on NAAQS, PSD increments, or air quality-related values, including visibility in a Class I area.

## VIII. <u>REPORTING REQUIREMENTS</u>

25. Beginning thirty (30) Days after the end of the first full calendar quarter following the Effective Date of this Consent Decree, and continuing on an annual basis until termination of this Decree, RMBC shall submit pursuant to Section XVI (Notices) to EPA and CDPHE a progress report that contains the following information for the preceding annual period (or portion of the annual period for the first report): 1) the status of RMBC's progress toward implementing Section IV (Compliance Requirements), including a description of completed requirements; 2)

any problems encountered or anticipated in implementing Section IV (Compliance Requirements), together with implemented or proposed solutions; 3) a summary of all permitting activity pertaining to compliance with the Consent Decree and the status of any necessary permit applications; 4) for the Combined Stack, a tabulation of the 30-Day Rolling Averages for NO_X and SO₂ and 365-Day Rolling Averages for NO_X; 5) the actual emissions of NO_X and SO₂ per Month from the Combined Stack, measured using CERMS; 6) the results of any source/stack testing performed at the Combined Stack or at any Furnace; 7) identification and description of all Abnormally Low Production Rate Days, Furnace Startups, Control Device Startups, Malfunctions, Maintenance, and CERMS downtime; and 8) any other information required to be recorded or reported pursuant to Section VIII (Reporting Requirements). Each annual report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation and the likelihood of its recurrence.

26. If RMBC violates, or has reason to believe that it may violate, any requirement of this Consent Decree, RMBC shall notify the United States, EPA, and CDPHE of such violation and its likely duration, in writing and by telephone, fax, or email, within ten (10) Days of the Day RMBC first becomes aware of the violation or potential violation. This notice shall provide an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, RMBC shall explain this in the report. RMBC shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day RMBC first becomes aware of the

cause of the violation. Nothing in this Paragraph or the following Paragraph relieves RMBC of its obligation to provide the notice required by Section XI (Force Majeure) of this Consent Decree.

27. Whenever any violation of this Consent Decree or any other event affecting RMBC's performance under this Consent Decree, or affecting the performance of a Furnace, may pose an immediate threat to the public health or welfare or the environment, RMBC shall notify EPA and CDPHE orally or by electronic or facsimile transmission as soon as possible, but in no case no later than twenty-four (24) hours after RMBC first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

28. All reports shall be submitted to the persons designated in Section XVI (Notices) of this Consent Decree.

29. Each report submitted by RMBC under this Section shall be signed by a plant manager, a corporate official responsible for environmental management and compliance, or a corporate official responsible for plant management, and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

30. The reporting requirements of this Consent Decree do not relieve RMBC of any reporting obligations required by the Clean Air Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

31. Any information provided pursuant to this Consent Decree may be used by the United States or the State of Colorado in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### IX. <u>REVIEW AND APPROVAL OF SUBMITTALS</u>

32. Where this Consent Decree requires that RMBC seek approval (other than applying for a Permit) before undertaking any action, EPA will review the plan, report, or other item and, after consultation with CDPHE, shall in writing:

- a. approve the submission; or
- b. disapprove the submission.

33. If the submission is approved pursuant to the preceding Paragraph, RMBC shall take all actions required by the plan, report, other document, or this Consent Decree.

34. If the submission is disapproved pursuant to sub-paragraph 32.b, RMBC shall, either: (i) within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, for approval, in accordance with the preceding Paragraphs; or (ii) submit the matter to Dispute Resolution under Section XII (Dispute Resolution) of this Consent Decree. If the resubmission is approved, RMBC shall proceed in accordance with the preceding Paragraph.

35. Any stipulated penalties applicable to the original submission, as provided in Section X of this Decree (Stipulated Penalties), shall accrue during the forty-five (45)-Day

period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved.

36. If a resubmitted plan, report, or other item is disapproved, EPA, after consultation with CDPHE, may again require RMBC to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to RMBC's right to invoke Dispute Resolution and the right of EPA, after consultation with CDPHE, to seek stipulated penalties as provided in the preceding Paragraphs.

## X. <u>STIPULATED PENALTIES</u>

37. RMBC shall be liable for stipulated penalties to the United States and CDPHE for violations of the Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

38. <u>Late Payment of Civil Penalty</u>. If RMBC fails to pay the civil penalty required to be paid under Section V (Civil Penalty) of this Consent Decree when due, RMBC shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late, plus interest accruing from the date the payment was due at the rate specified in 28 U.S.C. § 1961 as of the due date.

39. Compliance Milestones

a. <u>Emission Limits</u>. The following stipulated penalties shall accrue per violation per Day for each violation of the Final NO_X Limit required under sub-paragraph IV.8.b

(Final NO_X Emission Limit (30-Day Rolling Average)), and for each violation of the Final SO₂ Limit required under sub-paragraph IV.9.b (Final SO₂ Emission Limit (30-Day Rolling Average)):

Penalty Per Violation Per Day	Period of Noncompliance
\$3,000	1 st through 14 th Day
\$5,000	15 th through 30 th Day
\$10,000	31 st Day and beyond

(i) For the purpose of determining stipulated penalties under this subparagraph, Days of noncompliance are cumulative from the Effective Date and need not be continuous. Any Operating Day where the 30-Day Rolling Average NOx limit is exceeded is a separate one (1) Day violation. Any Operating Day where the 30-Day Rolling Average SO₂ limit is exceeded is a separate one (1) Day violation.

b. <u>Compliance Deadlines for Installing Control Devices or Control Methods.</u>

The following stipulated penalties shall accrue per violation per Day for each violation of any compliance deadline specified in Section IV (Compliance Requirements) of this Consent Decree regarding the installation and operation of Control Devices or Control Methods:

Penalty Per Violation Per Day	Period of Noncompliance
\$2,250	1 st through 14 th Day
\$3,500	15 th through 30 th Day
\$5,000	31 st Day and beyond

c. Installation, Calibration, Certification, Operation, and Maintenance of

<u>CERMS</u>. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement identified in Section IV (Compliance Requirements) of this Consent Decree regarding the installation, calibration, certification, operation and/or maintenance of a CERMS

by the specified deadlines, and per violation per Day for each violation of any other requirement of Paragraph 10:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000	1st through 30 th Day
\$1,500	31 st through 60 th Day
\$2,500	61 st Day and beyond

(i) For the purpose of determining stipulated penalties under this Paragraph, Days of noncompliance are cumulative from the Effective Date and need not be continuous. Any Operating Day where there is a violation of any requirement identified in Section IV (Compliance Requirements) of this Consent Decree regarding the installation, calibration, certification, operation and/or maintenance of a CERMS is a separate one (1) Day violation.

d. <u>Reporting Requirements</u>. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII (Reporting Requirements) of the Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$250	1 st through 14 th Day
\$500	15 th through 30 th Day
\$1,000	31 st Day and beyond

e. <u>Permitting Requirements</u>. The following stipulated penalties shall accrue per Violation per Day for each violation of any permitting requirement identified in Section VI (Permits) of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1 st through 14 th Day
\$1,250	15 th through 30 th Day
\$2,000	31 st Day and beyond

f. <u>Other Violations</u>. The following stipulated penalties shall accrue per violation per Day for each violation of any other requirement or prohibition of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1 st through 14 th Day
\$1,250	15 th through 30 th Day
\$2,000	31 st Day and beyond

40. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Per day violations do not increase from one tier to the next unless the violations are continuous, except as otherwise provided herein.

41. RMBC shall pay stipulated penalties to the United States and CDPHE within thirty (30) Days of a written demand by either Plaintiff, unless RMBC elects within twenty (20) Days of receipt of the written demand to dispute the obligation in accordance with Section XII (Dispute Resolution) below. Stipulated penalties shall be payable as follows: fifty (50) percent to the United States and fifty (50) percent to CDPHE. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

42. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

43. Stipulated penalties shall continue to accrue as provided in Paragraph 40, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, RMBC shall pay accrued penalties agreed or determined to be owing, together with interest accruing from the date RMBC received the written demand pursuant to Paragraph 41 at the rate specified in 28 U.S.C. § 1961 as of that date, to the United States or CDPHE within thirty (30) Days of the effective date of the agreement or the receipt of EPA's or CDPHE's decision or order.

b. If the dispute is appealed to the Court and the United States or CDPHE prevails in whole or in part, RMBC shall pay all accrued penalties determined by the Court to be owing, together with interest accruing from the date RMBC received the written demand pursuant to Paragraph 41 at the rate specified in 28 U.S.C. § 1961 as of that date, within sixty (60) Days of receiving the Court's decision or order, except as provided in sub-paragraph c, below.

c. If any Party appeals the District Court's decision, RMBC shall pay all accrued penalties determined to be owing, together with interest accruing from the date RMBC received the written demand pursuant to Paragraph 41 at the rate specified in 28 U.S.C. § 1961 as of that date, within fifteen (15) Days of receiving the final appellate court decision.

44. RMBC shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 16, except that the transmittal

letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. RMBC shall pay stipulated penalties owing to CDPHE in the manner set forth in Paragraph 17.

45. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

46. If RMBC fails to pay stipulated penalties according to the terms of this Consent Decree, RMBC shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due, together with additional penalties and administrative costs to the extent allowed by applicable law. Nothing in this Paragraph shall be construed to limit the United States or CDPHE from seeking any remedy otherwise provided by law for RMBC's failure to pay any stipulated penalties.

47. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or Colorado for RMBC's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act, its implementing regulations, or an analogous provision of Colorado law, RMBC shall be allowed a credit, for any stipulated penalties paid, against any statutory or regulatory penalties imposed for such violation.

#### XI. FORCE MAJEURE

48. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of RMBC, any entity controlled by RMBC, or RMBC's

contractors, that delays or prevents the performance of any obligation under this Consent Decree despite RMBC's best efforts to fulfill the obligation. The requirement that RMBC exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event: (a) as it is occurring and (b) after it has occurred in order to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include RMBC's financial inability to perform any obligation under this Consent Decree.

49. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, RMBC shall provide notice orally or by electronic or facsimile transmission to EPA and CDPHE, within ten (10) days of when RMBC first knew that the event might cause a delay. Within thirty (30) Days thereafter, RMBC shall provide in writing to EPA and CDPHE an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; RMBC's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of RMBC, such event may cause or contribute to an endangerment to public health, welfare or the environment. RMBC shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude RMBC from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. RMBC shall be deemed to know of any

circumstance of which RMBC, any entity controlled by RMBC, or RMBC's contractors knew or should have known.

50. If EPA, after a reasonable opportunity for review and comment by CDPHE, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify RMBC in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

51. If EPA, after a reasonable opportunity for review and comment by CDPHE, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify RMBC in writing of its decision.

52. If RMBC elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than thirty (30) Days after receipt of EPA's notice. In any such proceeding, RMBC shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that RMBC complied with the requirements of Paragraphs 48 and 49. If RMBC carries this burden, the delay at issue shall be deemed not to be a violation by RMBC of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XII. DISPUTE RESOLUTION

53. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. RMBC's failure to seek resolution of a dispute under this Section shall preclude RMBC from raising any such issue as a defense to an action by the United States to enforce any obligation of RMBC arising under this Consent Decree.

54. <u>Informal Dispute Resolution</u>. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when RMBC sends the United States and CDPHE, in accordance with Section XVI (Notices) of this Consent Decree, a written Notice of Dispute, or when the United States or Colorado sends RMBC a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date of the Notice of Dispute, unless extended by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, RMBC invokes formal dispute resolution procedures as set forth below.

55. <u>Formal Dispute Resolution</u>. RMBC shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and CDPHE, in accordance with Section XVI (Notices) of this Consent Decree, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include,

but need not be limited to, any factual data, analysis, or opinion supporting RMBC's position and any supporting documentation relied upon by RMBC.

56. The United States shall serve its Statement of Position, in accordance with Section XVI (Notices) of this Consent Decree, within forty-five (45) Days of receipt of RMBC's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on RMBC, unless RMBC files a motion for judicial review of the dispute in accordance with the following Paragraph.

57. RMBC may seek judicial review of the dispute by filing with the Court and serving on the United States and CDPHE, in accordance with Section XVI (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Days of receipt of the Statement of Position of the United States pursuant to the preceding Paragraph. The motion shall contain a written statement of RMBC's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

58. The United States shall respond to RMBC's motion within the time period allowed by the Local Rules of this Court. RMBC may file a reply memorandum, to the extent permitted by the Local Rules.

#### 59. Standard of Review.

a. <u>Disputes Concerning Matters Accorded Record Review</u>. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 55 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, RMBC shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. <u>Other Disputes</u>. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 55, RMBC shall bear the burden of demonstrating that its position complies with this Consent Decree.

60. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of RMBC under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 43. If RMBC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### XIII. INFORMATION COLLECTION AND RETENTION

61. The United States and CDPHE, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or CDPHE in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by RMBC or its representatives, contractors, or consultants;

- d. obtain documentary evidence, including photographs and similar data; and
- e. assess RMBC's compliance with this Consent Decree.

62. Upon request, RMBC shall provide EPA and CDPHE or their authorized representatives splits of any samples taken by RMBC. Upon request, EPA and CDPHE shall provide RMBC splits of any samples taken by EPA or CDPHE. The rights set forth in this Section are in addition to, and shall not be construed to limit, the rights of CDPHE prescribed in § 25-7-111, C.R.S.

63. Until three (3) years after the termination of this Consent Decree, RMBC shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to RMBC's performance of its obligations under this Consent Decree. This information-retention

requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or CDPHE, RMBC shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

64. At the conclusion of the information-retention period provided in the preceding Paragraph, RMBC shall notify the United States and CDPHE at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or CDPHE, RMBC shall deliver any such documents, records, or other information to EPA or CDPHE. RMBC may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If RMBC asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by RMBC. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

65. RMBC may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that RMBC seeks to protect as CBI, RMBC shall follow the procedures set forth in 40 C.F.R. Part 2.

66. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or CDPHE pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of RMBC to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits, including but not limited to § 25-7-111, C.R.S.

# XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. Entry of this Consent Decree shall resolve all civil liability of RMBC to the United States and Colorado that arose from any construction, modification, or change in the method of operation commenced at the RMBC Facility prior to the Date of Lodging of this Consent Decree, under any or all of:

a. Parts C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§7470-7492, 7501-7515, and the regulations promulgated thereunder at 40 C.F.R. §52.21, 40 C.F.R. §§ 51.165(a) and (b), 40 C.F.R. Part 51, Appendix S and 40 C.F.R. §52.24;

b. Sections 502(a) and 504(a) of Title V of the Clean Air Act, 42 U.S.C. §§ 7661a(a), c(a) and (f), but only to the extent that such claims are based on RMBC's failure to obtain a Permit that reflects applicable requirements imposed under Parts C or D of Subchapter I of the Clean Air Act;

c. The federally-approved and enforceable State Implementation Plan for Colorado;

d. Any State or local law counterparts to the provisions above in this Section; and

e. Any allegations set forth in the Notice of Violation issued February 1,2012, Docket No. CAA-08-2012-0002, or the Complaint.

The terms "construction" and "modification" as used in this Section shall have the meanings those terms are given under the Clean Air Act and under the implementing regulations in effect on or prior to the Date of Lodging of this Consent Decree or any State or local counterpart, rule or regulation in effect on or prior to the Date of Lodging. The resolution of liability set forth in the Paragraph shall apply and only apply for the pollutants NO_X and SO₂ and no other pollutant.

68. The United States and Colorado reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or Colorado to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in the preceding Paragraph. The United States and Colorado further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

69. In any subsequent administrative or judicial proceeding initiated by the United States or Colorado for injunctive relief, civil penalties, other appropriate relief relating to the Facility or RMBC's violations, RMBC shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or Colorado in the subsequent proceeding were or should have been

brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 67 of this Section.

70. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. RMBC is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and RMBC's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and Colorado do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that RMBC's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. §§ 7401, et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

71. This Consent Decree does not limit or affect the rights of RMBC or of the United States or Colorado against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against RMBC, except as otherwise provided by law.

72. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XV. COSTS

73. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and Colorado shall be entitled to collect the costs (including attorneys' fees) incurred in any action to enforce this Consent Decree provided that the United States or Colorado prevails in the action.

# XVI. <u>NOTICES</u>

74. Unless otherwise specified herein, whenever notifications, submissions,

statements of position, or communications are required by this Consent Decree, they shall be

made in writing, addressed as follows:

# To the United States:

EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice Box 7611 Ben Franklin Station Washington, D.C. 20044-7611 Re: DOJ No. 90-5-2-1-10146

# To EPA:

Director, Air Enforcement Division U.S. Environmental Protection Agency Office of Civil Enforcement Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Mail Code 2242-A Washington, DC 20460

Director, Air & Toxics Technical Enforcement Program Office of Enforcement, Compliance & Environmental Justice U.S. Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129

# To CDPHE:

Compliance and Enforcement Program Manager Colorado Department of Public Health and Environment Air Pollution Control Division APCD-SSP-B1 4300 Cherry Creek Drive South Denver, CO 80246-1530 First Assistant Attorney General Air Quality Unit Colorado Attorney General's Office 1300 Broadway, 7th Floor Denver, CO 80203

To RMBC:

Plant Manager Rocky Mountain Bottle Company 10619 West 50th Avenue Wheat Ridge, CO 80033-6717

Chief Legal Officer MillerCoors LLC 250 South Wacker Drive Chicago, IL 60606

75. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

76. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or emailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

# XVII. SALES OR TRANSFER OF OPERATIONAL OR OWNERSHIP INTERESTS

77. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Section or otherwise, shall relieve RMBC of its obligation to ensure that the terms of this Consent Decree are implemented unless the requirements of this Section are implemented and the Court consents to relieve RMBC of its obligations under the Consent Decree. Any attempt to transfer ownership or operation of the Facility without complying with this Section constitutes a violation of this Consent Decree.

78. At least 45 Days prior to any such transfer, RMBC shall provide a copy of this Consent Decree to the proposed transferee(s) and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States, EPA, and CDPHE, in accordance with Section XVI of this Decree (Notices).

79. RMBC shall expressly condition any transfer, in whole or in part, of ownership of, operation of, or other interest (exclusive of any non-controlling, non-operational shareholder or membership interest) in the Facility, upon the execution by the transferee of a modification to this Consent Decree. This modification shall make the terms and conditions of this Consent Decree applicable to and binding upon the transferee, and shall substitute the transferee for RMBC as the Party to the Consent Decree that is responsible for complying with the transferred obligations. In the event of such transfer, RMBC shall provide notice of the transfer to the United States and Colorado in accordance with the preceding Paragraph.

80. By no later than 60 days after providing notice of the transfer, RMBC shall send the United States and the State a draft motion and modification of the Consent Decree to substitute the transferee for RMBC that: (a) shows that the transferee has the financial and technical ability to timely comply with all requirements of this Consent Decree, and (b) shows that the modification effectively transfers the obligations and liabilities under the Consent Decree from RMBC to the transferee. If the United States and the State approve the proposed modification of the Consent Decree to substitute parties, RMBC may file the motion as being uncontested. If the United States and the State disapprove of the proposed modification of Consent Decree to substitute parties within 30 days of receipt, or do not approve or disapprove the proposed modification of the Consent Decree to substitute parties within 30 days of receipt,

RMBC may file a motion for the approval of the proposed modification of the Consent Decree to substitute parties, which motion shall be granted upon a showing that the proposed transferee has the financial and technical ability to timely comply with all requirements of this Consent Decree, and that the proposed modification effectively transfers the obligations and liabilities under the Consent Decree from RMBC to the transferee. The United States or the State may oppose the Motion if they disagree that the proposed transferee has the financial and technical ability to timely comply with all requirements of this Consent Decree, or if they disagree that the proposed modifications and liabilities under the Consent Decree from RMBC to the transfers the obligations and liabilities and technical ability to timely comply with all requirements of this Consent Decree, or if they disagree that the proposed modifications and liabilities under the Consent Decree from RMBC to the transfers the obligations and liabilities under the proposed modification effectively transfers the obligations and liabilities under the transferee.

#### XVIII. EFFECTIVE DATE

81. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### XIX. <u>RETENTION OF JURISDICTION</u>

82. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of: 1) resolving disputes arising under this Consent Decree pursuant to Section XII (Dispute Resolution), 2) entering orders modifying this Decree pursuant to Section XX (Modification), or 3) effectuating or enforcing compliance with the terms of this Consent Decree.

#### XX. MODIFICATION

83. Except as provided in Paragraph 75, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all

the Parties. Where the modification constitutes a material change to the Consent Decree, it shall be effective only upon approval by the Court.

84. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution) of this Decree, provided, however, that, instead of the burden of proof provided by Paragraph 59, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### XXI. <u>TERMINATION</u>

85. After RMBC has (i) maintained continuous satisfactory compliance with the requirements of Section IV (Compliance Requirements) and Section VIII (Reporting Requirements) for at least a two (2) year period from the first Day that the final NO_X and SO₂ limits in Section IV (Compliance Requirements) are in effect; (ii) obtained a Title V Operating Permit amendment/modification that incorporates the final NO_X and SO₂ emission limits required herein, and has obtained all other permits required by this Consent Decree; and (iii) paid the civil penalty and any accrued stipulated penalties as provided under Sections V (Civil Penalty) and X (Stipulated Penalties) of this Consent Decree, RMBC may serve upon the United States and CDPHE a Request for Termination, stating that RMBC has satisfied those requirements, together with all necessary supporting documentation.

86. Following receipt by the United States and CDPHE of RMBC's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether RMBC has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with Colorado,

agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

87. If the United States, after consultation with Colorado, does not agree that the Decree may be terminated, or the United States does not respond to the Request for Termination, RMBC may invoke Dispute Resolution under Section XII (Dispute Resolution) of the Consent Decree. However, RMBC shall not seek Dispute Resolution of any dispute or the absence of a response by the United States regarding termination until sixty (60) Days after service of its Request for Termination.

#### XXII. PUBLIC PARTICIPATION

88. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. RMBC consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified RMBC in writing that it no longer supports entry of the Consent Decree.

#### XXIII. <u>SIGNATORIES/SERVICE</u>

89. Each undersigned representative of RMBC, Colorado, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

90. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. RMBC agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### XXIV. INTEGRATION

91. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of the Consent Decree.

#### XXV. <u>APPENDICES</u>

92. The following appendices are attached to and incorporated as part of this Consent Decree:

"Appendix A" is the February 1, 2012, Notice of Violation.

#### XXVI. JUDGMENT

93. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to each Party. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. Case 1:17-cv-01554 Document 2-1 Filed 06/26/17 USDC Colorado Page 53 of 71

Dated and entered this _____ day of _____, 2017.

UNITED STATES DISTRICT JUDGE District of Colorado THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the United States of America and State of Colorado. v. Rocky Mountain Bottle Company, LLC (D. Colorado).

FOR THE UNITED STATES OF AMERICA:



Deputy Chief Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice

JAMES D. FREEMAN Senior Attorney Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice 999 18th Street, South Terrace Suite 370 Denver, CO 80202 303.844.1489 (Phone) 303.844.1350 (Fax) james.freeman2@usdoj.gov THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the United States of America and State of Colorado v. Rocky Mountain Bottle Company, LLC (D. Colorado).

### FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

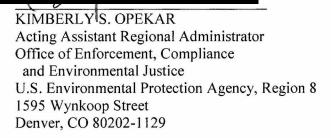
LAWRENCE STARFIELD Acting Assistant Administrator Office of Enforcement and Compliance Assurance United States Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

SUSAN SHINKMAN Director Office of Civil Enforcement United States Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

PHILLIP A BROOKS Director Air Enforcement Division United States Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

TAHANI A. RIVERS Attorney Advisor Air Enforcement Division United States Environmental Protection Agency 5 Post Office Square Boston, MA 02109 THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America and the State of Colorado v. Rocky Mountain Bottle Company, Inc.* (D. Colorado).

### FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



SHELDON H. MULLER Senior Attorney Legal Enforcement Program Office of Enforcement, Compliance and Environmental Justice U.S. Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129 THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the United States of America and the State of Colorado. v. Rocky Mountain Bottle Company, LLC (D. Colorado).

#### FOR THE STATE OF COLORADO:

6-21-17

THOMAS A. ROAN First Assistant Attorney General Natural Resources and Environmental Section Colorado Department of Law 1300 Broadway, 7th Floor

#### FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Denver, CO 80203

GARRISON W. KAUFMAN Director, Air Pollution Control Division Colorado Department of Public Health & Environment APCD-ADM-B1 4300 Cherry Creek Drive South Denver, CO 80246 THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the United States of America and the State of Colorado. v. Rocky Mountain Bottle Company, Inc. (D. Colorado).

#### FOR ROCKY MOUNTAIN BOTTLE COMPANY, LLC:

WILLIAM DILLAMAN Plant Manager, Rocky Mountain Bottle Company 10619 West 50th Avenue Wheat Ridge, CO 80033

# ATTORNEYS FOR ROCKY MOUNTAIN BOTTLE COMPANY, LLC:

PATRICK # TOF MillerCoors LLC Assistant General Counsel 3939 West Highland Boulevard Milwaukee, WI 53208

SUSAN L. SMITH Owens-Illinois, Inc. Intellectual Property and Environmental Counsel Three O-I Plaza - Legal Department One Michael Owens Way Perrysburg, OH 43551-2999

# APPENDIX A FEBRUARY 1, 2012, NOTICE OF VIOLATION

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8 2012 FEB - 1 AM 11: 40

IN THE MATTER OF

Rocky Mountain Bottle Company, LLC

10619 West 50th Ave. Wheat Ridge, CO

Respondent.

NOTICE OF VIOLATION BEARING OL FI

Docket No. CAA-08-2012-0002

Proceedings Pursuant to Sections 113(a)(1) and (3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (3)

### STATUTORY AUTHORITY

The United States Environmental Protection Agency (EPA) is issuing this Notice Of Violation (NOV) to Rocky Mountain Bottle Company, LLC (Respondent) for violations of the Clean Air Act (the Act) and the Colorado State Implementation Plan (SIP), at its glass manufacturing plant located in Wheat Ridge, Jefferson County, Colorado (the Facility).

This NOV is issued pursuant to Sections 113(a)(1) and (3) of the Act, as amended on November 15, 1990 by P.L. 101-549, 42 U.S.C. § 7413(a)(1) and (3). The authority to issue NOVs has been delegated to the Regional Administrator of EPA Region 8, and redelegated to the Assistant Regional Administrator of EPA Region 8's Office of Enforcement, Compliance and Environmental Justice. A description of the regulatory background, the relevant facts, and a list of the specific violations identified by EPA are outlined below. The geographical jurisdiction of EPA Region 8 includes the State of Colorado.

#### STATUTORY AND REGULATORY BACKGROUND

1. The Act is designed to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

#### **Requirements for New Source Review Permits**

2. On June 19, 1978, EPA promulgated the Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492. 43 Fed. Reg. 26388. Federal PSD regulations are codified at 40 C.F.R. § 52.21. The New Source Review (NSR) provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning to make a major modification, then that source must obtain either a PSD permit or a nonattainment NSR (NNSR) permit, depending on whether the source is located in an attainment or unclassifiable area, or in a nonattainment area, for the pollutant being increased above the significance level. To obtain the required permit, the source must agree to install the Best Available Control Technology

(BACT) in an attainment or unclassifiable area, or achieve the Lowest Achievable Emission Rate (LAER) in a nonattainment area.

3. Section 165(a) of the Act, 42 U.S.C. § 7475, provides, among other things, that no major emitting facility on which construction is commenced after Aug. 7, 1977, may be constructed or modified in any area that is in attainment with the National Ambient Air Quality Standards (NAAQS) unless:

- a. a preconstruction PSD permit has been issued for the proposed facility or modification;
- b. the proposed permit has been subject to a review in accordance with Section 165 of the Act, the required analysis has been conducted in accordance with the PSD regulations, and a public hearing has been held with opportunity for interested persons to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;
- c. the owner or operator of such facility demonstrates, as required pursuant to section 110(j) of the Act, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (1) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which the PSD regulations apply more than one time per year, (2) NAAQS in any air quality control region, or (3) any other applicable emission standard or standard of performance under the Act;
- d. the proposed facility is subject to the best available control technology for each pollutant subject to regulation under the Act emitted from, or which results from, such facility;
- e. the provisions of Section 165(d) with respect to protection of class I areas have been complied with for such facility;
- f. there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility; and
- g. the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under the PSD regulations agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source.¹

4. 40 C.F.R. § 52.21(a) provides that the PSD regulations apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the Act.

¹ All references to the Colorado SIP, the Clean Air Act, and the Code of Federal Regulations (C.F.R.), unless stated otherwise, are to the SIP, the Act, and the C.F.R. that were in effect at the time of the violations set forth in this NOV.

5. 40 C.F.R. § 52.21(i)(l) provides that no stationary source or modification to which the requirements of 40 C.F.R. § 52.21(j) through (r) apply may begin construction without a permit which states that the stationary source or modification will meet those requirements.

6. 40 C.F.R. § 52.21(i)(2) and (3) provide that the requirements of 40 C.F.R. § 52.21(j) through (r) are applicable to any major stationary source and any major modification that would be constructed in an area designated under the Act as in attainment with the NAAQS, with respect to each pollutant subject to regulation under the Act.

7. Sections 110 and 161 of the Act, 42 U.S.C. §§ 7410 and 7471, require that each SIP include a PSD permit program. EPA approved Colorado's PSD program as part of the Colorado SIP on September 2, 1986 and the approval became effective that same date. 51 Fed. Reg. 31125. EPA approved subsequent modifications to the portion of Colorado's SIP related to Colorado's PSD program, including approvals dated February 13, 1987, June 15, 1987, December 1, 1988, March 28, 1991, June 17, 1992, September 27, 1993, and August 18, 1994.

8. The Colorado SIP for PSD and NNSR provides that no emission unit or source subject to that rule shall be constructed without obtaining an air construction permit that meets the requirements of that rule. The PSD and NNSR provisions of the Colorado SIP can be found in the Colorado Air Quality Control Commission Common Provisions and Regulation No. 3, 5 CCR 1001-2 and 1001-5. Since the Common Provisions and Regulation No. 3 are part of the Colorado SIP, they are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. § 7410 and § 7413.

9. The Colorado SIP and 40 C.F.R. § 52.21(b)(1)(i) define a "major stationary source" as, inter alia, any stationary source that emits or has the potential to emit 250 tons per year or more of any air pollutant subject to regulation under the Act. For purposes of determining applicability of major NNSR review in a nonattainment area and the applicability of Regulation 3, Part B, Section IV.D.2, the Colorado SIP defines "major stationary source" as any stationary source of air pollutants which emits, or has the potential to emit, one hundred (100) tons per year or more of any pollutant regulated under the Act for which the area is nonattainment. Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section I.B.3.a (applicable to NNSR) and I.B.3.b.ii (applicable to PSD) (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.58, see "Major Stationary Source," subsections a. (applicable to NNSR) and b.ii (applicable to PSD) (Colorado SIP 110(h) Compilation as of 11/15/1998).² As of August 18, 1994, in the Denver Metropolitan PM-10 (particulate matter with a diameter of 10 micrometers or less) nonattainment area, any net emissions increase that is significant for sulfur dioxide (SO₂) or nitrogen oxides (NO_x) shall be considered significant for PM-10.

10. The Colorado SIP and 40 C.F.R. § 52.21(b)(2)(i) define a "major modification" as any physical change in or change in the method of operation of a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section I.B.2 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission

² The cited references of authority were substantively the same at the time of the 1991 plant modifications referenced in paragraph 41.

Regulation No. 3, 5 CCR 1001-5, Part A, Section I. B.35.B (Colorado SIP 110(h) Compilation as of 11/15/1998).

11. The Colorado SIP and 40 C.F.R. § 52.21(b)(3)(i) define "net emissions increase" as the amount by which the sum of the following exceeds zero:

- a. Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
- b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

See "Common Provisions Regulation", 5 CCR 1001 – 2 Section I.G, see "Net Emission Increase," subsections a.i and ii (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.36.a.i and ii (Colorado SIP 110(h) Compilation as of 11/15/1998).

12. The Colorado SIP and 40 C.F.R. § 52.21(b)(21) define "actual emissions" as the rate of emissions of a pollutant from an emissions unit, which, as of a particular date, are the actual emissions, in tons per year, at which the unit emitted the pollutant during a two-year period which precedes the particular date and is representative of normal unit operation, and are calculated using actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. *See* "Common Provisions Regulation", 5 CCR 1001 – 2 Section I.G, "Actual Emissions," subsections a and c (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.1.a and c (Colorado SIP 110(h) Compilation as of 11/15/1998).

13. The Colorado SIP and 40 C.F.R. § 52.21(b)(23) define "significant" and state that in reference to NO_x and SO₂, significant net emissions increase means an emissions rate that would equal or exceed 40 tons or more per year of NO_x, or 40 tons or more per year of SO₂. 40 C.F.R. § 52.21(b)(23)(i). See "Common Provisions Regulation", 5 CCR 1001 – 2 Section I.G, "significant," subsection a (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.57.a (Colorado SIP 110(h) Compilation as of 11/15/1998).

14. An applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.B.2-3 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Section IV.B.2-3 (Colorado SIP 110(h) Compilation as of 11/15/1995).

15. The Colorado SIP states that "...no person shall commence construction of any stationary source or modification of a stationary source without first obtaining or having a valid construction permit...". Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Sections I.A and III.A.1 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control

Commission Regulation No. 3, 5 CCR 1001-5, Part B, Sections I.A and III.A.1 (Colorado SIP 110(h) Compilation as of 11/15/1998). The Colorado SIP further requires, *inter alia*, that a source subject to PSD regulations undergo a control technology review, install BACT, and conduct air quality modeling. Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Sections IV.D.3.a and IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Sections IV.D.3.a and IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Sections IV.D.3.a and IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1998). *See also* 40 C.F.R. § 52.21(i) which prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r). 40 C.F.R. § 52.21(i)(2) and (3) provide that the requirements of 40 C.F.R. §§ 52.21(j) through (r) are applicable to any major source and any major modification that would be constructed in an area designated under the Act as in attainment with the NAAQS, with respect to each pollutant subject to regulation under the Act.

16. The Colorado SIP and 40 C.F.R. § 52.21(b)(12), define "BACT" as an emissions limitation based on the maximum degree of reduction for each regulated PSD pollutant that would be emitted from any proposed major modification while taking into account energy, environmental, and economic impacts and other costs. 42 U.S.C. § 7479(3). *See* "Common Provisions Regulation", 5 CCR 1001 – 2 Section I.G, "Best Available Control Technology" (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.12 (Colorado SIP 110(h) Compilation as of 11/15/1998).

17. Section 107(d) of the Act, 42 U.S.C. § 7407(d), requires each state to designate those areas within its boundaries in which the air quality has attained the NAAQS, those areas in which air quality has failed to attain the NAAQS, and those areas which cannot be classified due to insufficient data. The Act also requires EPA to promulgate a list of these areas and their attainment status.

18. On August 7, 1987, the Denver metropolitan area (including Jefferson County) was designated as a "Group I" nonattainment area (area with a strong likelihood of violating the PM-10 NAAQS) for PM-10 (52 FR 29383). Pursuant to the 1990 Clean Air Act Amendments and Section 107(d)(4)(B), the Denver area was designated as a "moderate" PM-10 nonattainment area. On September 16, 2002, the Denver area was redesignated as attainment for PM-10.

19. On March 3, 1978, EPA designated the Denver-Boulder metropolitan area (including Jefferson County) as nonattainment for the NAAQS for ozone (43 FR 8976). This designation, which was for the 1-hour ozone standard then in effect, was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to Section 107(d)(1) of the Clean Air Act, as amended in 1990, classifying the Denver-Boulder metropolitan area (including Jefferson County) as a transitional ozone nonattainment area. On September 11, 2001 (effective October 11, 2001), EPA redesignated the Denver-Boulder metropolitan area to attainment for the 1-hour ozone NAAQS (66 FR 47086). In April 2004, EPA designated the Denver-Boulder metropolitan area (including Jefferson County) as nonattainment for the 8-hour ozone NAAQS, but deferred the effective date of the designation based on a commitment from state and regional agencies to implement measures set forth in the Denver-Early Action Compact for Ozone. On November 20, 2007, the deferral expired, and the Denver-

Boulder-Greeley-Ft. Collins-Loveland, areas (including Jefferson County) became nonattainment for the 8-hour ozone NAAQS.

20. On August 18, 1994, EPA conditionally approved Colorado's SIP revisions, which included nonattainment NSR provisions for sources of PM-10 precursors, NO_x and SO₂, in the Denver metropolitan PM-10 nonattainment area. *See* 59 FR 42500. In 1997, EPA approved subsequent amendments to Colorado's SIP concerning Colorado's nonattainment NSR rules.

21. Sections 171-193 of the Act, 42 U.S.C. §§ 7501-7515, impose SIP requirements for nonattainment areas. Among other things, the statute requires that states adopt SIP provisions establishing an NNSR program which includes permitting requirements and other requirements governing construction and operation of new and modified major sources in nonattainment areas. Pursuant to Section 173(a)(2) of the Act, a state's NNSR program must include a mandate that any modified source comply with LAER. 42 U.S.C. § 7503(a)(2). Section 173(a)(1) of the Act specifies that a state's NNSR program must also include provisions requiring the modified source to obtain offsetting emissions reductions, 42 U.S.C. § 7503(a)(1). The State of Colorado's regulatory provisions specific to NNSR are set forth in Section IV.D.2 of Regulation No. 3. *See* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Section IV.D.2.a (Colorado SIP 110(h) Compilation as of 11/15/1995).

22. The Colorado SIP and Section 171(3) of the Act define "LAER" as the most stringent emission limitation which is achieved in practice or can reasonably be expected to occur in practice by such class or category of source, taking into consideration the pollutant which must be controlled. In no event can LAER be an emission limit greater than that allowed under an applicable New Source Performance Standard. As of May 30, 1995, the Colorado SIP also required that LAER consist of the most stringent emission limit contained in any SIP for such class or category of stationary source (unless the owner or operator of the proposed source demonstrates that such limits are not achievable). *See* "Common Provisions Regulation", 5 CCR 1001 – 2 Section I.G, "Lowest Achievable Emission Rate" (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.32 (Colorado SIP 110(h) Compilation as of 11/15/1998). *See also* Section 171(3)(A) of the Act, 42 U.S.C. § 7501(3)(A).

# Requirements for Title V Operating Permits

23. Section 502(a) of the Act, 42 U.S.C. § 7661a(a) provides that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

24. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of Title V.

25. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32295; 40 C.F.R. Part 70.

26. EPA granted interim approval to the Title V operating permit program submitted by the State of Colorado effective February 23, 1995. 60 Fed. Reg. 4563 (January 24, 1995); 40 C.F.R. part 70, Appendix A.. Effective October 16, 2000, EPA granted full approval to Colorado's Title V operating permit program. 65 Fed. Reg. 49919 (August 16, 2000).

27. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.

28. Section 504(a) of the Act, 42 U.S.C. 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.

29. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted, and 40 C.F.R. § 70.6 specifies required permit content. *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Sections III and V (CO SIP 110(h) Compilation as of 11/15/95).

30. 40 C.F.R. § 70.1(b) provides that "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Sections II and V (CO SIP Compilation as of 11/15/95).

31. 40 C.F.R. § 70.2 defines "applicable requirement" to include, "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter..." *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Section V (CO SIP 110(h) Compilation as of 11/15/95).

32. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Section IV (CO SIP 110(h) Compilation as of 11/15/95).

33. 40 C.F.R. § 70.7(b) provides that no source subject to Part 70 requirements may operate without a permit issued under a Part 70 program. *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Section II.A.1 and 2, (CO SIP 110(h) Compilation as of 11/15/95).

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

34. The Facility is located at 10619 West 50th Avenue in Wheat Ridge, Colorado. The Facility is engaged in the manufacture of glass containers for the food and beverage industry. The Facility was purchased by the Adolph Coors Company in 1976. In 1989, the Adolph Coors Company became the Coors Brewing Company. In or around 1995, Anchor Glass and Coors Brewing Company entered into a joint venture, called Rocky Mountain Bottle Company, to own and operate the Facility. Currently, the Facility is a joint venture of Owens-Brockway Glass Container, Inc. and MillerCoors, LLC in which each has a 50% interest in Rocky Mountain Bottle Company, LLC. Respondent is a limited liability company authorized under the laws of the State of Colorado.

35. Respondent is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

36. The Facility consists, in part, of two natural-gas-fired end port regenerative glass-melting furnaces (Furnaces A & B) and one natural gas over-fire/oxy-fuel furnace (Furnace C). The Facility also includes equipment that supports the glass manufacturing process, such as forming machines and cullet processing.

37. The Facility is located in Jefferson County, Colorado. Jefferson County was designated as a non-attainment area for PM-10 and ozone during the time of the 1991 modification and the 1995-1999 furnace modifications referenced below, and is currently designated as nonattainment for the 8-hour ozone standard. 40 C.F.R. § 81.306.

38. The three furnaces operated by Respondent are subject to Title V Operating Permit No. 950PJE053, issued to Respondent on October 1, 2001, last revised October 6, 2004, as well as applicable requirements of underlying Construction Permit No. 92JE129-1.

39. The Facility emits or has the potential to emit at least 250 tons per year of  $NO_x$  and  $SO_2$  and is a "major stationary source" under the Act and the Colorado SIP for PSD, NNSR and Title V.

40. EPA issued information requests pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, (Information Requests) dated May 31, 2008 and May 27, 2009, requiring Respondent to submit specific information regarding the Facility.

41. Respondent responded to EPA's Information Requests with submittals dated June 16, 2008, and August 11, 2009 (Respondent's Responses). Respondent's Responses discussed modifications to Furnace A in 1991, which included, but were not limited to, modifications to the melter, regenerator, and forehearths/refiners that were to occur in conjunction with rebricking. These changes resulted in a "significant net emissions increase" of NO_x.

42. Respondent's Responses to EPA's Information Requests also detailed information related to modifications of the three glass furnaces in or about 1995, 1996, and 1999 (the Furnace Expansion Project) that included, but were not limited to, "extensive reworkings of many of the plant operations" and "increased production by approximately 40%." As described in a 1994 permit

application, "Phase 1 activities would include the re-machining of Furnace 1, and the addition of staged combustion capability to Furnace 1. Both phase 2 and phase 3 would include the remachining of the respective furnaces to [narrow neck press and blow] NNPD glass forming machines and the addition of staged combustion capability."³

43. The 1991 modification to Furnace A constituted a "major modification" for  $NO_x$  under the PSD program and the Furnace Expansion Project constituted a "major modification" for  $NO_x$  and  $SO_2$  under the PSD and NNSR programs. A review of the Colorado Department of Public Health and Environment (CDPHE) records and Respondent's Responses, did not reveal any evidence that Respondent applied for a PSD permit for  $NO_x$  or  $SO_2$  or a NNSR permit for PM-10 prior to these major modifications or at any time prior to the date of this Notice of Violation.

44. On November 7, 1994, Respondent applied for a "synthetic minor" NSR permit modification to cover the Furnace Expansion Project. The application used proposed emission reductions of NO_x (by installation of oxygen-enriched air staging (OEAS) technology for the three furnaces) and existing emission reductions of SO2 (by historic raw material changes) to calculate a less than "significant net emissions increase" for the project. On June 29, 1995, CDPHE issued the "synthetic minor" NSR permit modification largely based on Respondent's representations made in its application. However, according to Respondent's Responses to EPA's Information Requests, Respondent only installed and temporarily operated the proposed combustion NO_x controls on Furnace A before discontinuing any NO_x controls on that furnace. Additionally, Respondent never added NO_x controls on Furnace B that would have offset expected NO_x emission increases from the permitted increase in production, as represented in the permit application. Furthermore, Respondent's Responses to EPA's Information Requests revealed that the maximum amount of SO2 reduction in the period contemporaneous to the furnace expansion project that could be considered creditable was not sufficient to offset the permitted SO2 increases. The result was a "significant net emission increase" in NOx and SO2.

# NOTICE AND FINDINGS OF VIOLATION

45. Pursuant to the Colorado SIP and 40 C.F.R. § 52.21(r), any owner or operator who constructs or operates a source or modification, without obtaining a permit, will be subject to an appropriate enforcement action. The Furnace Expansion Project conducted by Respondent caused a "significant net emissions increase" of NO_x and SO₂, and the 1991 modification caused a "significant net emissions increase" of NO_x, resulting in each being a "major modification" as defined in the Colorado SIP and 40 C.F.R. § 52.21(b)(2)(i). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section I.B.2 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.35.B (Colorado SIP 110(h) Compilation as of 11/15/1998).

46. With respect to the modifications outlined in paragraphs 41 - 42, Respondent failed to obtain a PSD permit or undergo PSD review, prior to commencing construction, and failed to apply BACT and conduct an air modeling analysis, in violation of Section 165(a)(1) of the Act, 42 U.S.C. § 7475(a)(1), 40 C.F.R. § 52.21(i) and (j) through (r), and the Colorado SIP,. Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Sections I.A, III.A.1, IV.D.3.a and

³ Respondent at times has referred to Furnaces A, B and C, as Furnaces 1, 2 and 3, respectively.

IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Sections I.A and III.A.1 & Part B, Sections IV.D.3.a. and IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1998).

47. As stated in Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a, for any new "major stationary source" or "major modification", the applicant must provide information outlined in that section for a nonattainment area permit. The Denver Metropolitan area was classified as nonattainment for PM-10 during the Furnace Expansion Project. Pursuant to Colorado Air Quality Control Commission Regulation No.3, 5 CCR 1001-5, Part A, Section I.B.35.B.a, the NO_x and SO₂ "significant net emission increases" also constitute a "significant net emission increase" for PM-10. With respect to the modifications outlined in paragraph 42, Respondent failed to obtain a NNSR permit prior to commencing construction, and failed to apply LAER, obtain offsets, and comply with the other requirements in Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a, in violation of Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a. (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a. (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a. (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado SIP 110(h) Compilation as of 11/15/1995).

48. The violations noted in paragraphs 46 - 47 occurred from at least the start date of the construction of the modifications and continue until the appropriate permits are obtained, the necessary pollution control equipment is installed and operated, and Respondent establishes continuous compliance with the above-cited requirements.

49. It is a violation to operate each affected source without BACT controls for  $NO_x$  and  $SO_2$  every day of such operation. It is a violation to operate each affected source without achieving LAER for  $NO_x$  and  $SO_2$ , obtaining necessary offsets, and complying with the other requirements of Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a, every day of such operation.

50. Respondent is in violation of the Title V permitting requirements because it failed and continues to fail to submit a timely and complete application for a Title V operating permit for the modified Facility, including updating its existing application to include all applicable requirements, including the requirement to meet BACT limits and LAER for a modified source.

# ENFORCEMENT

51. Section 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that at any time after the expiration of thirty (30) days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the Act, SIP or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation that occurred through January 30, 1997, no more than \$27,500 per day for each violation that occurred after January 30, 1997 through March 15, 2004, no more than \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and no more than \$37,500 per day for each violation that occurred after January 12, 2009. Section 113(c) of the Act, 42 U.S.C.

§ 7413(c), provides that criminal sanctions may also be imposed to redress knowing violations of the Act. Section 306 of the Act, 42 U.S.C. § 7606, allows that any facility found in violation of the Act may be barred from federal grants, loans, or contracts.

# **OPPORTUNITY FOR CONFERENCE**

52. Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the findings of violations, on the nature of the violations, and on any efforts Respondent may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by counsel. A request for a conference must be made within ten (10) calendar days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Sheldon H. Muller (Mail Code 8ENF-L) Senior Enforcement Attorney Office of Enforcement, Compliance and Environmental Justice U.S. EPA Region 8 1595 Wynkoop St. Denver, CO 80202-1129 muller.sheldon@epa.gov 303-312-6916

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

## EFFECTIVE DATE

53. This NOV shall be effective immediately upon issuance.

Date Issued: Lelonian

Andrew M. Gaydosh

Assistant Regional Administrator Office of Enforcement, Compliance and Environmental Justice

cc: Will Allison, Director Air Pollution Control Division Colorado Department of Public Health and Environment

> Phillip A. Brooks, Director Air Enforcement Division Office of Enforcement and Compliance Assurance United States Environmental Protection Agency

Case 1:17-cv-01554 Document 2-1 Filed 06/26/17 USDC Colorado Page 71 of 71

#### IN THE MATTER OF: DOCKET NUMBER:

#### **ROCKY MOUNTAIN BOTTLE, LLC** DOCKET No. CAA-08-2012-0002

#### CERTIFICATE OF SERVICE

On this date, the undersigned hereby certifies that the original and one true and correct copy of the NOTICE OF VIOLATION, DOCKET No. CAA-08-2012-0002 was hand-carried to the Regional Hearing Clerk:

> Tina Artemis, Region 8 Hearing Clerk U.S. Environmental Protection Agency 1595 Wynkoop Street Denver, Colorado 80202-1129

That a copy of the NOTICE OF VIOLATION, DOCKET No. CAA-08-2012-0002 was sent via CERTIFIED MAIL/RETURN RECEIPT # 7009 3410 0000 2592 0486 along with cover letter to:

> John Kester Vice President and Plant Manager Rocky Mountain Bottle Company, LLC 10619 West 50th Avenue RR836 Wheat Ridge, CO 80033

And that a copy the NOTICE OF VIOLATION, DOCKET No. CAA-08-2012-0002 along with copy of cover letter was sent by first class mail to:

> Will Allison, Director Air Pollution Control Division Colorado Department of Public Health and Environment 4300 Cherry Creek Drive south Denver, CO 80246-1530

Date: February 1, 2012

By: <u>Jayle Le Orvil</u> Dayle De Arvil



ITEM NO: <u>3.</u> DATE: January 28, 2019

## **REQUEST FOR CITY COUNCIL ACTION**



## TITLE: COUNCIL BILL NO. <u>01-2019</u> – AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS TO REGULATE THE CREATION OF FLAG LOTS (CASE NO. ZOA-18-05)

YES

<ul> <li>PUBLIC HEARING</li> <li>BIDS/MOTIONS</li> <li>RESOLUTIONS</li> </ul>	Ĵ	
QUASI-JUDICIAL:		[
		Λ

ORDINANCES FOR 1ST READING (01/28/19) ORDINANCES FOR 2ND READING (02/11/2019)

 $\mathbb{X}$ NO

**City Manager** 

## **Community Development Director**

#### **ISSUE:**

Article IV of Chapter 26 regulates the procedures for and the manner in which land can be subdivided. Those regulations allow flag lots, but they are not encouraged. Procedurally, subdivisions of three or fewer lots are permitted to be approved administratively, without a public hearing. These two topics have been points of discussion at several recent City Council meetings in late 2018. Based on Council direction, the proposed ordinance, if approved, would not allow a subdivision containing a flag lot to be approved administratively, requiring, at a minimum, a Planning Commission public hearing.

#### **PRIOR ACTION:**

City Council discussed the City's subdivision regulations at several recent meetings in the latter part of 2018. Those discussions were precipitated in large part based on comments from members of the public regarding the October 2018 approval of an administrative subdivision in the Bel-Aire subdivision, which created a flag lot. Those discussions related principally to 1) the appropriateness of flag lots and 2) the extent to which subdivisions should be reviewed and approved administratively.

The result of those discussions and actions are two-fold: 1) City Council adopted a temporary 90-day moratorium on the acceptance, processing and approval of any administrative subdivision in the Bel-Aire Subdivision, for the purpose of evaluating code sections relative to administrative

Council Action Form – Flag Lots January 28, 2019 Page 2

subdivision approvals; and 2) Council provided direction at their December 3, 2018 study session to draft an ordinance that would require a <u>minor</u> subdivision be processed (Planning Commission public hearing) for any subdivision that includes a flag lot.

#### FINANCIAL IMPACT:

The proposed ordinance is not expected to have a direct financial impact on the City.

#### **BACKGROUND:**

Article IV of Chapter 26 (Subdivisions) was most recently amended in 2014, with an ordinance that repealed and replaced the entire Article. During that process, the code was amended to allow subdivisions of up to three lots, to be approved administratively, provided no new public streets are being dedicated. Four and five-lot subdivisions require a Planning Commission public hearing and subdivisions of more than five lots require both a Planning Commission and City Council public hearing. Prior to 2014, administrative approval of subdivisions could be granted only for consolidation of two lots and for lot line adjustments.

Section 26-411 (subdivision design) discusses flag lots. Section 26-411.C.7 states the following:

Flag lots are not encouraged but are permitted when they are the most appropriate development option, as determined by the community development director. Use of a flag lot design shall meet the following criteria:

- The minimum width of the pole portion abutting a public street is twenty-five (25) feet.
- Use of a flag lot design is necessary for effective development of the land.
- The proposed design does not adversely affect public safety and includes clearly defined access for private use and for emergency service.

Based on City Council preliminary direction at the December 3, 2018 study session, staff has drafted an ordinance that would amend the code to require that any subdivision that includes a flag lot, which would otherwise be eligible for administrative consideration, be processed as a minor subdivision, requiring a Planning Commission public hearing.

The only other minor substantive change proposed in the ordinance relates to the language noted above in 26-411.C.7. Staff has proposed striking the following phrase: "Flag lots are not encouraged, but are permitted when they are the most appropriate development option as determined by the community development director. Use of a flag lots design shall meet all of the following criteria." Staff felt this language implied some discretion for the community development director subjectively to deny a subdivision containing a flag lot, when in practice, subdivisions containing a flag lot have generally been approved so long as they comply with the three criteria.

#### **RECOMMENDATIONS:**

Staff recommends approval of the ordinance.

Council Action Form – Flag Lots January 28, 2019 Page 3

## **RECOMMENDED MOTION:**

"I move to approve Council Bill No. <u>01-2019</u>, an ordinance amending the Wheat Ridge Code of Laws to regulate flag lots, on first reading and set the public hearing for 7:00 pm on Monday, February 11, 2019 in City Council Chambers.

Or,

"I move to postpone indefinitely Council Bill No. <u>01-2019</u>, an ordinance amending the Wheat Ridge Code of Laws to regulate flag lots, for the following reason(s)

#### **REPORT PREPARED BY:**

Kenneth Johnstone, Community Development Director Patrick Goff, City Manager

#### ATTACHMENTS:

1. Council Bill No. 01-2019

#### CITY OF WHEAT RIDGE, COLORADO INTRODUCED BY COUNCIL MEMBER ______ COUNCIL BILL NO. <u>01</u> ORDINANCE NO. _____ Series 2019

#### TITLE: AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS TO REGULATE THE CREATION OF FLAG LOTS

**WHEREAS**, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

**WHEREAS**, pursuant to its home rule authority and C.R.S. § 31-23-101, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

**WHEREAS**, in the exercise of this authority the City Council has previously enacted Article IV of Chapter 26 of the Wheat Ridge Code of Laws, entitled "Subdivision Regulations"; and

**WHEREAS**, the City Council finds that it is appropriate to require review of the creation of flag lots as minor subdivisions subject to Planning Commission review at a public hearing.

#### NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

**Section 1**. Section 26-404 of the Wheat Ridge Code of Laws is amended by the revision of the definition of *Subdivision, administrative,* and the addition of a new definition of *flag lot*, to read:

Sec. 26-404. - Definitions.

# Lot, flag. A lot which is situated such that the front lot line does not abut a public street. Primary access is by a private or privately shared drive leading to a street. The front lot line of a flag lot is that property line most parallel to the street from which access is gained.

*Subdivision, administrative:* Any subdivision, consolidation, or lot line adjustment that involves three (3) or fewer lots or parcels, conforms to all subdivision and zoning regulations, and does not include the dedication of a public street <u>or</u> <u>creation of a flag lot</u>. See section 26-405.

**Section 2.** Section 26-405, Subsections A and B of the Wheat Ridge Code of Laws is amended to require review of the creation of flag lots by the Planning Commission at a public hearing, as follows:

Sec. 26-405. - Types of plats.

These regulations recognize a variety of platting circumstances and provide specific requirements and procedures for each. These types of plats are set forth below.

- A. Administrative plat.
  - 1. Any subdivision, consolidation, or lot line adjustment meeting all of the following criteria:
    - a. Involves three (3) or fewer lots or parcels;
    - b. Conforms to all subdivision and zoning regulations, includes no waiver or variance; and
    - c. Does not include the dedication of a full-width ("full") public street right-of-way, but may include a partial, less than full dedication of right-of-way adjacent to an existing public street or for other purposes. See section 26-415.
  - 2. Review and approval of this type of subdivision plat is an administrative process that does not require a public hearing; the review procedure is outlined in section 26-406.B.
  - 3. <u>Creation of a new flag lot cannot be processed as an administrative plat.</u>
- B. Minor plat.
  - 1. <u>Any subdivision, consolidation, or lot line adjustment creating a new</u> <u>flag lot.</u>
  - 2. Any <u>other</u> subdivision, consolidation, or lot line adjustment meeting all of the following criteria:
    - a. Involves four (4) or five (5) lots or parcels;
    - b. Conforms to all subdivision and zoning regulations, includes no waiver or variance; and
    - c. Does not include the dedication of a full-width public street right-ofway, but may include a partial, less than full-width dedication of right-of-way adjacent to an existing public street or for other purposes. See section 26-415.
  - 3. Review and approval of a minor subdivision plat requires one (1) public hearing; the review procedure is outlined in section 26-406.C.

<u>Section 3.</u> Section 26-411. C.7 of the Wheat Ridge Code of Laws is amended to require review of the creation of flag lots by the Planning Commission at a public hearing, as follows:

Sec. 26-411. - Subdivision design.

- C. Lots.
  - 7. Flag lots are not encouraged but are permitted when they meet all of the following criteria:
    - a. The minimum width of the pole portion abutting a public street is twenty-five (25) feet.
    - b. Use of a flag lot design is necessary for effective development of land.
    - c. The proposed design does not negatively affect public safety and includes clearly defined access for private use and for emergency service.

<u>Section 4</u>. <u>Severability, Conflicting Ordinances Repealed</u>. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 5. Effective Date**. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of _____ to ____ on this 28th day of January, 2019, ordered published with Public Hearing and consideration on final passage set for February 11, 2019 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

**READ, ADOPTED AND ORDERED PUBLISHED** on second and final reading by a vote of _____, this ______ day of ______, 2019.

SIGNED by the Mayor on this _____ day of _____, 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

First Publication: Second Publication: Wheat Ridge Transcript Effective Date:

Published: Wheat Ridge Transcript and <u>www.ci.wheatridge.co.us</u>



ITEM NO: <u>4.</u> DATE: January 28, 2019

## **REQUEST FOR CITY COUNCIL ACTION**



**RESOLUTION 07-2019 – A RESOLUTION APPROVING A** TITLE: SUPPLEMENTAL **BUDGET APPROPRIATION IN** THE **AMOUNT** \$1,309,906.04 AND AWARD OF AND **PAYMENTS** TO **SUBSEQUENT** GOODLAND CONSTRUCTION, INC., OF GOLDEN, COLORADO FOR WEST 29th AVENUE REALIGNMENT PROJECT IN THE THE AMOUNT OF \$2,618,096.40 WITH A 10% CONTINGENCY OF \$261,809.64 FOR A TOTAL OF \$2,879,906.04

<ul> <li>PUBLIC HEARING</li> <li>BIDS/MOTIONS</li> <li>RESOLUTIONS</li> </ul>		ANCES FOR 1 ST REA ANCES FOR 2 ND REA	
QUASI-JUDICIAL:	YES	NO NO	
7		$\bigcap$	

atur **City Manager** 

#### **ISSUE:**

**Public Works Engineering Manager** 

The City has been working for several years with Denver Water, the City of Edgewater, and the Wheat Ridge Sanitation District on reconstruction plans for 29th Avenue between Kendall and Fenton Streets. In order to simplify design and construction coordination, the City negotiated agreements with the other parties to construct the improvements and be reimbursed by them for their shares.

Staff is recommending that the lowest responsive bidder, Goodland Construction, Inc., be awarded the contract in the amount of \$2,618,096.40 with a 10% contingency of \$261,809.64. The City of Wheat Ridge's portion of the project is \$1,368,603.39. The remaining \$1,511,302.65 will be reimbursed by Denver Water, the City of Edgewater and the Wheat Ridge Sanitation District.

#### **PRIOR ACTION:**

On September 10, 2012, the City Council approved a special use permit (SUP) with Denver Water to allow for reconstruction of the Ashland Reservoir to replace the original concrete-lined ponds with two smaller tanks. At that same meeting, an inter-governmental agreement (IGA) was also approved that outlined the responsibilities of Denver Water and the City for improvements to the adjacent streets and streetscape.

On April 24, 2017, the City Council designated the street width for 30th Avenue and Fenton Street adjacent to the Denver Water property. Also included was 29th Avenue between Ingalls and Fenton Streets.

On April 23, 2018, the City Council designated the street width for an additional portion of 29th Avenue between Kendall and Ingalls Streets and also re-designated the street width of 29th and 30th Avenues and Fenton Street since construction had not started before the previous street width designation expired.

On July 9, 2018, the City Council approved an IGA with the City of Edgewater that outlined the responsibilities of each city for the cost of the improvements for 29th Avenue between Kendall and Gray Streets. In addition to the street improvements, a waterline will also be installed in 29th Avenue within the project limits at their cost.

On September 24, 2018, the City Council approved an IGA amendment with Denver Water that outlined the responsibilities of each entity for the cost of the improvements around the Ashland Reservoir site on 29th and 30th Avenues and Fenton Street.

On December 10, 2018, the City Council approved an IGA amendment with the Wheat Ridge Sanitation District for the reconstruction of a sanitary sewer main between Ingalls and Gray Streets at their cost.

#### **FINANCIAL IMPACT:**

Funding for the portion of the street project that was originally Denver Water's responsibility will be provided by Denver Water. Likewise, Edgewater will be responsible for the portions of the street project within their jurisdiction as well as the cost of the waterline. In addition, the Wheat Ridge Sanitation District (WRSD) will be responsible for the cost of reconstructing their sanitary sewer line in 29th Avenue within the scope of the project. Denver Water, Edgewater, and WRSD will reimburse the City for their portions of the work as the pay requests from the contractor are received.

Funding for the street project was originally approved in the Minor Street Improvement Project line item of the 2018 Capital Improvement Program Budget in the amount of \$1,570,000. Based on this estimated cost, the reimbursement from Denver Water and Edgewater would total \$733,375, leaving the City's budgeted share at \$836,625. The above amounts did not include the underground utility work that is now proposed by Edgewater and WRSD.

Council Action Form – 29th Avenue Realignment Construction Contract January 28, 2019 Page 3

Bids were initially received on July 24, 2018, with the City's portion being almost 40% over the budgeted amount. Denver Water's portion was over 60% higher than what was budgeted. This is partly due to the fact the some work on 30th Avenue and Fenton Street was originally to be done separately by Denver Water and was not included in the budget. The City of Edgewater's portion was over twice what was budgeted, partly due to the addition of the waterline construction, which was also not included in the budget. The Wheat Ridge Sanitation District's portion for the sanitary sewer line was also not included in the budget

In late September 2018, City staff decided to rebid the project for a variety of reasons that were discussed with City Council on September 24, 2018, including anticipating obtaining better pricing. Bids were received on December 18, 2018. With the current low bidder, the City's portion is almost 18% over the previous bid. This is partly due to the fact the mill and overlay of 30th Avenue and Fenton Street was originally to be done by Denver Water and was not included in the City's share.

Denver Water's portion is over 19% lower than the previous bid. Edgewater's portion was slightly lower than the previous bid due to the fact that the sidewalk and on-street parking were removed from this project. The District's portion for the sanitary sewer line was over 60% higher than the previous bid. A breakdown of the funding amounts, including a 10% contingency over the low bidder's cost, for each stakeholder for this project is shown below:

<u>Stakeholder</u>	<b>Funding Amounts</b>
City of Wheat Ridge	\$1,368,603.39
Denver Water	\$540,434.21
City of Edgewater	\$688,123.70
Wheat Ridge Sanitation District	\$282,744.73
Project Total	\$2,879,906.04

A supplemental budget appropriation of \$1,309,906.04 is needed to increase the funding from what was originally budgeted for this project. The City's share of the supplemental budget appropriation is \$531,978.39.

#### **BACKGROUND:**

The City of Denver has maintained water storage reservoirs at the Ashland site since the 1890s. With their construction project, the previous 41-million-gallon reservoirs were replaced with two 10-million gallon concrete tanks.

A special use permit issued by the City required that Denver Water add streetscape improvements to the adjacent streets, 29th and 30th Avenues and Fenton Street. The IGA required that Denver Water assist in the reconstruction of 29th Avenue to straighten the street. This also included dedication of right-of-way along 29th Avenue. Denver Water was assigned responsibility for reconstructing the north half of 29th Avenue along their frontage with the City being responsible for the remainder of 29th Avenue. Council Action Form – 29th Avenue Realignment Construction Contract January 28, 2019 Page 4

As the City continued to work with Denver Water on this project, it was determined to be in the best interest of both entities to include Denver Water's portion of the street and streetscape construction into the City's project. This simplifies the design and construction coordination and would result in better pricing since all of the work would be done as one large project. In order to provide a logical starting point for the straightening of 29th Avenue, the western limit was extended to Ingalls Street, with the eastern limit at the alley between Fenton and Eaton Streets.

In mid-June 2017, the City was notified by the City of Edgewater of a potential development proposal for the vacant land south of 29th Avenue between Kendall and Ingalls Streets. In addition to the street improvements, Edgewater desired to construct a waterline between Kendall and Gray Streets. The line currently stops just south of the intersection of Kendall Street and 29th Avenue and must be frequently blown out (flushed) due to water quality issues caused by stagnation. The waterline connection is also needed to serve the potential development in Edgewater.

As with Denver Water, both cities saw numerous advantages in coordinating the design and construction work, including minimizing the impact to the traffic on 29th Avenue, by combining the waterline project with the street project. Edgewater's waterline plans are currently under review by Denver Water. The draft plans were incorporated into the City's street plan set. The City will provide the construction oversight of the street project with the waterline construction being inspected by Edgewater.

In addition, during a coordination meeting that was held earlier this year with the affected utility companies, staff was notified by Wheat Ridge Sanitation District that they needed to replace a sanitary sewer line within the limits of the street reconstruction project. Again, staff saw numerous advantages in coordinating the construction work by combining the sanitary sewer project with the street project. The District has completed the sanitary sewer plans and they have been incorporated into the City's street plan set. The City will provide the construction oversight of the street project with the sanitary sewer construction being inspected by the District.

On April 4, 2016, and March 7, 2018, neighborhood informational meetings were held to discuss the proposed improvements with neighboring property owners and stakeholders. The second neighborhood meeting included the new segment of 29th Avenue between Kendall and Ingalls Streets. Feedback received at both informational meetings was generally positive.

Negotiations concerning the cost sharing of the mill and overlay of 30th Avenue and Fenton Street and other items delayed the finalization of the amendment to the Denver Water IGA. In addition, the City of Edgewater wanted to reduce their scope of work on their portion of 29th Avenue. They also advised City staff that funds would not be available to reimburse the City until 2019.

Due to the delays in finalizing the Denver Water IGA amendment and the other issues mentioned above, in late September 2018, City staff decided to reject the bids that were received on July 24, 2018, repackage the bid documents, and rebid the project with a construction start in Spring

2019. The repackaged bid documents were advertised on November 19, 2018 and the bids were opened on December 18, 2018.

The project was packaged as several different bid schedules based on each portion of the work and each of the other agencies' portions of the project for ease of tracking costs and construction management. The West 29th Avenue Realignment Project is comprised of the following segments:

	Overall project costs such as mobilization and traffic control. City's portion of 29 th Avenue that includes storm sewer modifications, asphalt pavement, concrete curb, gutter, and sidewalk, and pedestrian light construction.
Bid Schedule #3 -	Denver Water's portion of 29 th Avenue that includes asphalt pavement, concrete curb, gutter, and sidewalk, and landscape construction for their half of the street.
Bid Schedule #4 -	Edgewater's portion of 29 th Avenue that includes asphalt pavement, concrete curb and gutter construction for their half of the street.
Bid Schedule #5 -	Denver Water's portion of Fenton Street that includes concrete sidewalk and landscape construction.
Bid Schedule #6 -	Denver Water's portion of 30 th Avenue that includes concrete curb, gutter, and sidewalk and landscape construction.

- Bid Schedule #7 City's portion of Fenton Street that includes concrete curb and gutter, traffic islands, and pedestrian crossing construction. This schedule also included the mill and overlay of Fenton Street and 30th Avenue.
- Bid Schedule #8 Wheat Ridge Sanitation District's portion of the project in 29th Avenue that includes sanitary sewer replacement.
- Bid Schedule #9 Edgewater's portion of the project in 29th Avenue that includes waterline installation.

Schedule	<b>Bid Ranges</b>	<b>Engineer Estimate</b>
#1	\$186,200.00 - \$375,220.00	\$81,500.00
#2	\$956,779.60 - \$1,208,946.00	\$921,192.00
#3	\$155,523.35 - \$225,591.00	\$134,173.00
#4	\$400,720.00 - \$624,255.50	\$444,844.40
#5	\$121,540.00 - \$195,119.00	\$163,840.00
#6	\$128,860.00 - \$202,425.50	\$137,056.00
#7	\$120,891.00 - \$203,780.50	\$115,401.00
#8	\$162,760.00 - \$300,350.00	\$172,070.00
#9	\$154,416.00 - \$230,944.00	\$184,560.00

The items included in bid schedule #1 will be split based on the proportional cost of each bid schedule.

Council Action Form – 29th Avenue Realignment Construction Contract January 28, 2019 Page 6

The lowest responsible and responsive bidder Goodland Construction, Inc, Golden, CO, has met the bid and qualification requirements. A contingency amount of \$261,809.64 is requested to allow for the cost of other potential unanticipated items related to the project that can sometimes occur after the commencement of construction.

#### **RECOMMENDATIONS:**

Based upon the contractor's demonstrated capabilities and performance on previous projects, staff recommends that a contract be awarded to Goodland Construction, Inc., staff also recommends that the Director of Public Works be authorized to issue change orders up to a total contract and contingency amount of \$2,879,906.04.

#### **RECOMMENDED MOTION:**

"I move to approve Resolution <u>07-2019</u>, a resolution approving a supplemental budget appropriation in the amount of \$1,309,906.04 and motion to award and approve subsequent payments to Goodland Construction, Inc., of Golden, Colorado for the West 29th Avenue realignment project in the amount of \$2,618,096.40 with a 10% contingency of \$261,809.64 for a total of \$2,879,906.04."

#### Or,

"I move postpone indefinitely Resolution <u>07-2019</u>, a resolution approving a supplemental budget appropriation in the amount of \$1,309,906.04 and motion to award and approve subsequent payments to Goodland Construction, Inc., of Golden, Colorado for the West 29th Avenue realignment project in the amount of \$2,618,096.40 with a 10% contingency of \$261,809.64 for a total of \$2,879,906.04 for the following reason(s) ."

#### **REPORT PREPARED/REVIEWED BY:**

Mark Westberg, Projects Supervisor Steve Nguyen, Engineering Manager Jennifer Nellis, Purchasing Agent Patrick Goff, City Manager

#### ATTACHMENTS:

- 1. Resolution No. <u>07-2019</u>
- 2. Bid Summary for West 29th Avenue Realignment Project

#### CITY OF WHEAT RIDGE, COLORADO RESOLUTION NO. <u>07</u> Series of 2019

TITLE: RESOLUTION <u>07-2019</u> – A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET APPROPRIATION IN THE AMOUNT OF \$1,309,906.04 AND MOTION TO AWARD AND APPROVE SUBSEQUENT PAYMENTS TO GOODLAND CONSTRUCTION, INC., OF GOLDEN, COLORADO FOR THE WEST 29th AVENUE REALIGNMENT PROJECT IN THE AMOUNT OF \$2,618,096.40 WITH A 10% CONTINGENCY OF \$261,809.64 FOR A TOTAL OF \$2,879,906.04

**WHEREAS**, the City Council wishes to realign West 29th Avenue from Fenton to Kendall Street jointly with the City of Edgewater, Denver Water and Wheat Ridge Sanitation; and

**WHEREAS**, the City has selected a contractor, by an established process, to construct the project; and

**WHEREAS**, a supplemental budget appropriation from the CIP Fund Balance is required to fund the project cost and reimbursement from City of Edgewater, Denver Water and Wheat Ridge Sanitation will be sought upon project completion.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wheat Ridge, Colorado, as follows:

**Section1. Budget Amendment.** The City of Wheat Ridge fiscal year 2019 CIP Budget is amended by a transfer of \$1,309,906.04 from CIP Fund Balance to line item 30-303-800-840 and the amendment of revenues accordingly.

**Section 2. Project Award.** The West 29th Avenue Realignment Project is awarded to Goodland Construction, Inc., in an amount of \$2,618,096.40 with a 10% contingency of \$261,809.64 for a total of \$2,879,906.04.

**<u>Section 3</u>**. <u>Effective Date</u>. This resolution shall be effective immediately upon adoption.

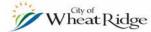
**DONE AND RESOLVED** this 28th day of January 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

**ATTACHMENT 1** 



#### PROJECT: ITB-18-19 W. 29th Ave. Realignment Project DUE DATE/TIME: TUESDAY, DECEMBER 18, 2018 BY 1 P.M. LOCAL TIME

#### REQUESTED BY: MARK WESTBERG / KELLY ROSSON - PUBLIC WORKS OPENED BY: JENNIFER NELLIS, PURCHASING AGENT WITNESSED BY: KIRBY HOLLUMS, BUYER II

VENDOR (PRIME)	Constrution Phase	American Civil Constructors, DBA ACC Mountain West	Concrete Express Inc	Duran Excavating Inc	Goodland Construction, Inc	Norra Concrete Construction Corp.	Technology Constructors, Inc.	Engineer Estimates
LOCATION		Littleton, CO	Denver, CO	Greeley, CO	Golden, CO	Keenesburg, CO	Arvada, CO	
Bid Schedule #1	Overall Project	\$276,200.00	\$357,300.00	\$305,270.00	\$207,425.00	\$375,220.00	\$186,200.00	\$81,500.00
Bid Schedule #2	29th Avenue - Wheat Ridge	\$1,003,780.00	\$956,779.60	\$979,336.50	\$999,349.90	\$1,096,801.60	\$1,208,946.00	\$921,192.00
Bid Schedule #3	29th Avenue - Denver Water	\$179,748.00	\$198,696.00	\$197,237.00	\$155,523.35	\$181,113.25	\$225,591.00	\$134,173.00
Bid Schedule #4	29th Avenue - Edgewater	\$400,720.00	\$444,844.40	\$431,829.50	\$418,195.75	\$493,263.80	\$624,255.50	\$444,844.40
Bid Schedule #5	Fenton Street - Denver Water	\$137,510.00	\$148,452.00	\$121,540.00	\$139,461.25	\$127,122.25	\$195,119.00	\$162,145.00
Bid Schedule #6	W. 30th Avenue - Denver Water	\$128,860.00	\$174,950.60	\$141,286.00	\$157,394.50	\$191,671.00	\$202,425.50	\$137,056.00
Bid Schedule #7	Fenton Street - Wheat Ridge	\$127,380.00	\$143,374.40	\$120,891.00	\$146,261.45	\$203,780.50	\$158,752.00	\$115,401.00
Bid Schedule #8	29th Avenue - Wheatridge San	\$162,760.00	\$300,350.00	\$169,356.00	\$236,676.00	\$279,119.50	\$270,038.00	\$172,070.00
Bid Schedule #9	29th Avenue - Edgewater Water Line	\$226,585.00	\$230,944.00	\$154,416.00	\$157,809.20	\$190,453.50	\$176,500.00	\$184,560.00
TOTAL Bid-		\$2,643,543.00	\$2,955,691.00	\$2,621,162.00	\$2,618,096.40	\$3,138,545.40	\$3,247,827.00	\$2,352,941.40

	2018 Adjusted	2018 Estimated	Goodland Bid	Engineer's Estimate
Wheat Ridge Sub Total	2010/10/00/00	2010 Estimated	\$1,145,611.35	\$1,036,593.00
Bid Schedule #1			\$98,573.55	\$37,193.27
Wheat Ridge Sub Total			\$1,244,184.90	\$1,073,786.27
10% Contingency			\$124,418.49	\$107,378.63
Wheat Ridge Total	\$836,625.00	\$1,095,640.00	\$1,368,603.39	\$1,181,164.90
Denver Water Sub Total			\$452,379.10	\$433,374.00
Bid Schedule #1			\$38,924.73	\$15,549.59
Denver Water Sub Total			\$491,303.83	\$448,923.59
10% Contingency			\$49,130.38	\$44,892.36
Denver Water Total	\$411,100.00	\$731,650.00	\$540,434.21	\$493,815.95
			4	
Edgewater Sub Total			\$576,004.95	\$629,404.40
Bid Schedule #1			\$49,562.05	\$22,583.22
Edgewater Sub Total			\$625,567.00	\$651,987.62
10% Contingency			\$62,556.70	\$65,198.76
Edgewater Total	\$322,275.00	\$690,803.00	\$688,123.70	\$717,186.38
Wheat Ridge Sanitation Sub Total			\$236,676.00	\$172,070.00
Bid Schedule #1			\$20,364.67	\$6,173.92
Wheat Ridge Sanitation Sub Total			\$257,040.67	\$178,243.92
10% Contingency			\$25,704.07	\$17,824.39
Wheat Ridge Sanitation Total	\$0.00	\$173,242.00	\$282,744.73	\$196,068.32
Project Sub Total			\$2,618,096.40	\$2,352,941.40
10% Contingency			\$261,809.64	\$235,294.14
Project Sub Total			\$2,879,906.04	\$2,588,235.54

Revenue	\$733,375.00	\$1,595,695.00	\$1,511,302.65	\$1,407,070.64
Expenses	\$1,570,000.00	\$2,691,335.00	\$2,879,906.04	\$2,588,235.54

## **ATTACHMENT 2**



ITEM NO: <u>5.</u> DATE: January 28, 2018

## **REQUEST FOR CITY COUNCIL ACTION**



## TITLE: RESOLUTION NO. <u>08-2019</u> – A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF ARVADA REGARDING STREET IMPROVEMENTS AT THE WHEAT RIDGE · WARD STATION AREA

<ul> <li>PUBLIC HEARING</li> <li>BIDS/MOTIONS</li> <li>RESOLUTIONS</li> </ul>		CES FOR 1 ST READING CES FOR 2 ND READING
QUASI-JUDICIAL:	YES	NO NO
Edge Name Public Works Engineering	Manager	City Manager

#### **ISSUE:**

The Wheat Ridge  $\cdot$  Ward Station area is one of four projects in the City's *Investing 4 the Future* bond program which is benefitting from \$12 million from the voter-approved, temporary  $\frac{1}{2}$ -cent sales and use tax rate increase. Wheat Ridge and Arvada have been cooperating in assessing improvements to several streets in the station area. In order to continue that cooperation through design and construction, including sharing the costs of the improvements, an Intergovernmental Agreement (IGA) is necessary.

#### **PRIOR ACTION:**

For several years, the City has lead extensive visioning and planning efforts focused on the Wheat Ridge · Ward Station planning area. Numerous Council updates and actions have occurred at various stages in these processes. Council was most recently updated on January 7, 2019 on the status of the Wheat Ridge · Ward Station planning area and on private developments in the area.

On August 27, 2018, Council approved a contract for design services with Short Elliot Hendrickson, Inc. (SEH) to design and prepare construction drawings for the first three task

orders. These task orders covered 52nd Avenue east of Ward Road, Tabor Street between Ridge Road and 52nd Avenue, and Ridge Road east of Tabor Street.

On November 19, 2018, Council directed staff not to pursue improvements at this time to the segment of 52nd Avenue east of Tabor Street that would have provided a connection to the proposed Haskins Station development in Arvada.

On December 10, 2018, Council approved a contract for right-of-way (ROW) acquisition services with HDR, Inc. to prepare deeds and acquire ROW for the first task order for Ridge Road east of Tabor Street.

On January 7, 2019, Council directed staff to continue to work on the potential project list that was presented.

On January 14, 2019, Council authorized staff to acquire ROW along the north side of Ridge Road east of Tabor Street. The authority to pursue eminent domain, if necessary, was deferred to a later date. Council authorized the Mayor and the City Clerk to accept the acquired ROW on their behalf.

#### **FINANCIAL IMPACT:**

Staff was previously working with Arvada and Jefferson County on this IGA in order to establish a cost sharing arrangement for the design and construction of 52nd Avenue. The proposed cost share was 40% Wheat Ridge, 40% Arvada, and 20% Jefferson County with the County's maximum contribution capped at \$600,000. With not connecting 52nd Avenue east of Tabor Street, Arvada indicated that they would be willing to also share costs for Ridge Road east of Tabor Street. On January 15, Jefferson County notified both cities that they would no longer be participating in the 52nd Avenue project. Arvada staff has expressed interest in continuing to participate in the 52nd Avenue project with a cost share of 50% for each city.

Funding for the street projects is available in the Wheat Ridge  $\cdot$  Ward Road Station 2E Bond Fund and was budgeted in 2018 as shown in Attachment 3. The amounts shown in Attachment 3 have not been adjusted for:

- 1. Elimination of 52nd Avenue east of Tabor Street with the anticipated cost share with Arvada for Tabor Street.
- 2. Withdrawal of Jefferson County's participation in 52nd Avenue and associated increase in both cities costs.

Updated cost share estimates will be available at the Council meeting.

#### **BACKGROUND:**

In early 2018, the City Managers of Arvada and Wheat Ridge along with the County Manager of Jefferson County signed a memorandum of understanding (MOU) agreeing to coordinate and cooperate on designing and funding mutually beneficial road improvements in the area surrounding the Wheat Ridge · Ward station area. Discussions between the staffs of the

jurisdictions continued through 2018 on this IGA that outlined the cost-sharing and other arrangements for the shared infrastructure improvements.

During the negotiations for the IGA, it was decided to split the costs of 52nd Avenue based on the source of the traffic on the street instead of the amount of ROW that each jurisdiction had. For negotiating purposes, a split of 40% Wheat Ridge, 40% Arvada, and 20% JeffCo was used. The traffic analysis resulted in a very similar split with the estimates being only 1% to 2% different. For ease of calculations, staff decided to keep the original estimated split.

On January 15, Jefferson County notified both cities that they would no longer be participating in the  $52^{nd}$  Avenue project. JeffCo provided the following reasons for withdrawing:

- A broader discussion about development in the area and annexation of developing properties is necessary prior to commitments of County funds for infrastructure improvements.
- Without connecting 52nd Avenue to serve areas to the east, the value of the road improvements is diminished and the project ranks lower against other priority County-wide capital projects.

While Wheat Ridge could proceed with just the improvements within our jurisdiction, Arvada staff has expressed interest in continuing to participate in the  $52^{nd}$  Avenue project with a cost share of 50% for each city. Although no longer a funding partner, JeffCo will still be involved, since almost 30% of the ROW is within their jurisdiction.

The following projects have long been identified and were confirmed at the January 7, 2019 Study Session as the potential infrastructure priorities in the station area:

- Improvements to 52nd Avenue from Ward Road to Tabor Street including improvements to multimodal facilities and to the intersection at Ward Road
- Improvements to Ridge Road from Tabor Street to the City boundary east of Simms Street including improvements to multimodal facilities
- Improvements to Tabor Street between Ridge Road and 52nd Avenue including improvements to multimodal facilities
- Improvements to Ridge Road between Ward Road and the station including improvements to multimodal facilities
- A pedestrian bridge from the station over the rail lines to the south to 49th Place
- A linear park with multimodal facilities connecting the station via the pedestrian bridge to the I-70 Frontage Road South

On August 27, 2018, Council approved a contract with Short Elliot Hendrickson, Inc. (SEH) to prepare construction drawings for the above projects. Staff has since authorized the first three task orders for the following projects:

- Task Order #1 52nd Avenue (from Ward Road to Tabor Street)
- Task Order #2 Ridge Road (from Tabor Street to the City boundary east of Simms Street)

Council Action Form – Ward TOD Street Improvement IGA January 28, 2019 Page 4

• Task Order #3 – Tabor Street between Ridge Road and 52nd Avenue

SEH submitted conceptual plans for the three streets for review on November 21, 2018. Based on the direction received from the Council on November 19, 2018, the portion of 52nd Avenue east of Tabor Street will be excluded from the remainder of the design contract.

The center turn lane has been reinstated in the design for Ridge Road due to the anticipated higher levels of traffic without the 52nd Avenue connection east of Simms Street. In order to minimize the additional ROW required, the proposed amenity zone was eliminated since the bike lane still provides a buffer from the traffic.

SEH submitted preliminary plans on January 18, 2019 that reflect the changes resulting from the elimination of improvements to 52nd Avenue east of Tabor Street. Those plans are currently under review by both cities and Jefferson County.

A series of block by block meetings were held on January 23, 2019 to present the preliminary plans and obtain feedback to the adjacent property owners and tenants. Results of the meeting will be presented at the Council meeting. A boarder neighborhood meeting will be held on February 6, 2019 for the general public to also present the preliminary plans and obtain feedback.

#### **RECOMMENDATIONS:**

Staff recommends approving the IGA with the City of Arvada.

#### **RECOMMENDED MOTION:**

"I move to approve Resolution No. <u>08-2019</u>, a resolution approving an intergovernmental agreement with the City of Arvada regarding street improvements at the Wheat Ridge  $\cdot$  Ward Station area."

#### Or,

"I move to postpone indefinitely Resolution No.  $\underline{08-2019}$ , a resolution approving an intergovernmental agreement with the City of Arvada regarding street improvements at the Wheat Ridge  $\cdot$  Ward Station area for the following reason(s) ."

#### **REPORT PREPARED/REVIEWED BY:**

Mark Westberg, Engineering Project Manager Steve Nguyen, Engineering Manager Kenneth Johnstone, Director of Community Development Patrick Goff, City Manager

#### **ATTACHMENTS:**

- 1. Resolution No. <u>08-2019</u>
- 2. Intergovernmental Agreement with the City of Arvada
- 3. Ward TOD street funding breakdown

#### CITY OF WHEAT RIDGE, COLORADO RESOLUTION NO. <u>08</u> Series of 2019

#### TITLE: RESOLUTION NO. <u>08-2019</u> – A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF ARVADA REGARDING STREET IMPROVEMENTS AT THE WHEAT RIDGE · WARD STATION AREA

**WHEREAS**, the Cities of Wheat Ridge and Arvada have facilities within the Wheat Ridge · Ward Station area; and

**WHEREAS,** the Cities of Wheat Ridge and Arvada have programmed various street improvements within the Wheat Ridge · Ward Station area; and

**WHEREAS**, the Cities of Wheat Ridge and Arvada have agreed to share the cost of the improvements; and

**WHEREAS**, the City of Wheat Ridge will oversee the design, right-of-way acquisition, and construction of those street improvements; and

**WHEREAS**, the City of Wheat Ridge will seek reimbursement from the City of Arvada for their share of the street improvements.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wheat Ridge, Colorado, as follows:

#### Section 1. Intergovernmental Agreement Approved.

The Intergovernmental Agreement with the City of Arvada regarding street improvements at the Wheat Ridge Ward Station area is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

DONE AND RESOLVED this 28th day of January 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

## ATTACHMENT 1

#### INTERGOVERNMENTAL AGREEMENT AMONG CITY OF WHEAT RIDGE AND CITY OF ARVADA, REGARDING ROADWAY IMPROVEMENTS IN THE WHEAT RIDGE · WARD ROAD STATION AREA

THIS INTERGOVERNMENTAL AGREEMENT AMONG THE **CITY OF WHEAT RIDGE** AND THE **CITY OF ARVADA** REGARDING ROADWAY IMPROVEMENTS IN THE WHEAT RIDGE · WARD ROAD STATION AREA is made and entered into as of the XXth day of February, 2019 by and between the City of Wheat Ridge (Wheat Ridge), a home rule municipal corporation of the State of Colorado and the City of Arvada (Arvada), a home rule municipal corporation of the State of Colorado together referred to herein as the "Parties."

WHEREAS, Article XIV, Section 18(2)(a), of the Constitution of the State of Colorado and Part 2, Article 1, Title 29, C.R.S., encourage and authorize intergovernmental agreements;

WHEREAS, C.R.S. 29-1-203 authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each;

WHEREAS, the Regional Transportation District (RTD) has completed a commuter rail station in Wheat Ridge near the intersection of Taft Court and Ridge Road, also referred to as the Wheat Ridge  $\cdot$  Ward Road Station (the "Station");

WHEREAS, future development of real property surrounding the Station and extending into the territorial jurisdiction of both Parties is expected to generate significant amounts of additional traffic over a multi-year period after the Station opens;

WHEREAS, much of the existing roadway infrastructure is considered inadequate for meeting future projected traffic needs in the vicinity of the Station;

WHEREAS, 52nd Avenue between Ward Road and Tabor Street is shared by the Parties and is relied upon by citizens and stakeholders of the Parties;

WHEREAS, Ridge Road between Tabor Street and the Parties' boundary east of Simms Place is in Wheat Ridge and is relied upon by citizens and stakeholders of the Parties; and

WHEREAS, the Parties share an interest in planning, designing, and constructing improvements to those streets that mutually serve the short and long-term interests of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is expressly acknowledged, the Parties hereby agree as follows:

- <u>Traffic Study</u>. The Parties shall commit funds to a comprehensive Traffic Study and subsequent revisions to ascertain future needs and traffic impacts to utilize for the design of specific streets and intersections, as described in the Traffic Study Scope of Work as depicted on the attached **Exhibit A** (the "Traffic Study"). Wheat Ridge shall act as "Lead Agency" for the Traffic Study and shall contract for and administer the Traffic Study and bill Arvada for their portion of the costs in accordance with the terms of this Agreement as set forth below.
- Street Improvements. The Parties desire to plan, design, and construct the transportation infrastructure and roadway improvements for 52nd Avenue between Ward Road and Tabor Street and Ridge Road between Tabor Street and the Parties' boundary east of Simms Place (the "Street Improvements" or the "Street Project"). The Street Improvements shall be administered, managed, and funded as described below.

## **ATTACHMENT 2**

- a. <u>Lead Agency</u>. Wheat Ridge shall serve as the "Lead Agency" and "Project Manager" for the design, construction, and project management of the Street Improvements. As the Lead Agency, Wheat Ridge shall coordinate and provide final roadway construction plans, conduct the bidding and award processes, provide construction contract management, construction inspection and quality assurance services, coordinate design and construction with public and private utilities and other agencies (including the Colorado Department of Transportation), and coordinate and manage the public process regarding the Street Improvements.
- b. Lead Agency Responsibilities. As part of the Lead Agency and Project Manager role as described in Section 2.a, Wheat Ridge shall be responsible for delivery of complete construction plans, bidding and awarding of a construction contract in accordance with the Lead Agency's policies for competitive bidding, preparation of pay estimates, performance of all construction inspection, construction staking, testing, and all related construction management and contract administration services. For-Bid construction plans for the Street Improvements shall be approved by Arvada in writing prior to Wheat Ridge advertising the Street Project for bid. In addition, Arvada will be given the opportunity to review and comment on the form of the construction contract proposed for the Street Project prior to the advertising the project for bid, and Wheat Ridge shall use reasonable efforts to incorporate Arvada's comments into the final contract. Wheat Ridge shall not award a construction contract and issue a Notice to Proceed without prior written approval of the bid results by Arvada. Any construction contract shall include a minimum one-year warranty on the improvements.
- c. Engineer's Estimate and Final Contract. As part of the construction management services provided by the Lead Agency, Wheat Ridge shall provide an Engineer's Estimate and projected cost share to Arvada prior to advertising the Street Project for bid. The Engineer's Estimate shall include a contingency amount up to 10% of projected costs to address unforeseen costs and expenses during construction. Arvada shall review and provide written approval of the Engineer's Estimate to the Lead Agency prior to submission of the Street Project for bid. The written approval of the Engineer's Estimate shall include a commitment by Arvada to fund the Street Project up to the amount included in the Engineer's Estimate, including contingencies. Should the actual contract prices for the Street Project after receipt of the bids exceed the Engineer's Estimate, Wheat Ridge shall not award a contract until written concurrence from Arvada is received and a commitment for the revised Street Project costs is received. Wheat Ridge, as the Lead Agency, will be responsible for issuing change orders as part of the contract management services. Wheat Ridge is not authorized to issue any change orders in excess of \$10,000, unless agreed upon jointly by Arvada. In addition, Wheat Ridge shall not issue any change orders, regardless of amount, that would cause the cost of the Street Project to exceed the total project expenditures approved by the Parties to this Agreement.
- d. <u>Maintenance Obligations</u>. Upon completion of the project, the Parties will each be responsible for the maintenance of the facilities within their respective jurisdictions. Should the final design of the street necessitate a modification to maintenance responsibilities, the Parties agree to negotiate an amendment to this Agreement in good faith in order to equitably address the modification.

- 3. <u>Reimbursement</u>. The Lead Agency shall submit invoices to Arvada at the notice address below for project costs at regular intervals, but not more than monthly, as the project progresses. Arvada shall reimburse the Lead Agency for their respective share of the total cost as forth in this Agreement within forty-five (45) days of receipt of an invoice for services and costs which shows the project costs due and payable in sufficient detail to validate the expenditure.
  - a. <u>Traffic Study</u>. The Parties agree that cost of the Traffic Study will not exceed \$27,500. The Parties agree to share the costs of the Traffic Study as follows: Wheat Ridge 50% up to \$13,500 and Arvada 50% up to \$13,500. A revision to the Traffic Study has been deemed necessary. The Parties agree that the cost of revision will not exceed \$17,060. The Parties agree to share the costs of the revision as follows: Wheat Ridge 50% up to \$8,530 and Arvada 50% up to \$8,530. In the event the cost of the Traffic Study or revision exceeds the agreed upon amounts, the additional cost must be agreed to by all Parties in advance in writing and shall be shared by the same percentages.
  - b. <u>52nd Avenue Improvements.</u> The Parties agree to share the Total Construction Cost (as defined below) of the 52nd Avenue Improvements as follows: Wheat Ridge 50% and Arvada 50%.
  - c. <u>Ridge Road Improvements.</u> Wheat Ridge and Arvada agree to share the Total Construction Cost (as defined below) based on the distribution of the traffic from Wheat Ridge and Arvada that is projected to use that portion of Ridge Road in the revision to the Traffic Study.
  - d. <u>Total Construction Cost</u>. The "Total Construction Cost" shall include all design and plan preparation services, construction contract, testing, permit fees, and any other construction related cost including the cost for the acquisition of any easements and right of way. The intent is the Parties will bear all costs of the construction for the entire project in accordance with the agreed upon percentages.
- 4. <u>Additional Improvements Projects</u>. The Parties acknowledge and agree that there are other transportation infrastructure projects that have been identified within Wheat Ridge · Ward Road Station area. The Parties agree to coordinate efforts on additional projects in the area including, but not limited to, Ward Road between 52nd Avenue and I-70. As additional projects are identified, the Parties may amend this Agreement to include such projects.
- 5. <u>Other Agencies.</u> The Parties shall work together in an effort to encourage participation and assistance from the Regional Transportation District (RTD) and the Colorado Department of Transportation (CDOT) as needed to successfully implement projects.
- 6. <u>Grants and Funding</u>. The Parties shall use reasonable efforts to pursue grants and funding opportunities as available to advance the improvements as described in this Agreement.
- 7. <u>Term</u>. This Agreement shall be and remain in effect for five (5) years from the date first set forth above, except for items 2.d., unless modified or extended by amendment to the Agreement.
- Liability. Each Party shall be responsible for its own negligent acts. To the extent permitted by law subject to all immunities, defenses and other protections afforded to the Parties pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, et seq, C.R.S., each Party shall reimburse the other Parties for any costs, expenses or legal fees that

such Parties may incur for any liability resulting from the negligent acts of the other Party in its performance of its obligations under this Agreement.

- 9. <u>Notices</u>.
  - a. "Key Notices" under this Agreement are notices regarding any default or contractual dispute relating to this Agreement. Key Notices shall be given in writing and shall be deemed received if given by: (i) confirmed electronic transmission (as defined in subsection (b) below) when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission, (ii) certified mail, return receipt requested, postage prepaid, three (3) business days after being deposited in the United States mail, or (iii) overnight carrier service or personal delivery, when received. For Key Notices, the parties will follow up any electronic transmission with a hard copy of the communication by the means described in subsection 9(a)(ii) or9(a)(iii) above. All other daily communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notice shall be given to the parties at the following addresses:

To Wheat Ridge:

City Manager City of Wheat Ridge 7500 W. 29th Avenue Wheat Ridge, Colorado 80033 Tel: _____ Email: _____

To Arvada:

City Manager City of Arvada 8101 Ralston Road Arvada, Colorado 80002 Tel:

- b. Electronic Transmissions. The Parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. The Parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic transmission as a defense in any proceeding or action in which the validity of such notice or communication is at issue and hereby forever waive such defense. For purposes of this Agreement, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts.
- 10. <u>No Waiver of Immunity</u>. Each Party, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations

or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, as amended, or otherwise available to it, its officers and employees.

- 11. <u>Amendments to Agreement</u>. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by the Parties.
- 12. <u>Entire Agreement</u>. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the subject matter of this Agreement.
- 13. <u>Situs, Venue and Severability</u>. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Jefferson, State of Colorado. If the final judgement of a court or arbitrator declares that any term or provision hereof is invalid, void, or unenforceable, the Parties agree to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the original intention of the invalid or unenforceable term or provision. In the event that such replacement is not possible, said term or provision shall be severed, and the validity and enforceability of the remaining provision of this Agreement shall not be affected thereby.
- 14. <u>Paragraph Headings</u>. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
- 15. <u>Binding Agreement</u>. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.
- 16. No Multi-Year Fiscal Obligation. The parties understand and acknowledge that each of them is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, the obligations of each party are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period ending upon the next succeeding December 31. Financial obligations of each party payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of such party and other applicable law. Notwithstanding any other provision of this Agreement concerning termination or term, upon any party's failure to appropriate such funds, this Agreement shall automatically terminate. Each party agrees to provide the other with thirty (30) days' notice of its intent to fail to appropriate funds for purposes of this Agreement.
- 17. <u>No Third Party Beneficiaries</u>. This Agreement will not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
- 18. <u>Informational Obligations</u>. Each Party hereto will meet its obligations as set forth in C.R.S. 29-1-205, as amended, to include information about this Agreement in a filing with the Division of Local Government; however, failure to do so shall in no way affect the validity of this Agreement or the remedies available to the Parties hereunder.

- 19. <u>Execution by Counterparts; Electronic Signatures</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24 71.3 101 to -121.
- 20. <u>Authority to Enter Agreement</u>. The signatures of those representatives of the Parties below affirm that they are authorized to enter into and execute this Agreement and that all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize the execution of this Agreement have been made.

IN WITNESS WHEREOF, the Parties have executed this Intergovernmental Agreement as of the date and year first set forth above.

#### CITY OF WHEAT RIDGE

Janelle Shaver, City Clerk

Bud Starker, Mayor

CITY OF ARVADA

, City Clerk

, Mayor

# Ward TOD Street Funding Breakdown

				Estimate	ed	Costs	
Street	Partners		Design	ROW	С	onstruction	Total
52nd Avenue	Arvada, JeffCo	\$	333,559		\$	3,277,363	\$ 3,610,922
Ridge Road	Arvada	\$	147,118	\$ 215,000	\$	808,206	\$ 1,170,324
Tabor Street		\$	162,958		\$	900,815	\$ 1,063,773
Total		\$	643,635	\$ 215,000	\$	4,986,384	\$ 5,845,019
				Share	d C	Cost	
Street	Partners	W	heat Ridge	Arvada		JeffCo	Total
52nd Avenue	Arvada, JeffCo	\$	1,505,461	\$ 1,505,461	\$	600,000	\$ 3,610,922
Ridge Road	Arvada	\$	1,170,324	\$ -	\$	-	\$ 1,170,324
Tabor Street		\$	1,063,773	\$ -	\$	-	\$ 1,063,773
Total		\$	3,739,558	\$ 1,505,461	\$	600,000	\$ 5,845,019

## **ATTACHMENT 3**



ITEM NO: <u>6.</u> DATE: January 28, 2019

## **REQUEST FOR CITY COUNCIL ACTION**



TITLE: RESOLUTION NO. <u>09-2019</u> - A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH THE FEDERAL HIGHWAY ADMINISTRATION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE WADSWORTH BOULEVARD WIDENING PROJECT FOR ENVIRONMENTAL ASSESSMENT

<ul> <li>PUBLIC HEARING</li> <li>BIDS/MOTIONS</li> <li>RESOLUTIONS</li> </ul>		ES FOR 1 ST READING ES FOR 2 ND READING
QUASI-JUDICIAL:	YES	NO NO
Estre Norks Engineering	Manager	City Manager

#### **ISSUE:**

In April 2015 the City was awarded funding through the Denver Regional Council of Governments (DRCOG) Transportation Improvement Program (TIP) to improve Wadsworth Boulevard from 35th Avenue to 48th Avenue.

The Colorado Department of Transportation (CDOT) and the State Historic Preservation Officer (SHPO) have determined that the Project may have an adverse effect on three historically significant properties, so a memorandum of agreement (MOA) is necessary between the Federal Highway Administration (FHWA), SHPO, CDOT, and the City.

#### **PRIOR ACTION:**

On October 12, 2015, the Council adopted the Planning and Environmental Linkage Study (PEL) that identified traffic congestion and safety issues, developed multi-modal solutions, and identified related environmental issues and mitigation measures that needed further assessment. Also on October 12, 2015, an Intergovernmental Agreement (IGA) with CDOT was approved by Council, authorizing the environmental, design, and ROW acquisition phases.

Council Action Form – MOA with SHPO - Wadsworth Boulevard Right of Way January 28, 2019 Page 2

On March 28, 2016, Council approved a contract with HDR to complete Phase I, the survey, conceptual (30%) design and plans, and prepare the Environmental Assessment (EA). In 2017, additional work was identified involving the historical status of several properties along the Wadsworth Corridor. Amendments to the HDR contract were approved by Council on May 22, 2017 and November 13, 2017.

On August 27, 2018, Council approved a contract with HDR to continue to work on the project to complete the preliminary and final design, including the preparation of construction plans and obtaining necessary state and federal approvals.

On December 10, 2018, Council approved a contract for ROW acquisition services with HDR, Inc. to prepare ROW plans and acquire ROW necessary to construct project.

On January 14, 2019, Council authorized staff to acquire ROW along the corridor. The authority to pursue eminent domain, if necessary, was deferred to a later date. Council authorized the Mayor and the City Clerk to accept the acquired ROW on their behalf.

#### **FINANCIAL IMPACT:**

In April 2015, the City was awarded a grant in the amount \$31.6 million through the DRCOG Transportation Improvement Program. The City's required local match for that grant is \$6,320,000. In early 2017, the City was awarded a Highway Safety Improvement Program (HSIP) grant for \$2,600,000 to construct the medians with a federal share of \$2,340,000. CDOT is covering the local match of \$260,000 because Wadsworth Boulevard is a state highway. CDOT has also committed to providing \$4,100,000 in additional funding that was previously programed for maintenance on this portion of Wadsworth Boulevard.

The proposed mitigation signage is included in the overall construction budget for this project, which is estimated at \$26 million. The funding is budgeted over several years from 2019 thru 2022 in both the Capital Improvement Program (CIP) and 2E Fund.

#### **BACKGROUND:**

In October 2014, the City applied to DRCOG for federal transportation funds available for fiscal years 2016 through 2021 to help fund a widening and improvement project on Wadsworth Boulevard from 35th Avenue to 48th Avenue. DRCOG awarded a Transportation Improvement Program (TIP) grant in October 2014.

In early 2017, CDOT's historian determined that additional analysis was required to evaluate potentially eligible historic properties along the corridor. The analysis for numerous properties was re-visited. In the PEL, only one property adjacent to the corridor was deemed to be potentially historic. On October 5, 2017, following 10 months of additional analysis, the City received concurrence from SHPO that five additional properties were potentially eligible for historic designation. The City, HDR, and CDOT staff worked with SHPO for an additional 5 months to minimize and mitigate the impacts from the project at the potentially eligible historic properties. The final response was received from SHPO in late February 2018. SHPO determined that the project may adversely impact three potentially eligible historic properties.

Council Action Form – MOA with SHPO - Wadsworth Boulevard Right of Way January 28, 2019 Page 3

The finding of adverse impact meant that the three properties would need be cleared through a federal process known as an Individual 4f process. This would normally add an additional 12 to 18 months to the process. However, because of all the work that was already completed to minimize impacts to the properties, the project was able to proceed with just doing additional documentation of that work, along with an additional review by the FHWA legal team.

Pursuant to 36 CFR 800, the implementing regulations for Section 106 of the National Historic Preservation Act of 1966, FHWA is required to execute an MOA with SHPO when a federally-funded project is anticipated to adversely affect historic properties. The MOA outlines the measures the project will undertake to mitigate the adverse effects, and demonstrates FHWA's compliance with the Section 106 process.

The proposed Wadsworth Boulevard Widening Project in Wheat Ridge resulted in an adverse effect to three historically significant properties:

- Butters-Plumb House, 4301 Wadsworth Boulevard, Dacko & Sons
- C.M. Dunn, Inc. Building, 4643 Wadsworth Boulevard, Jefferson County Mental Health (formerly Arapahoe House), including relocation of a historic sign
- William and Mary Lee Davis House, 4695 Wadsworth Boulevard

The City, SHPO, FHWA, and CDOT have come to an agreement regarding measures the project will implement to minimize and mitigate adverse effects to these three historic properties. In addition to modifying the alignment and reducing the widths of some of the street elements, the project will install historical interpretation plaques at four locations along Wadsworth Boulevard. The project will also include special provisions in the project plans to minimize impacts to other historic features, such as historic stairways and porches, related to the properties.

The proposed minimization and mitigation measures for this project are outlined in the MOA consistent with 36 CFR 800.6(b) and (c). The MOA must be executed by FHWA, SHPO, CDOT, and the City since all four parties have obligations under the agreement.

#### **RECOMMENDATIONS:**

Staff recommends that City Council approve the attached MOA between FHWA, SHPO, CDOT, and the City.

#### **RECOMMENDED MOTION:**

"I move to approve Resolution No. <u>09-2019</u>, a resolution approving a memorandum of agreement with the Federal Highway Administration, the Colorado State Historic Preservation Officer, and the Colorado Department of Transportation for the Wadsworth Boulevard widening project for environmental assessment."

Or,

Council Action Form – MOA with SHPO - Wadsworth Boulevard Right of Way January 28, 2019 Page 4

"I move to postpone indefinitely Resolution No. <u>09-2019</u>, a resolution approving a memorandum of agreement with the Federal Highway Administration, the Colorado State Historic Preservation Officer, and the Colorado Department of Transportation for the Wadsworth Boulevard widening project for environmental assessment for the following reason(s) ______."

## **REPORT PREPARED/REVIEWED BY:**

Mark Westberg, Project Manager Steve Nguyen, Engineering Manager Patrick Goff, City Manager

#### **ATTACHMENTS:**

- 1. Resolution 09-2019
- 2. Memorandum of Agreement

#### CITY OF WHEAT RIDGE, COLORADO RESOLUTION NO. <u>09</u> Series of 2019

#### TITLE: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH THE FEDERAL HIGHWAY ADMINISTRATION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, THE COLORADO DEPARTMENT TRANSPORTATION OF FOR THE WADSWORTH BOULEVARD WIDENING PROJECT FOR ENVIRONMENTAL ASSESSMENT

**WHEREAS**, the City Council wishes to provide for the widening of the Wadsworth Boulevard corridor from 35th Avenue to Interstate 70; and

**WHEREAS**, the City has been awarded a federal transportation grant by the Denver Regional Council of Government (DRCOG) to widen this segment; and

**WHEREAS**, the Colorado Department of Transportation (CDOT) and the State Historic Preservation Officer (SHPO) have determined that the Project may have an adverse effect on three historically significant properties; and

**WHEREAS**, the City has negotiated a Memorandum of Agreement (MOA) with the Federal Highway Administration (FHWA), SHPO, and CDOT, to minimize and mitigate the adverse impact of the Project on the historically significant properties; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wheat Ridge, Colorado, as follows:

The MOA between FHWA, SHPO, CDOT, and the City for the Wadsworth Boulevard Widening project from 35th Avenue to I-70, is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

**DONE AND RESOLVED** this 28th day of January 2019.

ATTEST:

Bud Starker, Mayor

Janelle Shaver, City Clerk

#### MEMORANDUM OF AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, THE COLORADO DEPARTMENT OF TRANSPORTATION AND THE CITY OF WHEAT RIDGE REGARDING ENVIRONMENTAL ASSSESSMENT, PROJECT STU 1211-088 WADSWORTH WIDENING BOULEVARD PROJECT CITY OF WHEAT RIDGE, JEFFERSON COUNTY, COLORADO

WHEREAS, the Federal Highway Administration (FHWA) proposes to fund Project STU 1211-088 (Project), which involves the widening of Wadsworth Boulevard, also known as Colorado Highway 121, between 35th Avenue and Interstate 70 in the City of Wheat Ridge, Jefferson County, Colorado; and

WHEREAS, the Project (or Undertaking) consists of improvements included in an Environmental Assessment, including additional traffic lanes, improved intersections, enhanced pedestrian and bicycle facilities, and standardized access to adjacent properties; and

WHEREAS, FHWA is the lead federal agency for the Project, including compliance with Section 106 of the National Historic Preservation Act of 1966, and shall be responsible for ensuring all requirements of this Memorandum of Agreement (MOA) are fulfilled; and

WHEREAS, the Colorado Department of Transportation (CDOT) carries out activities for Federal-Aid transportation projects on behalf of FHWA, including consultation under Section 106 of the National Historic Preservation Act of 1966 and the Advisory Council on Historic Preservation's (ACHP) regulations, 36 CFR §800, and is a signatory to this MOA; and

WHEREAS, CDOT, in consultation with the Colorado State Historic Preservation Officer (SHPO) and in accordance with 36 CFR §800.4(a)(1), has established the Undertaking's Area of Potential Effects (APE) to include all of the Project's right-of-way, temporary and permanent easements, adjacent properties, and water quality and construction staging areas, as shown in Attachment A; and

WHEREAS, CDOT has determined that the Undertaking may have an adverse effect on the (1) Butters-Plumb House, 4301 Wadsworth Boulevard (5JF.1902), (2) C.M. Dunn, Inc. Building, 4643 Wadsworth Boulevard, (5JF.5356), and (3) William and Mary Lee Davis House, 4695 Wadsworth Boulevard (5JF.5361), properties which are eligible for listing in the National Register of Historic Places, and has consulted with the SHPO pursuant to 36 CFR §800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. §470f); and

Page 1 of 13

# ATTACHMENT 2

**WHEREAS,** CDOT has consulted with the City of Wheat Ridge regarding the project and has invited the City to become a party to the MOA given that the City has responsibilities under the MOA; and

WHEREAS, the City of Wheat Ridge has agreed to participate in the MOA under the terms and conditions contained herein; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), FHWA has notified the ACHP of the adverse effect determination with the required specified documentation, and in a letter dated November 21, 2018, the ACHP has chosen not to participate in the consultation pursuant to 36 CFR §800.6(a)(1)(iii);

**NOW, THEREFORE**, FHWA, SHPO, CDOT and the City of Wheat Ridge agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

#### **STIPULATIONS**

The FHWA, in consultation with CDOT and the City of Wheat Ridge, shall ensure that the following stipulations are implemented:

#### I. CONSTRUCTION PLAN PROVISIONS

- A. CDOT shall ensure that the final Project design minimizes adverse effects to 5JF.1902, 5JF.5356, and 5JF.5361, including but not limited to:
  - Protection during construction of the following character-defining historic features:

     a. Front (west) entry stairs of 5JF.1902, and
    - b. Free-standing sign in the front (west) landscape of 5JF.5356, including dismantling of sign at construction onset, temporary storage of sign in a secure location during construction, and re-installation of sign at location shown in <u>Attachment B</u>, and
    - c. West elevation, particularly the projecting rounded awning, awning supports, patio, and patio wall of 5JF.5361.
  - 2. Addition of specific notes and details in the Project plans and specifications prepared by the City of Wheat Ridge, supplemented by contractor shop drawings as needed, to ensure that the provisions in Stipulation I.A.1. are met, and that the protection and construction work related to these provisions meet the Secretary of the Interior's Standards for Rehabilitation as codified in 36 CFR 67 (https://www.nps.gov/tps/standards/rehabilitation/rehab/stand.htm).

3. Review and approval of the Project's construction plan provisions delineated in this stipulation by a historic preservation professional with CDOT who meets the Secretary of the Interior's Professional Qualification Standards codified in 36 CFR 61, Appendix A (https://www.nps.gov/history/local-law/arch_stnds_9.htm).

#### **II. INTERPRETIVE MITIGATION**

- A. The City of Wheat Ridge, in coordination with CDOT, shall develop and install four historical interpretative signs (signage) at four Regional Transportation District (RTD) bus stops on Wadsworth Boulevard at the proposed 38th and 44th Avenue bus shelter locations, as shown on <u>Attachment C</u>.
- **B.** The signage shall include text, maps and images, and address the following historical themes/topics associated with the City of Wheat Ridge:
  - 1. Early Agriculture/Growth, including commercial agricultural operations and truck farms, including the Apel and Bacher Family, Wardle Feed & Supply, and Wilmore nursery.
  - 2. Mid-Century Architecture, including residential, commercial and institutional development.
  - 3. Post-World War II Residential Growth of Wheat Ridge.
- C. CDOT, in coordination with the City of Wheat Ridge, shall transmit the proposed conceptual plans for the signage, including specific locations, design (size, materials and placement) and content (layout, text and images) to the SHPO, the Jefferson County Historical Commission and the Wheat Ridge Historical Society, requesting comments within thirty (30) days. The City of Wheat Ridge, in coordination with CDOT, will make a good faith effort to address comments received within the requested comment period.
- **D.** The City of Wheat Ridge and CDOT shall ensure that the final plans for the signage, including design, size, materials, installation details and content, are included in the final plans used for construction advertisement of the Project. CDOT shall transmit a final copy of the final signage plans to the SHPO, the Jefferson County Historical Commission and the Wheat Ridge Historical Society, including any changes made to the design as a result of comments received.
- **E.** The City of Wheat Ridge and CDOT shall ensure that the signage is developed and fabricated as part of the Project construction contract, and installed prior to Project completion.

## III. POST-REVIEW DISCOVERIES

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, CDOT and FHWA will address the discovery or unanticipated effects in accordance with Section XI. of the 2014 "Programmatic Agreement Among the FHWA, the ACHP, and CDOT Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid Highway Program in Colorado" (Programmatic Agreement). This Programmatic Agreement can be accessed at <a href="https://www.codot.gov/programs/environmental/archaeology-and-history/106-programmatic-agreement-1/view">https://www.codot.gov/programs/environmental/archaeology-and-history/106-programmatic-agreement-1/view</a>.

## **IV. ADMINISTRATIVE PROVISIONS**

## A. Monitoring and Reporting

Reporting for this agreement shall be included in the Section 106 Annual Tracking Report as provided in Section XIII.B. of the 2014 Programmatic Agreement.

## **B.** Confidentiality

The MOA parties acknowledge that the historic properties covered by this MOA are subject to the provisions of §304 of the NHPA, relating to the disclosure of information to the public about the location, character, or ownership of the historic resource. If the federal agency determines, after consultation with the Secretary of Interior, that the disclosure may risk harm to the historic resource, and, having so acknowledged, it will ensure that all actions and documentation prescribed by this MOA are consistent with said sections. The parties acknowledge that SHPO, CDOT and the City of Wheat Ridge are subject to the Colorado Open Records Act, CRS §24-72-201, et seq., and agree that they shall cooperate in responding to any requests for disclosure of documents made, maintained or held by those parties in the exercise of their obligations under this MOA.

## C. Dispute Resolution

Should any signatory party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with the objecting party(ies) to resolve the objection. If FHWA determines, within thirty (30) days, that such objection(s) cannot be resolved:

 FHWA will forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR §800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise FHWA on the resolution of the objection within thirty (30) days. Any comment provided by the ACHP, and all comments from the parties to the MOA, will be taken into account by FHWA in reaching a final decision regarding the dispute.

- 2. If the ACHP does not provide comments regarding the dispute within thirty (30) days after receipt of adequate documentation, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to the MOA.
- 3. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. FHWA will notify all parties of its decision in writing before implementing that portion of the Project subject to dispute under this stipulation. FHWA's decision will be final.

## **D.** Amendments

Any signatory party to this MOA may propose that this MOA be amended, whereupon all signatory parties shall consult for no more than 30 days to consider such amendment. If any signatory to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Administrative Provision (Provision) IV.E., below.

## E. Termination

- 1. If this MOA is not amended as provided for in Provision IV.D above, or if a signatory party proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other MOA parties, explain the reasons for proposing termination, and consult with the other parties for at least thirty (30) days to seek alternatives to termination.
- 2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with the terms of that agreement.
- 3. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other MOA parties in writing. Termination hereunder shall render this MOA without further force or effect.
- 4. If this MOA is terminated hereunder, and if FHWA determines that the Project will nonetheless proceed, then FHWA shall comply with the requirements of 36 CFR §800.3-800.7. Prior to work continuing on the Undertaking, the FHWA must either (a) execute an MOA pursuant to 36 CFR §800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7. The FHWA shall notify the signatories as to the course of action it will pursue.

## F. Duration

- 1. This agreement shall take effect when it is filed with the ACHP.
- 2. Unless terminated pursuant to Provision IV.E. above, or superseded by an amended MOA, this MOA will remain in effect until FHWA, in consultation with the other signatory parties, determines that all of its stipulations have been satisfactorily fulfilled.
- 3. The terms of this MOA shall be satisfactorily fulfilled within ten (10) years following the date of execution by the signatory parties. If FHWA determines that this requirement cannot be met, the MOA parties will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, FHWA will comply with Provision IV.E.4. above if it determines that the Project will proceed notwithstanding termination of this MOA.
- 4. If the Project has not been implemented within ten (10) years following execution of this MOA, this MOA shall automatically terminate and have no further force or effect. This time frame can be expanded if agreed to in writing by the signatory parties prior to the expiration date. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Provision IV.D above.

# V. COORDINATION WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

FHWA shall use this agreement as part of its responsibility to meet the requirements of the National Environmental Policy Act (NEPA).

## VI. GENERAL PROVISIONS

## A. Compliance with Colorado Constitution

Notwithstanding other provisions in this MOA to the contrary, the Colorado state parties understand and acknowledge they are subject to Article X, §20 of the Colorado Constitution ("TABOR").

- a. The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.
- b. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of

the Colorado state parties are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the parties' current fiscal period ending upon the next succeeding December 31.

- c. Financial obligations of the Colorado state parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible party and other applicable law.
- d. Failure of a party to make appropriation of amounts required in any fiscal year, if not promptly cured, shall result in termination of this MOA.

#### **B.** Governmental Immunity

CDOT, the City of Wheat Ridge and SHPO do not waive any of the immunities, defenses and limitations of liability afforded them under the Colorado Governmental Immunity Act, CRS 24-10-101, et. seq. or the common law.

**EXECUTION** of this MOA by FHWA, SHPO, CDOT and the City of Wheat Ridge, its filing with the ACHP pursuant to 36 CFR §800.6(b)(1)(iv) prior to FHWA's approval of this Project, and implementation of its terms shall evidence that the FHWA has taken into account the effects of this Project on historic properties and afforded the ACHP an opportunity to comment.

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## **MEMORANDUM OF AGREEMENT** AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, THE COLORADO DEPARTMENT OF TRANSPORTATION AND THE CITY OF WHEAT RIDGE REGARDING **ENVIRONMENTAL ASSESSMENT, PROJECT STU 1211-088** WADSWORTH WIDENING BOULEVARD PROJECT CITY OF WHEAT RIDGE, JEFFERSON COUNTY, COLORADO

#### **SIGNATORIES:**

### **Federal Highway Administration**

By: _____ Date John M. Cater, P.E., Division Administrator

# **Colorado State Historic Preservation Officer**

By: Date Steve Turner, State Historic Preservation Officer

### **Colorado Department of Transportation**

By: _____ Date Paul Jesaitis, Region 1 Transportation Director

#### **City of Wheat Ridge**

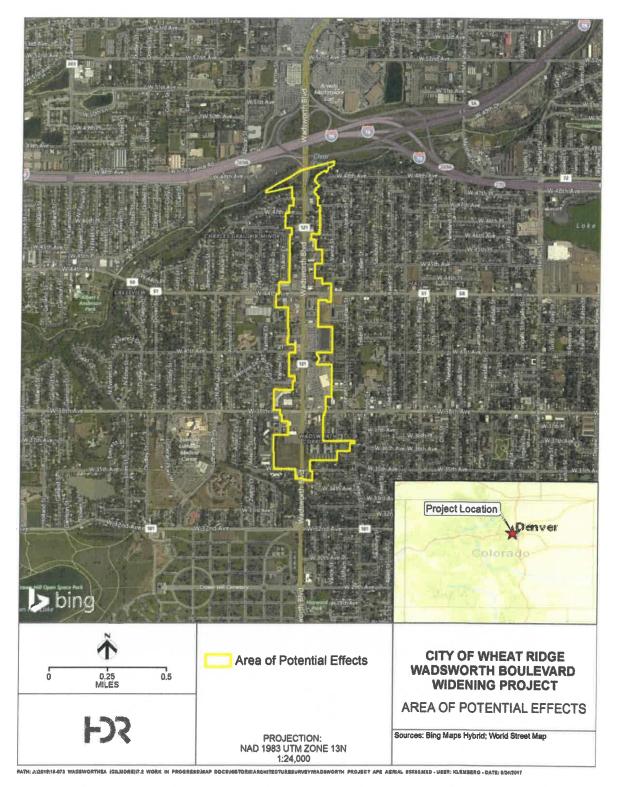
By:

Date

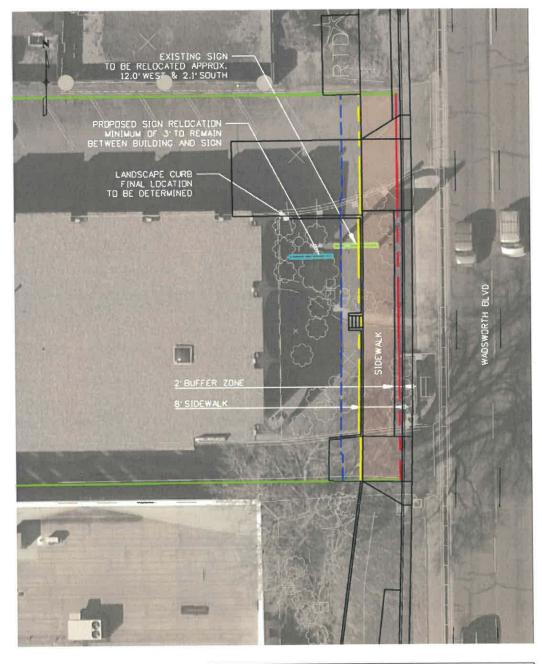
Bud Starker, Mayor

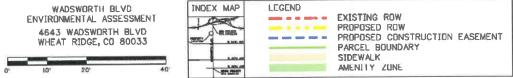
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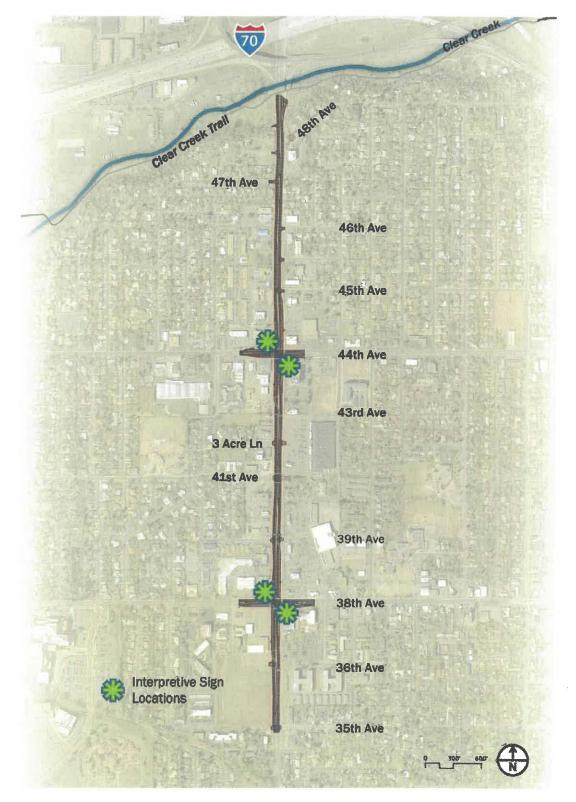
Attachment A Area of Potential Effects



Attachment B Relocation Plan for Sign at 4643 Wadsworth Boulevard (5JF.5336)







Attachment C Locations of Historical Interpretative Signage



ITEM NO: <u>7</u>. DATE: January 28, 2019

# **REQUEST FOR CITY COUNCIL ACTION**



- **TITLE: MOTION** TO AMEND THE CONTRACT FOR SERVICES TO AECOM TECHNICAL PROFESSIONAL SERVICES, INC., GREENWOOD VILLAGE, CO, FOR THE PERIOD OF JANUARY 1, 2019 – DECEMBER 31, 2019 IN AN AMOUNT NOT TO EXCEED \$1,466,966 AND APPROVE PAYMENTS FOR ONGOING PROGRAM MANAGEMENT SERVICES FOR **INVESTING** 4 THE THE FUTURE **PROGRAM**
- ☐ PUBLIC HEARING
   ☑ BIDS/MOTIONS
   ☐ RESOLUTIONS

ORDINANCES FOR 1ST READING ORDINANCES FOR 2ND READING

QUASI-JUDICIAL:

**Public Works Engineering Manager** 

YES

 $\mathbb{X}$ NO

**City Manager** 

# **ISSUE:**

In November of 2016, Wheat Ridge voters approved a 12-year, ½ cent increase in the City's sales and use tax rate in order to fund investments that will improve transportation infrastructure, create opportunities for economic development, and enable additional "place-making" to attract those wanting to live, work, and do business in Wheat Ridge.

A citizen-led task force identified the four projects to be funded from the proceeds of the tax increase as follows: (1) Improvements to Anderson Park and its facilities, (2) Construction of relocated west bound on/off ramps on Interstate 70 for the Clear Creek Crossing mixed use development; (3) Widening of Wadsworth Boulevard to 6-lanes and transforming it into an attractive multi-modal corridor; and (4) Improvements to public infrastructure and amenities in support of economic development at the Wheat Ridge  $\cdot$  Ward Station area.

Because of the large scale of investment and resources needed to plan, review, and manage construction of the infrastructure improvements, existing staff resources and capacities are insufficient in delivering the improvements while maintaining current on-going workload obligations. As a result, additional professional services have been solicited to assist in not only

delivering specific 2E related public improvements, but also to serve as an extension of staff as needed for review and assistance in the delivery of private related development, particularly in the Clear Creek Crossing and Wheat Ridge  $\cdot$  Ward Road Station areas.

Accordingly, staff engaged in a formal procurement process to seek and retain a qualified firm to provide comprehensive professional engineering and land use planning services related to the Investing 4 the Future projects. It was intended that the firm selected would serve as an extension of City staff for a multi-year period for three of the projects (additional services for Anderson Park were not anticipated to be needed by the selected firm). In general, the services requested include, but were not limited to the following:

- 1. Management and review of public infrastructure projects by the City and others; and management of land use cases and review of site development plans within the project areas by developers and private property owners.
- 2. Construction project management and inspection of private development and public infrastructure projects within the project area.
- 3. Assistance in identifying and applying for potential grant funds for improvements and in identifying and preparing agreements to leverage public and private partnership opportunities within the Wheat Ridge · Ward Road Station Area.
- 4. Assistance with public process, outreach, and communication during all project phases, from design through construction.

On November 27, 2017, the firm AECOM Technical Services, Inc. (AECOM) was selected by the City's established procurement process to perform the required professional services for the remainder of 2017 and all of 2018. The procurement process included review by a seven person evaluation committee of Request for Qualifications (RFQs) submitted by seven firms, followed by interviews with three top scoring firms. After selection of the firm, staff engaged in an extensive negotiation process with the firm to determine and finalize the work scope and fees for the anticipated work expected.

The AECOM contract was established to provide services over a multi-year period. Tasks and fees will be renegotiated and brought back to Council each year for approval. The scope and related fee each year will change considerably for each of the project areas each year. Action is requested for the approval of 2019 scope and fees.

# **PRIOR ACTION:**

The original AECOM contract was approved by City Council on November 27, 2017 for the initial period of December 1, 2017 – December 31, 2018 for ongoing program management services for the Investing 4 the Future program

# **FINANCIAL IMPACT:**

Professional service fees directly applicable to the three 2E projects are payable from the 2E bond revenues and will also be supplemented with 2019 Capital Improvement Program and Community Development's professional services funds.

Staff has spent the past several weeks negotiating specific tasks and services with AECOM, including fees for the entire 2019 year. Provided per Attachment 1 is an overall Scope of Work identifying the expected services, along with an overall breakdown of the anticipated tasks for each project and estimated hours and cost per task.

Task orders will be issued for each of the tasks and services will be billed on an hourly basis, and only for the services actually completed. The expected tasks and estimated fees for future years will be renegotiated and brought back to Council for approval. The scope and related fee each year will change considerably for each of the project areas.

# **BACKGROUND:**

The City of Wheat Ridge required professional services assistance for moving forward with the Investing 4 the Future projects. Because of the complexity and magnitude of these projects, the services of an outside consulting firm were needed to provide an extension of staff. It was expected that professional services would be needed over at least 4 years, depending on the timing of development and activity in the respective project areas.

The consultant retained by the City serves as an extension of staff to ensure that public and private improvement plans are submitted and eventually constructed per requirements. This required the consultant to engage a multi-disciplinary team that would be available as needed (up to full-time) and potentially on short notice. Project descriptions and the expected services needed are as follows:

# **Clear Creek Crossing**

# Services Required:

Construction of the hook-ramps will be managed by Evergreen with oversight by both the City and CDOT through Intergovernmental Agreements (IGAs). Professional services needed are as follows:

- 1. Construction project oversight and inspection in accordance with CDOT requirements.
- 2. Review and approval of design and construction plans.
- 3. Coordination of public information and assistance to the City and CDOT with updates as often as needed for the traveling public, adjacent landowners, businesses, nearby residents, and other stakeholders.
- 4. Construction coordination with the developer, including the developer's General Contractor, CDOT, Denver Water, and other public and private utilities.
- 5. Conduct land use case processing and civil plan review, as needed, on specific development plan and subdivision plat applications.

In addition to the hook-ramps, the Clear Creek Crossing development will also include other public and private infrastructure, including streets and utilities. Although site development and construction plans for these improvements will be completed by the developer, the City will need professional assistance with the following:

1. Management and review of public infrastructure projects in accordance with the requirements of the City and other applicable agencies.

- 2. Construction project oversight and inspection of public infrastructure projects in accordance with requirements of the City and other applicable agencies.
- 3. Assistance in coordinating public and private improvements that may occur simultaneously.
- 4. Coordination with other agencies and stakeholders, including RTD, CDOT, Denver Water, and other public and private utilities.
- 5. Review and approval of the plans to ensure they meet the City's requirements.
- 6. Construction observation and inspection of the improvements to ensure conformance with the approved plans.
- 7. Assistance in accepting the improvements on behalf of the City and ensuring that accurate record drawings are provided by the developer.

# Wadsworth Boulevard Widening

Services Required:

- 1. Management and review of the project in accordance with the requirements of the City and applicable State and Federal agencies, including utility identification and coordination, construction plans and specifications, right-of-way plans, easements, permits, and other legal documents.
- 2. Construction project management and inspection in accordance with requirements of the City and applicable State and Federal agencies.
- 3. Assistance in coordinating public and private improvements that may occur simultaneously in the corridor.
- 4. Coordination of public information and assistance to the City with updates as often as needed for the traveling public, adjacent landowners, businesses, nearby residents, and other stakeholders.
- 5. Coordination with other agencies and stakeholders, including RTD, CDOT, and public and private utilities.

# Wheat Ridge · Ward Station Area

Services Required:

- 1. Management and review of public infrastructure projects in accordance with the requirements of the City and applicable requirements of other agencies.
- 2. Review of traffic studies as required.
- 3. Construction project management and inspection of public infrastructure projects in accordance with requirements of the City and other applicable agencies.
- 4. Assistance in identifying and applying for potential grant funds for improvements.
- 5. Assistance in identifying and preparing agreements to leverage public and private partnership opportunities.
- 6. Assistance in coordinating public and private improvements that may occur simultaneously.
- 7. Coordination of public information and assistance to the City with updates as often as needed for the traveling public, adjacent landowners, businesses, nearby residents, and other stakeholders.

- 8. Assistance with public process, public outreach, and communication during all project phases, from design through construction, including coordination of public and private activities that may be occurring simultaneously.
- 9. Coordination with other agencies and stakeholders, including RTD, CDOT, City of Arvada, Jefferson County, and public and private utilities.

In addition, the potential development and redevelopment will include other public and private infrastructure, including streets and utilities. Construction plans for these improvements will be completed by property owners or developers. However, the City may need professional assistance with the following:

- 1. Review and approval of the plans to ensure they meet the City's requirements.
- 2. Construction observation and inspection of the improvements to ensure conformance with the approved plans.
- 3. Assistance in accepting the improvements on behalf of the City and ensuring that accurate record drawings are provided by the developer.
- 4. Assistance in ensuring that all public and private improvements are completed in accordance with the approved plans and agreements between the City and the developers prior to the City issuing building permits and/or Certificates of Occupancy as stated in the agreements and per state and city codes.

The City is also seeking assistance in strategizing and leveraging funding opportunities for the various improvements. These opportunities may include, but not be limited to, the following:

- 1. Public/private partnerships
- 2. Tax increment financing (TIF)
- 3. User/impact fees
- 4. State, Federal, or other grants
- 5. Expansion of the existing metropolitan taxing district

Anderson Park: At this time, additional professional services from AECOM are not anticipated.

# **RECOMMENDATIONS:**

Over the past year, AECOM has performed very well on all the tasks that were assigned to them. Staff has been very pleased with their performance, professionalism, timeliness, and cost effectiveness. Appropriate fees for the work have been negotiated in accordance with the specific tasks and services needed. Staff will authorize work to AECOM as specific task orders. Staff recommends amending the 2E Professional Services Contract to AECOM in the amount of \$1,466,966 for the expected work to be completed in 2019.

# **RECOMMENDED MOTION:**

"I move to amend the contract for professional services to AECOM Technical Services, Inc., Greenwood Village, CO, for the period of January 1, 2019 – December 31, 2019 in an amount not to exceed \$1,466,966 and approve payments for ongoing program management services for the Investing 4 the Future program."

Or:

"I move to deny the amendment of the contract for professional services to AECOM Technical Services, Inc., Greenwood Village, CO, for the period of January 1, 2019 – December 31, 2019 in an amount not to exceed \$1,466,966 and approve payments for ongoing program management services for the Investing 4 the Future program for the following reason(s)

# **REPORT PREPARED/REVIEWED BY:**

Steve Nguyen, Engineering Manager Ken Johnstone, Director of Community Development Mark Westberg, Project Manager Jennifer Nellis, Purchasing Agent Patrick Goff, City Manager

# **ATTACHMENTS:**

- 1. AECOM Scope and Fee Proposal for 2019
- 2. Project Management Estimate
- 3. Clear Creek Crossing Estimate
- 4. Wadsworth Estimate
- 5. Ward Station Estimate
- 6. Summary Estimate

### A. PROGRAM MANAGEMENT AND CONTINUING SERVICES

AECOM will provide ongoing program management services for the City's Investing 4 the Future Program. The Scope of Services covers the initial phase of the Program from January 1, 2019 to December 31, 2019 for a duration of 12 months. The Program Management activities will be led by AECOM's Project Manager, Steve McQuilkin, and will be supported by the project controls and administrative support team. The Scope includes the following program management activities:

#### Activity A.1 Project Initiation (N/A)

These activities were substantially completed under the initial phase of the contract.

## Activity A.2 Project Management

This activity includes ongoing project management activities necessary to administer and manage the program including the following:

- a) Project Coordination: Routine management and coordination activities
- b) Schedule and Document Control (if required)
- c) Cost and Risk Management (if required)
- d) Invoicing/Monthly Reporting: Routine monitoring and maintenance of project budgets and administration of each of the City projects (not including Anderson Park). Preparation of monthly invoices including monthly progress report including project status narrative, cost, schedule, budget and risk update. Note that non-2E related costs such as Clear Creek Crossing Phase 2 shall be tracked separately.

#### Activity A.3 Meetings/Communications

- a) Monthly 2E City staff meetings: Participate in monthly meetings with City Staff.
- b) Other 2E related meetings: A total of 12 additional meetings is included in the Scope of Services Note that project meetings for each of the projects are included in Sections B. through E. of this Scope of Services
- c) City Council and Planning Commission Meetings (if required)

#### Activity A.4 Rapid Response (Unforeseen Services)

a) The Scope of Services includes unforeseen services only when authorized by the Public Works Director or designated project manager. This allows rapid response only for circumstances approved by the Public Works Director or designated project manager. A total of 160 hours

#### **B. CLEAR CREEK CROSSING**

The AECOM/Benesch Team will provide design review support and construction management services for the proposed Clear Creek Crossing development site. Overall management of the Clear Creek Crossing Project shall be managed by Evergreen Development, Mortenson Construction and Longs Peak Metro District. The project scope is divided into two phases for the purpose of tracking costs:

# ATTACHMENT 1

- 2E Bond Funded Projects: This includes Clear Creek Crossing Phase 1 and the I-70 Interchange Project and associated work
- Non-2E Bonded Funded Projects: This includes Clear Creek Crossing Phase 2 and associated work

Charges to 2E and non-2E work will be tracked separately. The Scope of Services includes the following:

## Activity B.1 Design Review Support

- a) Project Management, Meetings and Coordination
  - 1. Assist the City PM with management of the I-70/CCC project. Provide support to the City with meetings, agency and consultant coordination, agreements, IGA's and permitting oversight.
  - 2. Progress Meetings. Meet with the City, Evergreen and project consultants as required. A total of 12 progress meetings are included in the Scope of Services.
- b) Design Review Support: includes the review of public infrastructure, streets, utilities and drainage
  - I-70 Interchange: Mortenson Construction has been selected as the contractor for the
     I-70 Interchange Project. Work is expected to commence in 2019. AECOM will support the City with the review of design changes during construction.
  - Clear Creek Crossing: The design of Clear Creek Crossing civil infrastructure is substantially complete and the Scope of Services includes only a minor effort for the review of the remaining design packages.
- c) Monthly Pay Applications: This will include the review of monthly pay applications submitted by Evergreen/LPMD.
- d) Other: Review of other project related documentation, agreements, bid recommendations and other financial documents on behalf of the City

#### Activity B.2 Development Review Support

- a) Clear Creek Crossing Development Review Support and Submittal Review: Provide the City with development support services for planning submittals and private infrastructure submittals on an asneeded basis. These services will be led by Dennis Arbogast (AECOM) and Nanci Kerr (Sky to Ground) and will include review of Pre-App, Concept Plan, Site Development Plan, Plat and construction document packages. It is anticipated that a total of 8 separate development projects will be submitted to the City which will require review. Review comments will be provided in a comment/response form for tracking and accountability with the next submittal. This budget includes up to 4 meetings with City and applicant for each submittal to review and resolve comments.
- b) Development Support and Coordination Lutheran Hospital Site: Provide liaison to Evergreen and the applicant to assist with the development submittal process

c) Architectural Control Committee – AECOM will provide one architectural staff position to serve on Evergreen's Architectural Control Committed to review the development submittals in accordance with the architectural guidelines and represent the City's interests. A total of 8 architectural reviews are included in the Scope of Services.

## Activity B.3 Construction Management Support

- a) Construction Management Services
  - Clear Creek Crossing Phase 1 and Phase 2: It is our understanding that Mortenson Construction will lead the overall construction management for the Clear Creek Crossing projects.
  - I-70 Interchange: Mortenson has been selected as the construction contractor for the I-70 Interchange Project. Evergreen Development Co. will lead the construction management activities for the I-70 Project.

The AECOM/Benesch Team will provide construction management support services for the Clear Creek Crossing and I-70 Interchange projects. All work on the Clear Creek Crossing infrastructure will be in accordance with City requirements and all work on the I-70 Interchange Project will be in accordance with CDOT's construction and materials testing requirements. The following labor needs are anticipated for the CM phase of these projects:

- Construction Project Manager One (1) Full Time Equivalent (FTE): Will participate in all CM activities, will serve as liaison between the City, Mortenson, Evergreen, CDOT and the project team, will supervise the inspectors and provide ongoing communication to the City construction manager.
- Construction Inspector One (1) FTE: Will participate in all CM activities and will provide daily construction observation and reporting services.
- Junior Construction Inspector One-half (1/2) FTE: Will support the Construction Inspector with construction observation on as as-needed basis during peak periods
- Materials Testing Unless otherwise needed, materials testing services will be provided by Evergreen's subcontractor, Kumar & Associates. The Scope of Services does not include any scope or hours for AECOM's geotechnical subconsultant, Geocal.

Charges to 2E and non-2E work will be tracked separately.

The anticipated time period required for the work described in this scope is 12 months from January through December, 2019. Work may be required night or day, on weekends, holidays, or on a split shift basis. Work week may be in excess of or less than the standard 40 hour week. Authorization by the City must be received prior to proceeding with overtime, nighttime or weekend work. Initial project planning meetings and site inspection may also be required prior to the construction contractor's NTP. The Scope of Services includes 12 months duration for the 2.5 FTE's listed above. Reductions in staffing are anticipated during no work periods during the winter months. The actual

duration of the project will be dictated by the construction contractor and may extend into 2020. Requirements for CM staffing beyond December, 2019 will be negotiated with the City as part of a future Scope of Services.

AECOM/Benesch shall furnish personnel, vehicles, cell phones, computer, printer and standard office software, and miscellaneous equipment required to perform the work. It is assumed that a Field Office will be provided by the construction contractor for the shared use of the entire CM Team.

General Work Description: AECOM/Benesch will provide support to the City through assignment of personnel for construction management and inspection, and shall be responsible for the following activities:

- Assist with construction contract activities management inspection, documentation
- Review, give comments, and acknowledge completeness of required submittal resulting from but not limited to:
  - Method of Handling Traffic
  - Progress Schedule
- Assist in the preparation of the following documentation, reports and billing on a routine basis:
  - Periodic reports and billings
  - Preparation of monthly progress Invoices for monthly and final billings for AECOM/Benesch fees and construction contractor payments
  - Project files, project diaries and time counts
  - Attend weekly progress meeting with City, Contractor, subcontractors, utilities and other interested parties
  - Monitoring of project contractor for fulfillment of contract plans and specifications
  - Assist in securing all project documentation from the contractor
- Anticipating project problems and direct solutions to the City Project Manager.
- On-Site cursory review of drawings and data submitted by the construction contractor and suppliers for general conformance with the intent of the specifications. Inform and obtain concurrence as needed from the City Project Manager and keep relative documentation for project records.
- Assist with monitoring compliance with the taking appropriate action to preserve safety on the project for all workers and traveling public in accordance with Method of Handling Traffic (MHT).
- Assist with preparation of punch list of uncompleted work, non-conformance reports, and deficiency notices.
- Tracking responses to contractors' and suppliers' request for information, submittals, change notices, claims, and correspondence.

- Project Documentation Maintain a daily diary for each day work is performed on the project. The contents of the diary shall be brief and accurate statements of progress and conditions encountered during the prosecution of the work.
- b) Site Development Construction Support: Provide CM support to the City with the construction observation of City infrastructure including drainage and stormwater BMP's. We do not anticipate a significant demand for this activity during 2019 and we anticipate that CM support can be provided with the CM staffing described above on an as-needed basis.

# C. WADSWORTH WIDENING

# Activity C.1 Design Review Support

AECOM will provide design review support to the City and will assist the City with the management of the Wadsworth Widening Project in accordance with City and CDOT Local Agency requirements. It is our understanding that the City has contracted with the team of HDR/WSP to prepare the environmental clearance documents, preliminary and final design for the Wadsworth Project. The Scope of Services includes the following:

- a) Design Coordination and Meetings: Ongoing coordination, review of project schedule and cost estimates and monthly progress meetings. The Scope of Services includes a total of 12 progress meetings
- b) EA/FONSI Support: Provide support to the City and the project team with the completion of the EA and the technical review of the FONSI. Attend public meeting
- c) Preliminary Plan Review: Assist the City and the project team with review of the FIR plan submittal including roadway, traffic, utilities, hydraulics, ROW and other disciplines as required. Review will include preliminary plans, drainage report, cost estimate and other deliverables for conformance with City and CDOT Local Agency requirements and potential design exceptions.
- d) Final Plan Review: Assist the City and the project team with review of the FOR plan submittal including final plans, specifications, drainage report, cost estimate and other deliverables for conformance with City and CDOT Local Agency requirements.
- e) Bid Documents Review: Assist the City and the project team with the review of the final construction bid documents
- f) Right of Way Plan Support: Assist the City and the project team with review of the ROW plans and acquisition documents. Participate in ROWPR meeting.

## Activity C.2 Funding Support

It is anticipated that assistance with grant writing applications will be provided by the City's design consultant, HDR/WSP. Funding support services, if required, will be negotiated as a contract amendment.

## **D. ANDERSON PARK**

Services to support the Anderson Park Project are not anticipated at this time, however, may be negotiated as under a future task order if required by the City.

## E. WHEAT RIDGE WARD STATION AREA

The focus for the Ward Road Station area in 2019 will primarily include design review support, development review support and construction management services as described below. The Scope of Services includes the following activities:

## Activity E.1: Project Management

Ongoing project management and coordination including participation in monthly meetings to facilitate ongoing coordination with the City staff to discuss progress and deliverables status. A total of 12 monthly coordination meetings are included in the Scope of Services.

## Activity E.2: Station Area Analysis

- a) 52nd Anenue Traffic Analysis Update: This task order includes an update to the original 52nd Avenue traffic analysis to reflect the City's decision to not extend 52nd Avenue east of Tabor Street (see attached detailed Scope of Work dated 11/28/18).
- b) 50th Avenue/Ward Rd. Three-Quarter Intersection Design: This task order includes the final design of the three-quarter access at the 50th Avenue/Ward Road intersection in accordance with the provisions of the CDOT access permit (see attached detailed Scope of Work dated 12/6/18).
- c) The Scope of Services also includes a total of 40 hours to serve as a placeholder to cover any minor effort that may be required for the station area analysis. Any additional effort or task orders will be negotiated as a contract amendment.

#### Activity E.3: Design Review Support

It is our understanding that all design work on the Ward Station area infrastructure will be completed by the City's design consultant, SEH. Anticipated infrastructure projects may include 52nd Avenue, Tabor Street and Ridge Road; and may also include Ward Road, the pedestrian bridge and the linear park. AECOM will provide support to the City including the review of public infrastructure, streets, utilities and drainage. We anticipate that the following reviews will be required for up to two separate construction packages:

- Preliminary Plan Submittal already completed under previous scope of services
- Final Plan Submittal
- Construction Bid Documents Submittal

## Activity E.4: Development Review Support

Provide the City with development support services for planning submittals and private infrastructure submittals on an as-needed basis. These services will be led by Dennis Arbogast (AECOM) and Nanci Kerr (Sky to Ground)

and will include review of Pre-App, Concept Plan, Site Development Plan, Plat and construction document packages. It is anticipated that a total of two (2) separate development projects will be submitted to the City which will require review. Review comments will be provided in a comment/response form for tracking and accountability with the next submittal. This budget includes up to 4 meetings with City and applicant for each submittal to review and resolve comments.

## Activity E.5: Funding Support

It is our understanding that the City of Wheat Ridge will require financial support in order to proceed with the development of the site and provide supporting infrastructure to market to developers. With that in mind, we plan to enlist our national team of grant experts to help the City find and apply to relevant federal, state, and local grants that could support the project. These could include grants such as Great Outdoors Colorado and LIST. The intent is to leverage the grant funds with the local funds available. We will align the potential grant sources with the priority infrastructure identified for the site.

## Activity E.6 Construction Management Services

AECOM will provide construction management support services for the Ward Station area infrastructure projects. All work on these projects will be in accordance with City requirements. The following labor needs are anticipated for the CM phase of these projects:

- Construction Project Manager One (1) Full Time Equivalent (FTE): Will manage CM activities and will serve as liaison between the City and the project team, will supervise the inspectors and provide ongoing communication to the City construction manager.
- Construction Inspector One-half (1/2) FTE: Will support the Construction Manager with construction observation on as as-needed basis during peak periods
- Materials Testing Unless otherwise needed, materials testing services will be provided by selected construction contractor. The Scope of Services does not include any scope or hours for AECOM's geotechnical subconsultant, Geocal.

The anticipated time period required for the work described in this scope is 6 months from July through December, 2019. Work may be required night or day, on weekends, holidays, or on a split shift basis. Work week may be in excess of, or less than the standard 40 hour week. Authorization by the City must be received prior to proceeding with overtime, nighttime or weekend work. Initial project planning meetings and site inspection may also be required prior to the construction contractor's NTP. The Scope of Services includes 6 months duration for the 1.5 FTE's listed above plus back-office support. Reductions in staffing are anticipated during no work periods during the winter months. The actual duration of the project will be dictated by the construction contractor and may extend into 2020. Requirements for CM staffing beyond December, 2019 will be negotiated with the City as part of a future task order.

AECOM shall furnish personnel, vehicles, cell phones, computer, printer and standard office software, and miscellaneous equipment required to perform the work. It is assumed that a Field Office will be provided by the construction contractor for the shared use of the CM team.

General Work Description: AECOM will provide support to the City through assignment of personnel for construction management and inspection, and shall be responsible for the following activities:

- Coordination of all construction contract activities
- Review, give comments, and acknowledge completeness of required submittal resulting from but not limited to:
  - Method of Handling Traffic
  - Progress Schedule
- Provide the following documentation, reports and billing on a routine basis:
  - Periodic reports and billings
  - Preparation of monthly progress Invoices for monthly and final billings for AECOM/Benesch fees and construction contractor payments
  - o Maintaining of project files, project diaries and time counts
  - Attend weekly progress meeting with City, Contractor, subcontractors, utilities and other interested parties
  - o Monitoring of project contractor for fulfillment of contract plans and specifications
  - Securing all project documentation from the contractor
- Anticipating project problems and direct solutions to the City Project Manager.
- On-Site cursory review of drawings and data submitted by the construction contractor and suppliers for general conformance with the intent of the specifications. Inform and obtain concurrence as needed from the City Project Manager and keep relative documentation for project records.
- Communicating with adjacent landowners as required resolving issues that arise due to construction.
- Monitoring compliance with the taking appropriate action to preserve safety on the project for all workers and traveling public in accordance with Method of Handling Traffic (MHT).
- Preparing punch list of uncompleted work, non-conformance reports, and deficiency notices.
- Preparing responses to contractors' and suppliers' request for information, submittals, change notices, claims, and correspondence.
- Project Documentation Maintain a daily diary for each day work is performed on the project. The contents of the diary shall be brief and accurate statements of progress and conditions encountered during the prosecution of the work.

#### Wheat Ridge Investing 4 the Future Program Management/Construction Management Workhour/Cost Estimate 2019 1/22/2019 Program Management Services

Task			Project Mar	agement	Design R	eview Suppor	tvelopment Revi		Planning)			A = 60.14
No.		Principal	Project Manager	Project Controls	Admin	Roadway Engineer	Development Support Manager (AECOM)	Senior Planning Manager	Total Hours	Tota	al Cost	AECOM
		\$269.37	\$184.08	\$190.81	\$94.55	\$136.50	\$187.96	\$205.21				
A	PROGRAM MANAGEMENT/CONTINUING SERVICES	(Eckman/Romig)	(McQuilkin)	(Dwyer)	(Wood)	(Krell)	(Arbogast)	(Sousa)				
A.1	Project Initiation (N/A)									\$	-	
A.2	Project Management											
	a) Routine management, accounting and administration	24	50	24	200				298	\$	39,158	Assume PM 1 hour per week, Admin 4 hours per week
	b) Schedule and document control (if required)								0	\$	-	
	c) Cost and risk management (if required)								0	\$	-	
	d) Invoicing/monthly reporting		48		96				144	\$	17,913	Assume PM 4 hours per month, Admin 8 hours per month
	Subtotal Project Management	24	98	24	296	0	0	0	442	\$	57,071	442
A.3	Meetings/Communications											
	Monthly 2E staff meetings	18	36						54	\$		Assume 12 meetings at 3 hours each
	Other meetings		36						36	\$		Assume 12 meetings at 3 hours each
	Subtotal Meetings/Communications	18	72	0	0	0	0	0	90	\$	18,102	90
										\$	-	
A.4	Rapid Response (Unforeseen Services)											
	a) Unforeseen rapid response services	8	40			40	40	40	168	\$	30,705	
										1		
	Subtotal Project Management/Continuing Requirements	50	210	24	296	40	40	40	700	\$	105,878	Total Labor
	Labor Fee at 11.5%									\$	12,176	Total Labor Fee
	Other Direct Costs									\$	1,000	
	TOTAL PROJECT MANAGEMENT/CONTINUING REQUIREMENTS									\$	119,054	

Subconsultant

**ATTACHMENT 2** 

#### Wheat Ridge Investing 4 the Future Program Management/Construction Management Workhour/Cost Summary 2017-2018 1/22/2019 Clear Creek Crossing/I 70 Interchange

Taak				D-	esign Review	Support (AFO	OM)	D-	sign Review S	upport (Pass	aceb)	De	velopment Rev	viou	Construction Management										
Task				De	esign Review	Support (AEC	,OM)	De	sign Review S		escri)	Development		view				Con	istruction Manag	ement			1	ΔΞϹΟΜ	
		Project	A almain	Roadway	Senior Civil	Traffic	ROW	Project	Roadway	Civil/	Structural	Support	Support	Architectural	CM Oversight	Construction	Inspector	Inspector	CM Oversight	Inspector	Inspector	Total	Tatal Cost		
		Manager	Admin	Engineer	Engineer	Engineer	Manager	Manager		Hydraulics Engineer	Engineer	Manager	Manager	Manager	(AECOM)	Engineer (AECOM)	(AECOM)		(Benesch)	(Benesch)	(Benesch)	Hours	Total Cost	Notes	
No.												(AECOM)	(S2G)												
в	CLEAR CREEK CROSSING	\$184.08	\$94.55		\$105.14				\$180.00		\$179.00	\$187.96	\$185.00	\$200.75	\$201.01	\$131.17	\$93.13	1	\$149.00	\$63.00	\$100.00				
_	<u></u>	(McQuilkin)	(Wood)	(Krell)	Seyboldt	(Candeleria)	) (Brown)	(Sabo)	(Salek)	(Beegle)	(Bechtold)	(Arbogast)	(Kerr)	Keady	(Hlad)	(Miller)	(Bricker)	(Omtvedt)	J. Hastings)	(E. Hastings)	(Laskero)				
B.1	Design Review Support																								
	a) Project Management, Meetings and Coordination																								
	1. Project Management and Administration	24	48																			72	\$ 8,956	Assume 2 hours per mont PM, 4 hours per month Admin	
	2. Progress Meetings	36						18				18										72	\$ 13,916	12 meetings at 3 hours each	
	Subtotal Project Management, Meetings and Coordination	60	48					18				18										144	\$ 22,872		
	b) Design Review Support																1						\$		
	1. I-70 Interchange	8						32	40	24	40											144		Assume Monthly - say 13 meetings @ 3 hours each = 42 hours	
	2. Clear Creek Crossing	8			16							40										64	\$ 10,673	i	
	Subtotal Design Review Support	16			16			32	40	24	40	40										208	\$ 36,594	k	
	c) Monthly Pay Applications	96																				96	\$ 17,672	12 pay application @ 8 hours each	
	d) Other	24										24										48	\$ 8,929		
	Subtotal Design Review Support	196	48	0	16	0	0	50	40	24	40	82	0	0	0	0	0	0	0	0	0	496	\$ 86,067		
B.2	Development Review Support																								
	a) Development Design and Submittal Review			80	160	80						600	240									1,160	\$ 192,035	Assume 8 separate SDP's, 4 submittals each	
	b) Coordination - Lutheran Hospital Site											40	40	0								80	\$ 14,918		
	c) Architectural Control Committee													80								80	\$ 16,060	8 SDP's @ 10 hours each	
	Subtotal Development Review Support	0	0	80	160	80	0	0	0	0	0	640	280	80	0	0	0	0	0	0	0	1320	\$ 223,014	1	
B.2	Construction Management																								
	a) I-70 Interchange and Clear Creek Crossing CM Services														80	2000			80	1000	2000	5,160	\$ 553,341	Assume 2 FTE's for 12 months plus 1 FTE for 6 months	
	b) Site Development Construction support																								
	(Included in Item a) above)																								
в	Subtotal - Clear Creek Crossing	196	48	80	176	80	0	50	40	24	40	722	280	80	80	2000	0	0	80	1000	2000	6976	\$ 862,421	Total Cost	
_		4						1	1		1												· ·	•	
	Labor Fee at 11.5%							1															\$ 58,345		
	Other Direct Costs		1	1		1	1	1	1		1			1	1		1					1	\$ 24 600	ODC's AECOM and Benesch	
				<u> </u>				<u> </u>					L	L								L	¥ 24,000		
1	TOTAL CLEAR CREEK CROSSING		1	1	1	1	1	1	1	1	1	1	1		1	1	1	1	1			1	\$ 945,366		

Subconsultant

#### Wheat Ridge Investing 4 the Future Program Management/Construction Management Workhour/Cost Summary 2019 1/22/2019 Wadsworth Widening

Task			Project Mar	nagement		De	sign Review S	upport (AEC	OM)		Plann	ing)		1-0014
No.		Principal	Project Manager	Project Controls	Admin	Roadway Engineer	Senior Civil Engineer	Traffic Engineer	ROW Manager	Senior Planning Manager	NEPA Specialist	Total Hours	Total Co	t Notes
		\$269.37	\$184.08	\$190.81	\$94.55	\$136.50	\$105.14	\$88.96	\$148.03	\$205.21	\$130.39			
С	WADSWORTH WIDENING	(Eckman/Romig	) (McQuilkin)	(Dwyer)	(Wood)	(Krell)	Seyboldt	(Candeleria)	(Brown)	(Sousa)	(Snow)			
C.1	Design Review Support													
	a) Design Coordination/Meetings		48			48					12	108	\$ 16,	53 Assume 12 meetings at 4 hours per meetring
	b) EA/FONSI Support		4							24	48	76	\$ 11,	20
	c) Preliminary Plan Review		4			28	24	20				76	\$ 8,	61
	d) Final Plan Review		4			36	28	24				92	\$ 10,	29
	e) Bid Documents Review		4			18	14	12				48	\$ 5,	33
	f) ROW Plan Support								48			48	\$7,	05
	Subtotal Design Review Support	0	64	0	0	130	66	56	48	24	60	448	\$ 61,	<b>01</b> 448
C.2	Funding Support		4							24		28	\$5,	<b>61</b> 28
	Subtotal - Wadsworth Widening	0	68	0	0	130	66	56	48	48	60	476	\$ 66,	62 Total Labor
	Labor Fee at 11.5%												\$7,	01 Total Labor Fee
	Other Direct Costs												\$	00 ODC's
С	TOTAL WADSWORTH WIDENING												\$75,	63

Subconsultant

#### Wheat Ridge Investing 4 the Future Program Management/Construction Management Workhour/Cost Summary 2019 1/22/2019 Ward Road Station

Task				De	sian Review	Support (AEC	OM)	Development Review Planning)									C	Construction N	1			
No.		Project Manager	Admin	Roadway Engineer	Senior Civil		ROW Manager		Development Support Manager (S2G)	Architectural Manager	Senior Planning Manager	Sr. Traffic Engineer	Senior Utban Designer	NEPA Specialist	EIT	CM Oversight (AECOM)	Construction Engineer (AECOM)	Inspector	Inspector (AECOM)	Total Hours	Total Cost	AECOM
		\$184.08	\$94.55	\$136.50	\$105.14	\$88.96	\$148.03	\$187.96	\$185.00	\$200.75	\$205.21	\$203.26	\$169.58	\$130.39	\$71.41	\$201.01	\$131.17	\$93.13	\$64.85			
E	WARD STATION	(McQuilkin)	(Wood)	(Krell)	Seyboldt	(Candeleria)	(Brown)	(Arbogast)	(Kerr)	Keady	(Sousa)	(GaraKhalli)	(Wilensky)	(Snow)	(Lavery)	(Hlad)	(Miller)	(Bricker)	(Omtvedt)			
E.1	Project Management																					
	1. Project Management, Administration	24	48																	72	\$ 8,95	6 Assume 2 hours per mont PM, 4 hours per month Admin
	2. Meetings	36		36							18									90	\$ 15,23	5 12 meetings at 3 hours each
	Subtotal Project Management	60	48	36	0	0	0	0	0	0	18	0	0	0	0	0	0	0	0	162	\$ 24,19	1
E.2	Station Area Analysis																					
	a) 52nd Avenue Traffic Analysis Update		4			116					21									141	\$ 15,00	
	b) 50th Avenue/Ward Road Three Quarter Intersection Design	12	8	47		36	40								72					215	\$ 23,64	
	c) Station Area Analysis As-Needed Services										16		24							40	\$ 7,35	
	Subtotal Station Area Analysis	12	12	47	0	152	40	0	0	0	37	0	24	0	72	0	0	0	0	396	\$ 46,00	6
E.3	Design Review Support																					
	Ward Station Area Infrastructure																					
	1. Preliminary Plan Submittal (Already Completed)																			0	\$	-
	2. Final Plan submittal	4		32	24	20														80	\$ 9,40	
	3. Construction Bid Document Submittal	4		16	12	10														42	\$ 5,07	
	Subtotal Design Review Support	8	0	48	36	30	0	0	0	0	0	0	0	0	0	0	0	0	0	122	\$ 14,47	8
E.4	Development Review Support				70	25		150	125											370	\$ 60,90	3
<b>L</b> . <del>.</del>																				0.0	\$	
E.5	Funding Support									1	40									40	\$ 8,20	8
																				-	, .	
E.6	Construction Management Services															40		1000	500	1,540	\$ 133,59	5 Assume 1 FTE for 6 months, 1 FTE for 3 months
	Subtotal - Ward Station	80	60	131	106	207	40	150	125	0	95	0	24	0	72	40	0	1000	500	2630	\$ 287,38	2
	Labor Fee at 11.5%			1																	\$ 30,39	0
	Other Direct Costs																				\$ 9,61	0
Е	TOTAL WARD STATION																				\$ 327,38	2

#### Wheat Ridge Investing 4 the Future Program Management/Construction Management AECOM and Subconsultant Workhour/Cost Estimate 2019 1/22/2019 Workhour/Cost Summary

						-											1					1									
Task		Principal	Project Mar Project Manager	Project Controls	Admin	Roadway Engineer	Senior Civ		ROW Manager	Des Project Manager	Roadway Engineer	Civil/ Hydraulics Engineer	Chrysterral	Development Support Manager	Support Manager		Senior Planning Manager	Sr. Traffic Engineer	Planning Senior Utban Designer	NEPA Specialist	EIT	CM Oversight (AECOM)	Construction Engineer (AECOM)	Inspector (AECOM)	Inspector (AECOM)	CM Oversight (Benesch)	t Inspector (Benesch)	Inspector (Benesch)	Total Hours	Total Cost	AECOM Notes
No.		\$269.37	\$184.08	\$190.81	\$94.55	\$136.50	\$105.14	\$88.96	\$148.03	\$217.00	\$180.00	\$131.00	\$179.00	(AECOM) \$187.96	(S2G) \$185.00	\$200.75	\$205.21	\$203.26	\$169.58	\$130.39	\$71.41	\$201.01	\$131.17	\$93.13	\$64.85	\$149.00	\$63.00	\$100.00			
	Subtotal - Program Management	(Eckman/Romig)	(McQuilkin)	(Dwyer)	(Wood)	(Krell)	Seyboldt	(Candeleria	) (Brown)	(Sabo)	(Salek)	(Beegle)	(Bechtold)	(Arbogast)	(Kerr)	Keady	(Sousa)	(GaraKhalli)	(Wilensky)	(Snow)	(Lavery)	(Hlad)	(Miller)	(Bricker)	(Omtvedt)	J. Hastings)	(E. Hastings)	(Laskero)			
Α	Continuing Requirements	50	210	24	296	40								40			40												700 \$	105,878	Labor
																													\$	12,176	Fee (11.5%)
																													\$	1,000	ODC's (Mileage, printing, delivery, etc)
																													\$	119,054	\$0
в	Subtotal - Clear Creek Crossing	0	196	0	48	80	176	80	0	50	40	24	40	722	280	80	0	0	0	0	0	80	2000	0	0	80	1000	2000	6976 \$	862,421	Labor
																													\$	58,345	Fee (11.5%)
																													\$	24,600	ODC's (Mileage, printing, delivery, etc)
																													\$	945,366	Total Cost
с	Subtotal - Wadsworth Widening	0	68	0	0	130	66	56	48	0	0	0	0	0	0	0	48	0	0	60	0	0	0	0	0	0	0	0	476 \$	66,962	Labor
																													\$	7,701	Fee (11.5%)
																													\$	500	ODC's (Mileage, printing, delivery, etc)
																													\$	75,163	Total Cost
D	Subtotal - Anderson Park	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0\$	-	Labor
																															Fee (11.5%)
																													\$		ODC's (Mileage, printing, delivery, etc)
																													\$		Total Cost
Е	Subtotal - Ward Road Station	0	80	0	60	131	106	207	40	0	0	0	0	150	125	0	95	0	24	0	72	40	0	1000	500	0	0	0	2630 \$	287,382	Labor
																													\$	30,390	Fee (11.5%)
																													\$	9,610	ODC's (Mileage, printing, delivery, etc)
																													\$	327,382	Total Cost
	PROJECT TOTALS	50	554	24	404	381	348	343	88	50	40	24	40	912	405	80	183		24	60	72	120	2000	1000	500	80	1000	2000	10782 \$	1,466,966	

Subconsultant

10782

# SPECIAL STUDY SESSION AGENDA

# CITY COUNCIL CITY OF WHEAT RIDGE, COLORADO

7500 W. 29th Ave. Wheat Ridge CO

<u>January 28, 2019</u>

Upon adjournment from Regular Council Meeting

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Sara Spaulding, Public Information Officer 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

Citizen Comment on Agenda Item

<u>1.</u> Finalize amendments to Council Rules and Procedures

ADJOURNMENT



# Memorandum

TO:	Mayor and City Council
FROM:	Patrick Goff, City Manager
DATE:	January 24, 2019
SUBJECT:	Review of Council Rules of Order and Procedure

# **ISSUE:**

The Charter of the City of Wheat Ridge provides that the Council may determine its own rules of procedure for meetings. Section C of Suspension and Amendment of these Rules states "These Rules shall be reviewed by the Council within three (3) months of a Regular Council Election."

# **PRIOR ACTION:**

Council Rules of Order and Procedure were last amended in 2016. At the June 27, 2016 Study Session, numerous sections of the Rules were discussed and recommended for change. The City Attorney incorporated all of the recommended changes and reorganized the numbering. The City Council approved the Council Rules of Order and Procedure as amended on July 11, 2016.

Council Rules of Order and Procedure were reviewed by City Council at the March 19, 2018 study session. Recommended changes were provided to the City Attorney for future discussion with City Council.

## **RECOMMENDATION:**

Council should review the proposed changes to the Rules and Procedure and propose any recommended changes. Final changes will be placed on the next Council agenda for consideration.

# **ATTACHMENTS:**

1. Redline of Rules of Order and Procedure, July 11, 2016



#### RULES OF ORDER AND PROCEDURE

OF THE CITY COUNCIL

FOR THE

CITY OF WHEAT RIDGE

COLORADO

Revised: July 11, 2016

Revised: May ____, 2018

#### TABLE OF CONTENTS

I.	AUTHORITY	3
II.	CITIZENS' RIGHTS TO SPEAK	3
III.	CHAIR, MAYOR PRO TEM, CITY CLERK, CITY ATTORNEY, PARLIAMENTARIAN AND THEIR DUTIES AT MEETINGS	4
	CHAIR	4 5 5
IV.	COUNCIL MEETINGS AND MEETING PROCEDURES	6
	TYPES OF MEETINGS STUDY SESSIONS ADJOURNED MEETINGS EXECUTIVE SESSIONS MEETING NOTICES AND REQUIREMENTS ATTENDANCE AT MEETINGS OF OTHER ORGANIZATIONS AND SOCIAL GATHERINGS ABSENCES RIGHT OF THE FLOOR ELECTED OFFICIALS' MATTERS	6 6 7 8 8
V.	ORDER OF BUSINESS AND THE AGENDA	9
	SCOPE OF RULE	) D 1 1 1
VI.	RECONSIDERATION 1	2
VII.	SUSPENSION AND AMENDMENT OF THESE RULES 1	3
	SUSPENSION	3

#### RULES OF ORDER AND PROCEDURE FOR THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO

#### I. AUTHORITY

Sections 4.7 and 5.1 of the Home Rule Charter of the City of Wheat Ridge authorize the City Council to determine its own rules of order and procedure for meetings. The following Rules shall be in effect upon their adoption by the Council until such time as they are amended or new Rules adopted in the manner provided by these Rules.

#### II. CITIZENS' RIGHT TO SPEAK

- A. CITIZENS' RIGHT TO SPEAK
  - 1. Citizens' right to speak at meetings of the City Council are of primary importance. This Rule describes those rights and the manner in which they are exercised.
  - 2. Citizens' right to speak at <u>Regular</u>, Adjourned and Special Council <u>Meetings</u>:
    - a) For non-agenda items: a citizens may speak once per meeting for a maximum of three (3) minutes on any item not on the agenda.
    - b) For agenda items: a, citizens may speak once for each agenda item, for any length of time, unless limited by the presiding officer at the beginning of the item.
  - 3. <u>Citizens' right to speak Comments</u> at Study Sessions:
    - a) A ceitizens may speakcomment once per agenda item for a maximum of three (3) minutes. Citizens present may donate time to other speakers forto a maximum of nine (9) minutes, including the three (3) minutes of the person to whom donated.
    - b) Citizen comments will be heard at the beginning of the Study Session, unless the Study Session is combined with a Regular, Special or Adjourned Council meeting, in which case the comments will be taken at the beginning of that meeting.
  - 4. General Restrictions on Citizens' Right to Speak Comments
    - a) There is no limit on the number of persons who may speak.

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- b) Content of Citizen Comments are not censored, other than foul or threatening language, which is not permitted.
- c) Speakers shouldare encouraged to limit their comments to the relevant topic or agenda item.
- d) Speakers are requested to sign the appropriate roster in the Council Chambers and will be called in order.
- e) Written comments are permitted on any agenda or non-agenda item and should be given to the City Clerk.
- f) The presiding officer will entertain no written comments from the public unless a member of the public representing the author is present to read them into the record. A Council Member or the City Clerk may read written comments into the record with the approval of the majority of the Council present. Any such individual reading is limited to three (3) minutes.
- g) The City Clerk is the designated timekeeper for all time-limited comments.
- a)h) Councilmembers and the Mayor have the choice of whether or not to respond to citizens after the completion of Citizens' Right To Speak.-Comments.

Citizens' Comments Category 1 (non Agenda Items at a Regular or Special Meeting: one per meeting for a maximum of three (3) minutes. A person may speak only once per meeting for a maximum of three (3) minutes.

- Citizens' Comments Category 2 (Agenda Items at a Regular or Special Study Session): once per person per meeting for a maximum of three (3) minutes.
- 3. Persons wishing to give Citizens' Comments may speak once per Category.
- Persons in attendance shall be allowed to donate time in each Citizens' Comments category to other speakers for a maximum of nine (9) minutes, including the three (3) minutes the original speaker has.
- 5. The City Clerk shall be the timekeeper for Citizens' Comments.
- 6. Council has the choice whether or not to respond to citizens after the closure of the Citizen Comments portion of the meeting.
- 7.—Persons desiring to speak on a Regular or Special Meeting Agenda Item are requested to sign the appropriate roster in Council Chambers. Speakers shall confine their remarks to the relative item. There shall

be no time limit applied to public comment on any scheduled Agenda Item unless deemed appropriate by the Chair.

- 8.——There shall be no restriction on the number of citizens who wish to speak.
- 9. The content of any speaker's comments cannot be censored.
- 10. The Chair will entertain no written comments from the public unless a member of the public representing the author is present to read them into the record. A Council Member or the City Clerk may read written comments into the record with the approval of the majority of the Council present.
- 11. All written communications to Council must be signed. If not signed, the written communications may not be accepted.

#### III. CHAIR, MAYOR PRO TEM, CITY CLERK, CITY ATTORNEY, PARLIAMENTARIAN AND THEIR DUTIES AT MEETINGS

#### A. CHAIR

- 1. The Mayor shall preside over the meetings of the City Council as the Chair
- 2. In the absence of the Mayor, the Mayor Pro Tem shall preside as the Chair.
- 3. The Chair shall preserve order and decorum, prevent personal attacks or the impugning of members motives, confine members in debate to questions under discussion, be responsible for conducting meetings in an orderly manner, assure that the minority opinion may be expressed and that the majority be allowed to rule.

#### B. MAYOR PRO TEM

- At the first or second Regular meeting in November of each year, the Council shall nominate, by secret paper ballot, and elect by motion upon a majority vote, a Mayor Pro Tem who shall serve until their successor is elected. The procedure shall be as follows:
  - a) The Chair will announce that the floor is open for nominations for the position of Mayor Pro Tem.
  - b) Nominations will be taken from City Council members by voice. No second is needed.

- c) Each nominee will have the opportunity to address the Council.
- Each Council member will mark the paper ballot with the name of the nominee they wish to vote for.<u>-and fold the paper in half to ensure secrecy.</u> The Mayor shall similarly cast a paper ballot for their favored nominee and write "Mayor" on the outside of their folded ballot. The City Clerk will open and include the Mayor's vote only in the event of a tie.

<u>d)</u>

- •e) The City Clerk will collect the ballots, tally the results, include the Mayor's vote only in the case of a tie, and return the written name of the majority vote receiver to the presiding officer, who will announce the highest vote getter.
- d)<u>f)</u> In the event of a tie, the Mayor will cast a paper ballot, to be delivered to the City Clerk for inclusion into the election tally.
- e)g) A motion and second is then in order to elect a person , the highest vote getter to the position of Mayor Pro Tem. In the event of a tie, the Mayor shall cast a tie breaking vote. The Council is encouraged to confirm the nomination unanimously; however, Council Members are not required to vote for this person. If the motion is not carried, additional motions are in order until a Mayor Pro Tem is elected by a majority of Council.
- 2. If presiding as the meeting Chair, the Mayor Pro Tem shall have the voting privileges of a regular Council Member.
- 3. The Mayor Pro Tem's duties shall include reviewing and setting the Agenda prior to Council Meetings and adding emergency items for discussion if necessary. The Mayor Pro Tem shall have the authority to remove any item from the Agenda of any Regular Meeting or Study Session with the exception of:
  - a) -An item placed on the Agenda by two (2) Council Members prior to the meeting pursuant to Rule V.D.1; or
  - b) An item added by the Council by majority vote during any meeting pursuant to Rule V.C.6.
- 3.4. The Mayor Pro Tem shall arrange for and coordinate the orientation of all newly elected officials, including a review of these Rules, within two (2) months after the election.
- C. CITY CLERK

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D. The City Clerk, or designated representative, shall attend all meetings of Council and shall keep the official minutes.CITY ATTORNEY

1. The City Attorney, or acting City Attorney, shall attend all meetings of the Council unless excused by the City Council and shall, upon request, give an opinion, either written or oral, on the question of law.

#### E.D. PARLIAMENTARIAN AND RULES OF ORDER

- 1. The Mayor Pro Tem shall also function as the Council Parliamentarian, and may call upon the City Attorney for a recommendation on procedure, if desired.
- 2. The Parliamentarian shall advise the Chair and members of Council on parliamentary rules.
- 3. The current edition of Robert's Rules of Order, newly revised, shall advise the Parliamentarian regarding questions of order and procedure in all cases to which they are applicable and in which they are not inconsistent with these Rules, the Wheat Ridge Home Rule Charter, the Wheat Ridge Code of Laws or other laws governing the City.
- 4. In cases where the current edition of Robert's Rules of Order, newly revised, are inconsistent with the Rules of Procedure, the Rules of Procedure control.
- 5. The Mayor (or the Mayor Pro Tem, if presiding), shall be the final authority on all points of order or procedure, subject to override upon a three-fourths (3/4) majority vote of the entire Council.

#### IV. COUNCIL MEETINGS AND MEETING PROCEDURES

- A. TYPES OF MEETINGS
  - 1. The Council meets in the Municipal Building for Regular, Adjourned, and Special Meetings and Regular and Special Study Sessions.
  - Regular Meetings are held the second (2nd) and fourth (4th) Monday of each month at 7:00 PM unless otherwise provided by amendment of these Rules.
  - 3. Study Sessions are held the first (1st) and third (3rd) Monday of each month at 6:30 PM, unless otherwise provided by the Mayor Pro Tem.
  - 4. The Mayor Pro Tem may schedule additional Study Sessions to take place at any other day and time.

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#### B. STUDY SESSIONS

- Study Sessions shall be for the purpose of discussing concepts and ideas. No formal business shall be conducted. Consensus votes during all Study Sessions are non-binding, with exception of consensus votes to schedule or decline to schedule a matter for consideration at a Regular or Special Meeting, which may, however, be reconsidered after six (6) months as permitted by Rule V.D.3. Unless an issue is disposed of at a Regular, Adjourned, or Special Meeting, it may be amended or reconsidered in that or any future Study Session.
- 2. Public Comment will be allowed at the beginning of a Study Session as provided by Rule II.A.3. for only those items on the agenda and each speaker is limited to a maximum of three (3) minutes. When a Study Session is added to a Regular, <u>Adjourned</u> or Special Meeting, Public Comment on Study Session Agenda Items shall be taken at the beginning of the<u>that</u> meeting, it being the intention that all Public Comment and Citizens Comments be taken at the beginning of the meeting.

#### C. ADJOURNED MEETINGS:

Any Meeting of the Council may be adjourned to a later date and time, provided that no adjournment shall be for a period longer than the next Regular Meeting. Formatted: Indent: Left: 0.5", First line: 0.5"

#### D. EXECUTIVE SESSIONS

- The Council may meet in Executive Session on a vote of a majority of City Council in a Regular or Special Meeting (Charter – Section 5.7).
- 2. No notes may be taken during an Executive Session except by the City Clerk and/or City Attorney.
- 3. If, at any time during the Executive Session, a Council Member feels that a matter is being discussed other than that stated as the purpose of the Executive Session, that member should so state and may request that the Executive Session be terminated. If a consensus of City Council Members present agree, the session shall be terminated.
- 3.4. All requirements of the Colorado Open Meetings Law shall be followed.
- E. MEETING NOTICES AND REQUIREMENTS:

All Meetings, whether formal or informal (other than those between only two (2) Council Members and/or the Mayor) shall be open to members of the public and the press except as provided in this Rule.

- 1. Meetings involving no more than two (2) Council Members, whether in person,by telephone or other electronic medium and whether or not the Mayor also attends, shall not be subject to any of the requirements of this Rule.
- 2. Meetings of any three (3) or four (4) Council Members must be open to the public, but no <u>advance</u> notice is required.

3. All meetings of five (5) or more Council Members must be preceded by public notice of the meeting posted at least 72 hours prior to the meeting, with the exception of Special Meetings and emergency Special Meetings, on the City website and the locations designated by resolution of the Council, listing the topic of the meeting, its location, time, and date. Copies of the notice shall be given to all City Council Members and the City Clerk at least 72 hours before the meeting.

- a. The City Clerk is responsible for the posting of the meeting pursuant to the Charter and Code.
- b. There is no responsibility to post notices of meetings of other bodies and groups, whether or not members of the Council are expected to attend.

4. Public meetings arranged by the City for the citizens, such as open houses and public input meetings, are not meetings of the City Council.

- F. ATTENDANCE AT MEETINGS OF OTHER ORGANIZATIONS AND SOCIAL GATHERINGS
  - 1. The purpose for this rule is to permit the City to be represented by its elected officials at meetings of other groups or organizations, including without limitation, intergovernmental organizations, neighborhood organizations, business and service organizations, and other organizations or groups with which the City has a relationship.
  - 2. Any member of Council and the Mayor may attend meetings of other groups without prior notice, provided however, that any such meeting, if attended by three (3) or more members of the Council, is open to the public, pursuant to Section 24-6-401, et seq., C.R.S.
  - 3. Social gatherings, at which the discussion of public business is not the central purpose, shall not be subject to any of the requirements of Rule IV.E.
- G. ABSENCES

In the event that a Council Member expects to be absent from a Regular, Special or Adjourned Meeting or Study Session, the Member shall notify the City Clerk, and the City Clerk will duly notify the City Council at the beginning of the meeting.

#### H. RIGHT OF THE FLOOR

- 1. The presiding officer must first recognize each Council Member requesting to speak unless limited by a motion to limit debate or for calling the question. (applicable also to Study Sessions)
- 2. Speakers shall confine themselves to the question under discussion. All discussion must be germane to the Agenda Item. (applicable also to Study Sessions)
- 3. Members of Council shall avoid personal attacks and refrain from impugning the motives of any member's argument or vote. (applicable also to Study Sessions)
- 4. Once a vote, or in the case of a Study Session a Consensus, has been taken, there shall be no further discussion on that motion or Agenda Item unless a motion to reconsider is adopted.

#### I. ELECTED OFFICIALS' MATTERS

This is the time elected officials may make comments on any subject. Time limit per elected official will be five (5) minutes.

#### V. ORDER OF BUSINESS AND THE AGENDA

- A. SCOPE OF RULE: This Rule V shall apply only to Regular, Special and Adjourned Meetings, and not to Study Sessions, unless specifically noted.
- B. ORDER OF BUSINESS

The general rule as to the Order of Business in Regular Meetings is stated thus:

- CALL TO ORDER
- PLEDGE OF ALLEGIANCE
- ROLL CALL
- APPROVAL OF MINUTES
- PROCLAMATIONS AND CEREMONIES
- CITIZENS' RIGHT TO SPEAK: CATEGORY 1: NON-AGENDA ITEMS
   (REGULAR OR SPECIAL MEETING)
- CITIZENS' RIGHT TO SPEAK: CATEGORY 2: AGENDA ITEMS (REGULAR OR SPECIAL STUDY SESSION)
- APPROVAL OF AGENDA
- CONSENT AGENDA
- PUBLIC HEARINGS, ORDINANCES ON SECOND READING, FINAL SITE PLANS
- ORDINANCES ON FIRST READING
- DECISIONS, RESOLUTIONS AND MOTIONS

- CITY MANAGER'S MATTERS
- CITY ATTORNEY'S MATTERS
- ELECTED OFFICIALS' MATTERS
- EXECUTIVE SESSION (AS NEEDED)
- ADJOURNMENT

#### C. AGENDA: PREPARATION AND INITIATION OF AGENDA ITEMS

- 1. The Order of Business of each meeting shall be as contained in the Agenda prepared by the Mayor Pro Tem following the Order of Business provided in this Rule.
- 2. By majority vote of the City Council during any City Council meeting the order of business for that meeting may be changed. The City Manager and City Attorney may also propose to add or delete items to the Agenda of such meetings under "Approval of Agenda," subject to approval by a majority of the Council.
- 3. The Agenda shall be distributed to the members of City Council and the public by 5:00 PM on the Thursday prior to the Monday of the Regular Meeting.
- 4. The City Clerk's Office shall be notified of the Agenda by noon on the Wednesday preceding the Monday on which the City Council meets. All backup material and documents required for the Agenda shall be filed with the Clerk's office by 5:00 PM on that day in order to be included in the City Council packet.
- 5. A majority of City Council Members present at a meeting is required to direct the City Attorney or staff to draft an ordinance to be included on the Agenda.
- 6. A majority vote of City Council Members present may add, change the order of, or delete an item from, the Agenda under "Approval of Agenda." In Regular Meetings, this must be done before Public Hearings and Ordinances on Second Readings.
- 7. The first option of introducing Agenda Items shall go to a representative of the City Council District to which the Agenda Item pertains or to the City Council Member who initiated the item. Council Agenda Items not specific to a City Council District may be introduced by any member requesting such privilege from the Chair in advance of the meeting or requesting to introduce the item at the meeting. The Mayor shall assign Agenda Item introductions and notify each City Council Member and the City Clerk prior to each City Council meeting.
- 8. Fiscal Notes. On any Agenda item containing a fiscal impact on the City's budget, the City Manager shall prepare a brief explanatory note that shall include a reliable estimate of any anticipated change in the

expenditures or revenues to the City and whether such expenditures or revenues shall be recurring in nature during future budgets years. This shall include any principal and interest payments required to finance expenditures.

- 9. City Council may not approve an appropriation under City Manager's Matters, City Attorney's Matters, or Elected Officials' Matters.
- D. INITIATING AND ADDING AGENDA ITEMS:
  - City Council Members or the Mayor may each originate an Agenda Item with the approval of one other City Council Member. Each City Council Member and the Mayor shall be allowed to originate only two (2) items per month to be added to the Agenda of a Regular Meeting or a Study Session, subject to the scheduling authority of the Mayor Pro Tem under Rule III.B.3. It is the intent of this Rule that no more than two (2) agenda items may be initiated by the Mayor or any City Council Member during any single month.
  - 2. It is the responsibility of the originating City Council Member to provide backup material for the City Council packet as to the subject or arrange for that backup material to be prepared. No item may be included in the Agenda without proper backup.
  - 3. Other than by reconsideration pursuant to Rule VI, once an item has been decided by a formal City Council vote at any Regular, Special or Adjourned Meeting or by a binding consensus vote at any Study Session under Rule IV.B.1, it is not eligible to be added to a future Agenda for six (6) months.
  - 4. Motions made by City Council Members which are not in the City Council packet should be submitted to the City Clerk and the Mayor in writing during the City Council Meeting so they may be accurately voted upon and included in the minutes.
  - 5. During a Regular Meeting, under the City Manager's Matters, theCity Attorney's Matters or the Elected Official's Matters portion of the Agenda, or at a Study Session, the Mayor, a City Council Member, the City Manager, or the City Attorney may request that a motion be made to add an item to a future Agenda for consideration, subject to approval by the City Council by a majority vote (for addition to a Regular Meeting Agenda) or a consensus vote (for additions to a Study Session Agenda).
  - 6. The City Manager may add administrative and operational items to the agenda during "Approval of Agenda."

#### E. PUBLIC HEARINGS:

- 1. All speakers are requested to sign up on the appropriate roster, indicating whether they intend to speak to a particular Agenda Item. There is no time limit on individual public testimony, provided the presiding officer may impose a limit on individual speakers' time in the event the number of persons signed up to testify justifies_this. The City Council shall not entertain a motion for the final disposition of the matter until the City staff and applicant have made their presentations, if any, the public has been able to speak on the matter, and the public hearing has been closed, provided that motions regarding the conduct, scheduling or continuation of the public hearing₇ it-shall be proper at any time.
- 2. Hearings which are labeled as "Quasi-Judicial" matters on the Request for Council Action in the meeting packet:
  - a) Councilmembers shall refrain from communicating with each other, the applicant, or the public prior to the hearing.
  - b) Written material and e-mails received prior to the hearing shall be forwarded to staff for inclusion in the hearing record.
  - a)c) The presiding officer shall swear in all witnesses, affirming their intention to tell the truth

#### F. ORDINANCES ON FIRST READING:

- 1. It is the goal and desire of City Council to allow all interested parties to provide input during the Public Hearing/Second Reading on all proposed ordinances. A full, complete, and open discussion of all proposed ordinances is encouraged during the Public Hearing/Second Reading.
- 2.— Therefore, public comment and staff presentations will occur only during the Public Hearing/Second Reading. First Reading will be for the purposes of setting proposed ordinances for publication, and establishing a date for the Public Hearing/Second Reading. Amendments to a proposed ordinance maycan be made during a First Reading., following the guidelines for offering amendments in these Rules.

#### G. TIME OF ADJOURNMENT

At 11:00 PM, the City Council shall complete action on the Agenda Item then under discussion and shall adjourn the meeting. Prior to such adjournment, the City Council may take any of the following actions:

- 1. Acting by three-fourths (¾) majority vote of the City Council Members present, complete all or portions of the remaining Agenda.
- Acting by a majority vote of the City Council Members present, schedule any unfinished items for a future Regular or Special Council Meeting.
- 3. Acting by majority vote<u>of the City Council Members present</u>, continue the meeting to a later date and time certain.

#### VI._RECONSIDERATION

- 1. A motion to reconsider <u>may can</u> be made only by a City Council Member originally voting with the prevailing side.
- Such motion<u>to reconsider</u> s-shall be made only at that or the next scheduled Regular Meeting. A continued or rescheduled meeting shall be considered a next scheduled Regular Meeting for the purpose of <u>such motion to reconsiderReconsideration</u>. If not reconsidered at that time, the issue <u>may not</u>cannot be placed on any agenda for six (6) months.
- 3. A motion to reconsider shall require an affirmative vote of a majority of the entire City Council.
- 4. A City Council Member who was absent from the meeting at which the item was discussed may vote on the substantive matter following a successful motion to reconsider provided that City Council Member affirms, on the record, that he or she has listened to the recording of that Agenda Item.

#### VII. SUSPENSION AND AMENDMENT OF THESE RULES

A. SUSPENSION

Any provision of these Rules not governed by the Home Rule Charter or Code of Laws may be temporarily suspended by a three-fourths (3/4) majority vote of the City Council Members present.

#### B. AMENDMENT

These Rules may be amended, or new Rules adopted by a majority vote of City Council Members present at a Regular or Special Meeting, provided that the proposed amendments or new Rules shall have been submitted in writing to City Council at a preceding meeting or a Study Session. Any City Council Member, or the Mayor, may initiate an amendment of these Rules in the manner provided for initiation of Agenda Items by Rule V.D. These Rules shall be reviewed and revised by the City Council as needed and as provided for herein<u>.within three (3) months of a Regular Council Election</u>.