CINDY CONWAY (F)

CITY OF COLORADO SPRINGS

CITY COUNCIL AGENDA

MEETING DATE: AUGUST 8, 1995

TIME: 9:30 a.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

CITIZEN DISCUSSION AND RESOLUTIONS OF APPRECIATION

CITY COUNCIL WILL RECESS FROM 12:00 NOON

UNTIL 12:45 P.M. FOR LUNCH

City Administration Building • Council Chambers • 30 South Nevada Avenue
Mailing Address: Post Office Box 1575 • Colorado Springs, Colorado 80901-1575

CITY OF COLORADO SPRINGS

To: City Council

From: Richard E. Zickefoose, City Manager

Subject: Agenda for the City Council meeting of August 8, 1995 - 9:30 A.M., Council Chambers, City Administration Building, 30 S. Nevada Avenue

1. Invocation and Pledge of Allegiance.

2. Citizen Discussion.

3. Approval of the Minutes of the regular Council meeting of July 25, 1995.

CONSENT CALENDAR

4. These items will be acted upon as a whole, unless a specific item is called for discussion by a Councilmember or a citizen wishing to address the City Council. **(Any items called up for separate consideration shall be acted upon following Utilities Business)**

SECOND PRESENTATION:

A-1. Ordinance No. 95-114 amending Ordinance No. 94-220 (1995 Appropriation Ordinance) and Ordinance No. 94-219 (1995 Tax Levy Ordinance) relating to the receipt of additional revenue from the North Colorado Springs Rotary Club for the Drug Abuse Resistance Education (DARE) Program. [second presentation] **(Item No. 4-B-1 - C.C. Meeting - July 25, 1995)**

Recommendation: Pass ordinance on final presentation.

A-2. Ordinance No. 95-116 amending Ordinance No. 94-220 (1995 Appropriation Ordinance) for the Airport Gross Income Fund in the total amount of $150,000 for parking lot shuttle service and expansion of the security screening area at the airport. [second presentation] **(Item No. 4-B-3 - C.C. Meeting - July 25, 1995)**

Recommendation: Pass ordinance on final presentation.

A-3. CPC P 95-176: (Quasi-Judicial Matter) Ordinance No. 95-117 amending the zoning map of the City of Colorado Springs relating to .89 acre located southeast of Eighth Street and Olympic Village Drive at 910-920 Summer Games Drive, from C-6/HS to PUD/HS (Planned Unit Development with Hillside Overlay). [second presentation] **(Item No. 4-B-4 - C.C. Meeting - July 25, 1995)**

Recommendation: Pass ordinance on final presentation.

A-4. CPC P 95-184: (Quasi-Judicial Matter) Ordinance No. 95-118 amending the zoning map of the City of Colorado Springs relating to 28.6128 acres located northwest of Lexington Drive and Dynamic Drive, from PIP-1 and A to R-1 6000/DF (Single-Family Residential with Design Flexibility Overlay). [second presentation] **(Item No. 4-B-5 - C.C. Meeting - July 25, 1995)**

Recommendation: Pass ordinance on final presentation.

A-5. CPC P 95-159: (Quasi-Judicial Matter) Ordinance No. 95-119 amending the zoning map of the City of Colorado Springs relating to 9.05 acres located northeast and southeast of Corporate Drive and Corporate Centre Circle at 6235 Corporate Drive, from PIP-1/HS and PBC/CR/HS to PIP-1 (Planned Industrial Park). [second presentation] **(Item No. 4-B-6 - C.C. Meeting - July 25, 1995)**

Recommendation: Pass ordinance on final presentation.

A-6. DS V 95-187: (Quasi-Judicial Matter) Ordinance No. 95-120 vacating a portion of the Rockrimmon Boulevard right-of-way located northeast of Windchime Place and Woodmen Road consisting of 1.792 acres zoned R-5 (Multi-Family Residential). [second presentation] **(Item No. 4-B-7 - C.C. Meeting - July 25, 1995)**

Recommendation: Pass ordinance on final presentation.

A-7. CPC SP 95-174: Ordinance No. 95-121 amending Article 4 (Administration and Procedures) of Chapter 14.1 (Zoning) of the Code of the City of Colorado Springs 1980, as amended, relating to meeting dates of the Historic Preservation Board. [second presentation] **(Item No. 4-B-8 - C.C. Meeting - July 25, 1995)**

Recommendation: Pass ordinance on final presentation.

FIRST PRESENTATION:

B-1. Acceptance by the City of Colorado Springs of the El Paso County Election Precincts for the November 7, 1995 Coordinated General Election and authorizing the City to enter into an agreement with El Paso County relating to the conduct of the election.

See attached copy of proposed agreement.

B-2. A resolution authorizing the Director of Parks and Recreation to execute an agreement with the Colorado Springs Urban Renewal Authority regarding the property at 313 East Victoria Street.

See attached memorandum from the Director of Parks and Recreation, copy of proposed resolution and proposed agreement.

B-3. An ordinance amending Ordinance No. 94-220 (1995 Appropriation Ordinance) and Ordinance No. 94-219 (1995 Tax Levy Ordinance) for the Park-Developer Easement Fund in the total amount of $7,162.00.

See attached memorandum from the Director of Parks and Recreation and copy of proposed ordinance.

B-4. CPC P 95-224: (Quasi-Judicial Matter) Request by NES, Inc., on behalf of The Broadmoor Hotel for approval of a change of zone classification from OR/CR (Office/Residential with Conditions of Record) to OR (Office/Residential) consisting of .80 acre located northwest of Beech Avenue and First Street at 36 First Street.

See attached copy of proposed ordinance.

UTILITIES BUSINESS

5. An ordinance designated by the short title "1995A Utilities Bond Ordinance"; concerning the City of Colorado Springs Water System, Electric Light and Power System, Gas System and Wastewater System, constituting the Utilities System of the City; providing for the extension, betterment, other improvement and equipment of the Utilities System; declaring the necessity for issuing Utilities System Revenue Bonds, Series 1995A payable solely out of the net revenues to be derived from the operation of the Utilities System; authorizing the issuance and sale of such revenue bonds in the aggregate principal amount of $48,915,000; providing for the disposition of the revenues to be derived from the operation of the Utilities System; providing other details concerning the bonds and the Utilities System, including, without limitation, covenants and agreements in connection therewith; ratifying action previously taken concerning such improvement project and the 1995A Bonds; providing other matters relating thereto; and declaring an emergency.

See attached copy of proposed ordinance.

CONSIDERATION OF ITEMS CALLED UP FROM REPORT SECTION OR CONSENT CALENDAR SECTION

UNFINISHED BUSINESS

6. Ordinance No. 95-115 amending Article 5 (Police and Fire Alarm Systems) of Chapter 20 (Public Safety) of the Code of the City of Colorado Springs 1980, as amended, relating to the regulation of false alarms. [second presentation] **(Item No. 4-B-2 - C.C. Meeting - July 25, 1995)**

See attached ordinance.

7. CPC A 95-122: Ordinance No. 95-122 annexing to the City of Colorado Springs that area sometimes known as Faaborg Annexation No. 1. [second presentation] **(Item No. 12 - C.C. Meeting - July 25, 1995)**

See attached ordinance.

8. CPC A 95-1: Ordinance No. 95-123 annexing to the City of Colorado Springs that area sometimes known as Faaborg Annexation No. 2. [second presentation] **(Item No. 13 - C.C. Meeting - July 25, 1995)**

See attached ordinance.

9. CPC P 95-120: (Quasi-Judicial Matter) Ordinance No. 95-124 amending the zoning map of the City of Colorado Springs relating to 73.6311 acres located southeast of Las Vegas Street and El Paso Street, from M-2, County zoning and R-1 6000 to PF (Public Facility). [second presentation] **(Item No. 14 - C.C. Meeting - July 25, 1995)**

See attached ordinance.

10. A resolution submitting a question to the electors of the City of Colorado Springs at the coordinated General Election on November 7, 1995 relating to expenditure of the 1994 Revenue Offset.

See attached copy of proposed resolution.

11. A resolution in support of El Paso County placing an issue to partially fund I-25 on the November, 1995 Ballot.

See attached memorandum from the Capital Improvements Manager, I-25 Questionnaire Results and copy of proposed resolution.

12. An ordinance submitting a Charter amendment to the electors of the City at the regular General Election on November 7, 1995 relating to creation of an open space program through a sales and use tax.

See attached memorandum from the Trails, Open Space and Parks Initiative and copy of proposed ordinance.

13. An ordinance submitting a Charter amendment to the electors of the City at the regular General Election on November 7, 1995 relating to funding of the Colorado Springs Police Department through a sales and use tax.

See attached copy of proposed ordinance and supporting information.

14. Appointments to various Boards and Commissions. See attached list.

NEW BUSINESS

15. A resolution accepting the improvements of the Woodmen Valley Local Improvement District and setting September 12, 1995 as the date of the hearing at which time Council will hear and determine any and all of the objections and approve the assessments.

    See attached copy of proposed resolution.

16. A resolution authorizing the conveyance of land to the Colorado Department of Transportation for the I-25 Improvements Project.

    See attached memorandum from the Capital Improvements Program Manager, memorandum from the Land Manager, and copy of proposed resolution.

17. A resolution establishing a joint City/County Citizens' Board to make recommendations on funding options for open space acquisitions.

    See attached memorandum from the Director of Parks and Recreation, letter from El Paso County Administrative Services, proposed resolution and supporting information.

PUBLIC HEARINGS

18. Public Hearing relating to the Garden of the Gods Road Local Improvement District Phase II and assessing the costs thereof.

19. A resolution sustaining in part and overruling in part protests made and confirming the costs and assessments in the Garden of the Gods Road Local Improvement District Phase II.

    See attached copy of proposed resolution.

20. An ordinance assessing the costs of improvements of the Garden of the Gods Local Improvement District Phase II in the City of Colorado Springs, Colorado.

    See attached copy of proposed ordinance.

21. CPC A 95-93-A: Request by Robert S. Hamilton for approval of the annexation of Hamilton Addition No. 1 consisting of .3562 acre located northeast of Austin Bluffs Parkway and Siferd Boulevard.

PP to

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Esmiol, seconded by Commissioner Bevington, to approve the petitioner's request. The motion unanimously carried.

(Item G - CPC Minutes - June 8, 1995)

See attached minutes and map.

22. CPC A 95-93-B: Request by Robert S. Hamilton for approval of the annexation of Hamilton Addition No. 2 consisting of .3342 acre located northeast of Austin Bluffs Parkway and Siferd Boulevard.

PP to

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Esmiol, seconded by Commissioner Bevington, to approve the petitioner's request. The motion unanimously carried.

(Item G - CPC Minutes - June 8, 1995)

See minutes attached to Item No. 21 and map.

23. CPC P 95-144: (Quasi-Judicial Matter) Request by Michael MacDonald on behalf of Robert Hamilton for approval of the establishment of a C-6/CR (Commercial with Condition of Record) zone classification consisting of .69 acre located southeast of Siferd Boulevard and Austin Bluffs Parkway at 4083 Austin Bluffs Parkway.

PP to

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Esmiol, seconded by Commissioner Bevington, to approve the petitioner's request. The motion unanimously carried.

(Item H - CPC Minutes - June 8, 1995)

See minutes attached to Item No. 21 and copy of proposed ordinance.

24. CPC DS S 94-289P: (Quasi-Judicial Matter) Public Hearing on an appeal by Becker-Johnson, Inc., on behalf of Keith A. Ringler of a request for preliminary plat approval of Ringler Subdivision No. 2 consisting of 4 lots on 4.2 acres zoned R-Estate (Single-Family Residential) located southwest of Mesa Road between Mesa Road and Oswego Street.

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Friesen, seconded by Commissioner Esmiol, to deny the petitioner's request.

The motion passed 6 - 1. (Commissioner Hjelkrem opposed. Commissioners Bauer and Bradley were absent).

(Item No. 5 - CPC Minutes - April 6, 1995)

This appeal was received within the required time period and reasons for the appeal are stated in the attached letter.

If the Council elects, it may affirm the action of the City Planning Commission, refer the matter back to the City Planning Commission for further consideration, reverse the action of the City Planning Commission or modify said action.

This matter was postponed from the Council meeting of July 11, 1995, Item No. 11.

See attached letter of appeal, minutes and map.

25. CPC DP 95-70-A1: (Quasi-Judicial Matter) Public Hearing on an appeal by Scott Toniolli of a request by LDC, Inc., on behalf of Alan Ginsborg-Pacific Retail Partners for approval of the Woodmen Plaza West Development Plan consisting of 14.62 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Gruen, seconded by Commissioner Esmiol, to approve the petitioner's request subject to the following Conditions of Record:

1. No loudspeaker intercom systems on the north end of the facility.
2. No truck deliveries, unloading or trash collection between the hours of 9:00 P.M. and 7:00 A.M.
3. No diesel engines left running for more than 10 minutes during deliveries.
4. The materials and character of the wall buffer will be consistent with the walls to be constructed north of this site.

The motion unanimously carried.

(Item No. 4 - CPC Minutes - July 6, 1995)

This appeal was received within the required time period and reasons for the appeal are stated in the attached letter.

If the Council elects, it may affirm the action of the City Planning Commission, refer the matter back to the City Planning Commission for further consideration, reverse the action of the City Planning Commission or modify said action.

This item was postponed from the Council meeting of July 25, 1995, Item No. 16.

See attached letter of appeal, minutes and map.

26. CPC SP 95-70-A2: (Quasi-Judicial Matter) Public Hearing on an appeal by Scott Toniolli of a request by Nolte and Associates, Inc., on behalf of Home Depot U.S.A., Inc., for approval of a variance to Section 14.1-3-102.A of the City Code to build an 8' to 10' variable height wall for noise retention where a 6' wall is the maximum allowed in a PBC (Planned Business Center) zone consisting of 22.35 acres located northwest of Woodmen Road and Academy Boulevard.

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Gruen, seconded by Commissioner Esmiol, to approve the petitioner's request. The motion unanimously carried.

(Item No. 5 - CPC Minutes - July 6, 1995)

This appeal was received within the required time period and reasons for the appeal are stated in the attached letter.

If the Council elects, it may affirm the action of the City Planning Commission, refer the matter back to the City Planning Commission for further consideration, reverse the action of the City Planning Commission or modify said action.

This item was postponed from the Council meeting of July 25, 1995, Item No. 17.

See letter of appeal, minutes and map attached to Item No. 25.

27. CPC MP 94-14-A1(95): Public Hearing on an appeal by Scott Toniolli of an administrative approval of a minor amendment to the FCY Master Plan consisting of 22.35 acres to relocate the cul-de-sac on Venhorst Road in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

This appeal was received within the required time period and reasons for the appeal are stated in the attached letter.

If the Council elects, it may affirm the action of the City Planning Commission, refer the matter back to the City Planning Commission for further consideration, reverse the action of the City Planning Commission or modify said action.

This item was postponed from the Council meeting of July 25, 1995, Item No. 18.

See letter of appeal, minutes and map attached to Item No. 25.

28. CPC P 95-70: (Quasi-Judicial Matter) Request by LDC, Inc., on behalf of Alan Ginsborg-Pacific Retail Partners for approval of a change of zone classification from R (Single-Family Residential) to PBC (Planned Business Center) consisting of 22.35 acres located northwest of Woodmen Road and Academy Boulevard.

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Gruen, seconded by Commissioner Jones, to approve the petitioner's request.

The motion passed 7 - 1 (Commissioner Bradley opposed. Commissioner Friesen was absent).

(Item No. 16 - CPC Minutes - May 4, 1995)

This item was postponed from the Council meeting of July 25, 1995, Item No. 21.

See attached copy of proposed ordinance, minutes and map.

29. CPC CU 95-148: (Quasi-Judicial Matter) Reconsideration of an appeal by Cross, Gaddis, Kin, Herd & Kelly, P.C., on behalf of Jack Mason of a request by Keith D. McCandless on behalf of Richard Bingman and Ralph Young for approval of a conditional use to allow retail sales within an existing warehouse building in an M-1 (Light Industrial) zone consisting of 3.46 acres located southeast of Garden of the Gods Road and Mark Dabling Boulevard at 4401 Mark Dabling Boulevard.

PLANNING COMMISSION RECOMMENDATION:

It was moved by Commissioner Gruen, seconded by Commissioner Ruggiero, to approve the petitioner's request. The motion unanimously carried.

(Item L - CPC Minutes - June 8, 1995)

This appeal was received within the required time period and reasons for the appeal are stated in the attached letter.

If the Council elects, it may affirm the action of the City Planning Commission, refer the matter back to the City Planning Commission for further consideration, reverse the action of the City Planning Commission or modify said action.

See attached letter of appeal, minutes and map.

30. CPC CP 85-178-A1(95): (Quasi-Judicial Matter) Request by NES, Inc., on behalf of UTMC for approval of an amendment to the United Technologies-Mostek Concept Plan consisting of 60.34 acres zoned PIP-1 (Planned Industrial Park) located southwest of Centennial Boulevard and Garden of the Gods Road.

See attached staff report and map.

31. CPC SP 95-216: (Quasi-Judicial Matter) Request by NES, Inc., on behalf of UTMC for approval of a variance to Section 14.1-2-304 (Table 2.2.2) of the City Code to allow a building height of 95' where the maximum is 45' for the construction of Building #2 in a PIP-1 (Planned Industrial Park) zone consisting of 60.34 acres located southwest of Centennial Boulevard and Garden of the Gods Road.

See information attached to Item No. 30.

32. CPC SP 95-216-A1: (Quasi-Judicial Matter) Request by NES, Inc., on behalf of UTMC for approval of a variance to Section 14.1-2-304 (Table 2.2.2) of the City Code to allow a building height of 95' where the maximum is 45' for the construction of Building #3 in a PIP-1 (Planned Industrial Park) zone consisting of 60.34 acres located southwest of Centennial Boulevard and Garden of the Gods Road.

See information attached to Item No. 30.

33. CPC SP 95-216-A2: (Quasi-Judicial Matter) Request by NES, Inc., on behalf of UTMC for approval of a variance to Section 14.1-2-304 (Table 2.2.2) of the City Code to allow a building height of 95' where the maximum is 45' for the construction of a nitrogen tower in a PIP-1 (Planned Industrial Park) zone consisting of 60.34 acres located southwest of Centennial Boulevard and Garden of the Gods Road.

See information attached to Item No. 30.

34. CPC SP 95-216-A3: (Quasi-Judicial Matter) Request by NES, Inc., on behalf of UTMC for approval of a variance to Section 14.1-4-604.C.1 of the City Code to allow the expiration of a concept plan to be eight (8) years where the maximum is four (4) years in a PIP-1 (Planned Industrial Park) zone consisting of 60.34 acres located southwest of Centennial Boulevard and Garden of the Gods Road.

See information attached to Item No. 30.

CITY COUNCIL MEETING -AUGUST 8, 1995

35. CPC SP 95-216-A4: (Quasi-Judicial Matter) Request by NES, Inc., on behalf of UTMC for approval of a variance to Section 14.1-4-907.A of the City Code to allow the expiration of a non-use variance to be eight (8) years where the maximum is six (6) months in a PIP-1 (Planned Industrial Park) zone consisting of 60.34 acres located southwest of Centennial Boulevard and Garden of the Gods Road.

See information attached to Item No. 30.

LIQUOR HEARING

36. Public Hearing on an appeal of the decision of the Liquor and Beer Licensing Advisory Board to deny the application to change the location of the Tavern Liquor License issued to Investment Group III dba Pure Energy, from 210 East Cimarron Street to 2106 East Platte Avenue.

This meeting should be adjourned until 2:00 P.M., Wednesday, August 16, 1995.

Respectfully submitted,

Richard E. Zickefoose by Rel

Richard E. Zickefoose
City Manager

CITY OF COLORADO SPRINGS

To: City Council

From: Richard E. Zickefoose, City Manager

Subject: Extra Item Agenda for the City Council meeting of August 8, 1995 - 9:30 A.M., Council Chambers, City Administration Building, 30 South Nevada Avenue.

NEW BUSINESS

1. Approval of the Fourth Supplemental Agreement to the Ford Annexation Agreement.

   See attached memorandum from the Manager of Development Services and Comprehensive Planning, memorandum from the Traffic Engineer and copy of proposed agreement.

Respectfully submitted,

Richard E. Zickefoose cyc

Richard E. Zickefoose
City Manager

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

Date: 4 August 95

To: Dave Nickerson - Planning, Development & Finance Director

From: Chuck Miller - Development Services & Comprehensive Planning Manager CM

Subject: Extra agenda item - August 8, 1995 Council Meeting
Approval of fourth supplemental agreement to the Ford annexation agreement

In 1982, the City annexed 662 acres owned by Ford Microelectronics, Inc and Ford Colorado Properties ("Ford"). The parcel is located north of Old Ranch Road on both sides of State Highway 83 and has been master planned as an industrial park designed for high-end research and development uses. Current companies include Loral and Ford Microelectronics. The 3M Company recently purchased a large parcel in the park for future use.

The annexation agreement between the City and Ford specified certain obligations that Ford would have for the provision of roadways within and adjacent to the project. One such obligation is to pay 45% of the cost of the Stout-Allen Interchange, as yet to be constructed.

Pikes Peak Community College ("PPCC") wishes to establish a north campus on 75 acres in the Ford project. Recognizing the value of a north campus to the community, as well as PPCC's financial constraints, Ford has agreed to donate 25 acres and sell the remaining 50 acres at one-half the market value. The value of the donation is approximately $2,300,000. Because Ford will forego a substantial portion of their gain on the 75 acres, they have requested that their obligation to pay 45% of the cost of the interchange be proportionally reduced to 39.9%. As relates to the 75 acre parcel, they have also asked that Ford and PPCC not be obligated to pay any impact fee or participate in any improvement district that may be created in the future.

The current cost estimate for the Stout-Allen Interchange is $8,000,000. Ford's obligation would be reduced by 5.1% or $408,000 in today's dollars. Again, the approximate value of Ford's donation to PPCC is $2,300,000. In the future, the 5.1% will have to be contributed by others such as the City, the State, the Federal Govt., other developments in the area, etc.

The administration believes the community benefits to be derived from a north campus of PPCC far outweigh the additional financial obligation that must be assumed by others and, therefore, recommends approval of the fourth supplemental agreement. Because of the key location of the proposed PPCC campus, Traffic Engineering recommends that we require a Memorandum of Understanding between PPCC and the City detailing certain traffic and land use requirements (see attached memo).

PPCC has requested that this be heard by Council on 8 August due to certain deadlines they must meet.

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

Date: August 7, 1995

To: Chuck Miller, Manager, Development Services/Comprehensive Planning

From: John Merritt, Principal Traffic Engineer, Traffic Engineering JWM

Subject: **Memorandum of Understanding Between the City of Colorado Springs and Pikes Peak Community College (Fourth Supplemental Agreement - FCPI-FMI-City)**

As we discussed yesterday, if the City is to agree with the request from Ford to exempt PPCC from participation in the cost of construction of the Stout-Allen Interchange, we should have a memorandum of understanding with PPCC to assure several key issues are understood and agreed to.

- The retention of the provision to assure the City of the right-of-way dedication for the realignment of State Highway 83 when needed.
- The access control plan for State Highway 83 be maintained as currently master planned.
- The land use be for college purposes only. Any higher traffic impact use would be subject to financial participation of the Interchange.
- The submission of a development plan incorporating the above items.

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FOURTH SUPPLEMENTAL AGREEMENT

This Fourth Supplemental Agreement ("Fourth Supplement") is between the City of Colorado Springs, a municipal corporation ("City"), Ford Colorado Properties, Inc., a Delaware corporation, ("FCPI"), and Ford Microelectronics, Inc., a Delaware corporation ("FMI") ("FCPI" and "FMI" are collectively "Ford") and is dated, for identification purposes August ___, 1995.

RECITALS:

On October 26, 1982, the City and FCPI together with Ford Aerospace Corporation (formerly Ford Aerospace & Communications Corporation), a Delaware corporation, ("Aerospace") entered into an Annexation Agreement whereby certain real property ("Ford Property") was annexed to the City of Colorado Springs. The Annexation Agreement was recorded in Book 3627 at Page 842 of the records of El Paso County, Colorado.

On March 25, 1986, the City and FCPI together with Aerospace, entered into a Supplemental Agreement recorded in Book 5145 at Page 610 of the records of El Paso County, Colorado.

On May 1, 1990, the City and FCPI together with Aerospace, entered into a Second Supplemental Agreement recorded in Book 6009 at Page 761 of the records of El Paso County, Colorado.

On May 8, 1990, the City and FCPI together with Aerospace, considered entering into a Second Supplemental Agreement which contained a contingency which did not occur. The designation of this agreement as "Second" was inadvertent by all parties.

FMI and FCPI are the successors in interest to Aerospace.

On November 30, 1992, the City and Ford entered into a Third Supplemental Agreement recorded in Book 6142 at Page 1290 of the records of El Paso County, Colorado.

The purpose of this Fourth Supplemental Agreement is to exempt certain property defined in this Fourth Supplement from future impositions relating to the cost of construction of the Stout-Allen Interchange.

The parties therefore agree as follows:

1. Except as specifically modified or amended herein, all provisions of the Annexation Agreement, the Supplemental Agreement, Second Supplemental Agreement and Third Supplemental Agreement are hereby ratified and reaffirmed.

2. Ford has contracted to donate and sell a portion of its property to the State Board for Community Colleges and Occupational Education (the "State"), and to enable such sale requires that this property be donated and sold to the State exempt from future impositions in respect of the cost of construction of the Stout-Allen Interchange. Accordingly, with respect to the real property described in Exhibit A attached hereto and made a part hereof by reference, the parties agree as follows:

a. The real property described in Exhibit A represents ____ acres of the total Ford property consisting of 662 acres as described in Exhibit A to the Annexation Agreement.

b. Neither the City nor the improvement district to be created shall make any demand upon the State as owner of the real property described in Exhibit A with respect to the cost of construction of the Stout-Allen Interchange.

c. The real property described in Exhibit A has been used to calculate Ford's Fair Share, but is exempted from all requirements attributable to Ford's Fair Share as defined in the Supplemental Agreement.

d. Upon the issuance of any building permit for any building which shall have a traffic impact to be constructed upon any parcel of real property located within the description in Exhibit A, neither Ford nor the State shall be obligated to pay any Impact Fee as may be determined by the City or any improvement district created in the future.

3. The parties agree that this Fourth Supplement may be recorded in the records of El Paso County and shall thereafter be deemed to be a covenant which the parties intend shall run with the land. For reference the real property to which this Fourth Supplement refers is described in Exhibit B attached.

4. This Fourth Supplement is not effective until the same is finally approved by City Council of the City of Colorado Springs. Signatures of the Mayor, and appropriate officers of Ford Colorado Properties, Inc., shall be conclusive evidence of such final approvals.

5. This Fourth Supplement may be signed in counterparts each of which shall constitute an original although not fully executed, but all of which when taken together, shall constitute but one agreement. The signature page(s) of any counterpart may be detached from a counterpart without impairing the legal effect of the signature(s) thereon and attached to any other counterpart identical thereto except for the signature page(s) attached to it.

LETTER OF AGREEMENT

This Letter of Agreement shall serve as the intergovernmental agreement between the El Paso County Clerk & Recorder (hereinafter referred to as County) and ________________ ________________ in El Paso County, (hereinafter referred to as District).

1. PURPOSE. Pursuant to the terms of this agreement, the County and District agree to the scheduling of a General Election on November 7, 1995. Such General Election may involve more than one political subdivision with overlapping boundaries, and the County shall serve as the General Election Official for all political subdivisions involved in this election. This election shall be held under the provisions of Title I of the Colorado Revised Statutes.

2. PRECINCTS & POLLING PLACE LOCATIONS. Voting precincts and polling place locations will be those established and designated by the County.

3. APPOINTMENT OF ELECTION JUDGES. All Election Judges shall be appointed and trained by the County.

4. LEGAL NOTICES. Publication of legal notices concerning District's election, which are to be published prior to certification of the ballot content to the County, shall be the responsibility of the District. A copy of such published legal notice shall be submitted to the County for its records.

   Publication of legal notices concerning the Coordinated Election, which are required to be published after certification of the ballot contents to the County, shall be the responsibility of the County.

5. RECEIVING AND PROCESSING OF PETITIONS. The petition process for the District shall be entirely the responsibility of the District, and shall be done in compliance with applicable Colorado statutes, ordinances or charter provisions.

   It shall be the responsibility of the District to inform issue committees on Campaign Reform Act requirements. CRA filings are to be made with the County Clerk's office.

6. BALLOT CONTENTS. In accordance with Colorado law, the ballot contents must be certified to the County by the District, in its exact and final form, no later than 4:30 p.m. on September 12, 1995. Such ballot contents must be delivered to the County at 200 South Cascade, Colorado Springs. A Spanish translation of the ballot contents shall also be provided to the County by the District.

7. RECEIVING OF WRITTEN COMMENTS AS COVERED BY SECTION 20 OF ARTICLE X of the Colorado Constitution. The process of receiving written comments and summarizing such comments, as required by Section 20 of Article X, shall be solely the responsibility of the District.

8. RECEIVING OF PETITION REPRESENTATIVE'S SUMMARY OF COMMENTS. Receipt of such summary, shall be solely the responsibility of the District, as covered by C.R.S. 1-7-116 (4).

9. PREPARATION AND MAILING OF NOTICES FOR BALLOT ISSUE ELECTIONS. The District shall certify a final and exact summary of comments concerning its ballot issues to the County, no later than October 10, 1995, for inclusion in the ballot issue mailing as required by Section 20, Article X, of the Colorado Constitution. The summary text shall also be provided in Spanish by the District. The County shall coordinate the text for the ballot issue mailing for all participating El Paso County political subdivisions, into one notice. Said ballot issue mailing shall be prepared and mailed by the County in accordance with Section 20, Article X, of the Colorado Constitution.

10. PREPARATION FOR COORDINATED ELECTION. The County shall be responsible for preparing and printing the sample ballot for the Coordinated Election, as well as ballot pages and ballot cards. The County shall also be responsible for providing, preparing and delivering voting equipment to all polling place locations.

11. CONDUCT OF THE COORDINATED ELECTION. The County shall be responsible for the conduct of the Coordinated Election, including the appointment of observers as provided by law. The General Election shall be conducted under the provisions of C.R.S. Title I.

12. ABSENTEE AND EARLY VOTING. All requests for absentee ballots shall be transmitted to and processed by the County, 200 South Cascade, Colorado Springs. Early voting processes will be the responsibility of the County.

13. TABULATION OF BALLOTS. All processes relating to and tabulation of ballots shall be the responsibility of the County. An unofficial abstract of votes will be provided to the District, upon completion of the counting of all ballots.

14. CANVASS OF VOTES. The canvass of votes will be the responsibility of the County. Such canvass will be completed no later than November 14, 1995, and official results of the canvass will be provided to all political subdivisions participating in the November 7 Coordinated Election. Certificates of Election of candidates will be issued by the District upon receipt of the official results from the County.

15. ALLOCATION OF COST OF ELECTION. The County shall determine the cost allocation for each political subdivision participating in the Coordinated Election. The District shall reimburse the County for such election costs allocated to the District. Such reimbursement shall be made to the County within thirty days from receipt of billing from the County.

16. INDEMNIFICATION. The District agrees to indemnify, defend and hold harmless the County from any and all loss, costs, demands or actions, arising out of or related to any actions, errors or omissions of the District in completing its responsibilities relating to the November 7, 1995, Coordinated Election. The County agrees to indemnify, defend and hold harmless the District from any and all loss, costs, demands or actions, arising out of or related to any actions, errors or omissions of the County in completing its responsibilities relating to the November 7, 1995, Coordinated Election.

THIS LETTER OF AGREEMENT executed by the parties hereto as of the dates and year written below.

EL PASO COUNTY CLERK & RECORDER	DISTRICT NAME
______________________________	BY______________________________
	Title of Officer
Date__________________	Date__________________

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

Date: July 18, 1995

To: Richard E. Zickefoose, City Manager

From: Paul D. Butcher, Director of Parks and Recreation

Subject: Intergovernmental Agreement With Colorado Springs Urban Renewal Authority for Building at 313 East Victoria Street

Recommendation: Approval of a resolution authorizing the Director of Parks and Recreation to execute an agreement with the Colorado Springs Urban Renewal Authority regarding the property at 313 East Victoria Street.

Background: The Colorado Springs Urban Renewal Authority (CURE) owns the property at 313 East Victoria Street, and desires to clear this site of the structure. The structure is a large metal building of approximately 5,200 square feet and is suitable for use by our Forestry Division. The Parks and Recreation Department proposes to dismantle the building and remove it from the site. In exchange for the building, Parks will remove the east block wall, remove any remaining asphalt and concrete, restore the site to grade, and seed with native grasses. This arrangement is acceptable to the Colorado Springs Urban Renewal Authority. No funds will be transferred between the parties and ownership of the land at 313 East Victoria will remain with CURE.

ITEM NO. 4-B-2

A RESOLUTION AUTHORIZING THE DIRECTOR OF PARKS AND RECREATION TO EXECUTE AN AGREEMENT WITH THE COLORADO SPRINGS URBAN RENEWAL AUTHORITY REGARDING THE PROPERTY AT 313 EAST VICTORIA STREET

WHEREAS, the Colorado Springs Urban Renewal Authority ("CURE") owns the land and building described as 313 East Victoria Street, and

WHEREAS, the City Parks and Recreation Department has indicated its desire to acquire the building located at 313 East Victoria Street to be relocated and utilized at the Recreation Way complex by the City Parks and Recreation Department, Forestry Division, and

WHEREAS, cure no longer has use for the building located at 313 East Victoria Street.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The Director of Parks and Recreation is hereby authorized to execute an agreement with the Colorado Springs Urban Renewal Authority for the acquisition of the building at 313 East Victoria Street and the restoration of the land.

Introduced, read and passed on the ____________ day of ____________________, 1995.

____
Mayor

WITNESS:

____
City Clerk

INTERGOVERNMENTAL AGREEMENT

BY AND BETWEEN
COLORADO SPRINGS URBAN RENEWAL AUTHORITY
AND
THE CITY OF COLORADO SPRINGS PARKS AND RECREATION DEPARTMENT
FOR BUILDING STRUCTURE TRADE

WHEREAS, Colorado Springs Urban Renewal Authority ("CURE") owns the land and building described in attached Exhibit A, and referred to as the property at 313 East Victoria Street, Colorado Springs, CO , and

WHEREAS, the City Parks and Recreation Department ("Parks") has indicated it's desire to acquire the building located at 313 East Victoria Street to be relocated and utilized at the Recreation Way Complex by the City Parks and Recreation Department, Forestry Division, and

WHEREAS, CURE no longer has use for the building located at 313 East Victoria Street.

NOW, THEREFORE, CURE and Parks agree as follows:

1. **Land and Building** CURE agrees to trade to Parks, under the terms and conditions as set forth in this Agreement, the building located at 313 East Victoria Street, in the City of Colorado Springs and the County of El Paso, Colorado.

2. **Performance Term** Parks will begin the removal of the building and site clean up in early fall, 1995 and approximates the completion time to be sixty (60) days.

3. **Termination** Either party to this Agreement may terminate this Agreement by written notice to the other party provided such notification is given no later than thirty (30) days prior to the beginning of the structure dismantling and removal from the Victoria Street address.

4. **Trade Transaction** No monies will be transferred between the parties. The ownership of the land at 313 East Victoria will remain with CURE. Parks will receive ownership of the building currently located at 313 East Victoria Street. Parks will dismantle the building and remove it from the site. In exchange for the building, Parks will also remove the east block wall, remove any remaining asphalt/concrete, restore the site to grade and seed with native grasses.

5. **Permits and Environmental Issues** Parks will be responsible for all costs associated with obtaining any necessary permits. Parks will properly dismantle and dispose of asbestos ceiling tiles in the building. Parks will take control measures to minimize dust during the building dismantling and site clean up.

6. **Appropriation of Funds** In accord with the City Charter, performance of the City's obligations under this Agreement are expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part due to City Charter spending limitations, then the City may terminate this Agreement without compensation to CURE.

IN WITNESS WHEREOF, the parties below hereby set their hands and seals, this _______ day of _________________, 1995, dated in Colorado Springs, Colorado.

COLORADO SPRINGS URBAN RENEWAL AUTHORITY (CURE)

BY_____________________________ Chairman ___7/25/95___
TITLE DATE

CITY OF COLORADO SPRINGS PARKS AND RECREATION DEPARTMENT

BY_____________________________ ______________________
TITLE DATE

APPROVED AS TO FORM

Wynetta P. Massey
Senior Corporate Attorney
Wynetta P. Massey

EXHIBIT A

Address and Legal Description:

313 East Victoria Street, Colorado Springs, Colorado, El Paso County

Parcel # 64191-16-023

Lots 13 & 14, except the west five (5) feet, Victoria Subdivision

Land: 75 foot frontage, 170 feet deep, 12,355 sq. ft.

Building size: approximately 50 feet by 100 feet (5,000 sq. ft)

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

Date: July 28, 1995

To: Richard E. Zickefoose, City Manager

From: Paul D. Butcher, Director of Parks and Recreation
MM FOR PDB

Subject: Amendment of the 1995 Appropriation and Tax Levy Ordinances for the Park-Developer Easement Fund in the Total Amount of $7,162.

Recommendation: Approval of an ordinance amending ordinance number 94-220 (1995 appropriation ordinance), and ordinance number 94-219 (1995 tax levy ordinance) for the Park-Developer Easement Fund in the total amount of $7,162.

Background: City Council granted an easement in 1994 to Sprint, Inc. for a fiber optic cable within what is now the Richard M. "Goose" Gossage Youth Sports Complex. The fee for this easement amounted to $7,162. We propose to appropriate this sum for improvements and site furnishings at the Gossage Youth Sports Complex.

AN ORDINANCE AMENDING ORDINANCE NUMBER 94-220 (1995 APPROPRIATION ORDINANCE), AND ORDINANCE 94-219 (1995 TAX LEVY ORDINANCE), FOR THE PARK-DEVELOPER EASEMENT FUND IN THE TOTAL AMOUNT OF $7,162.00.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Ordinance Number 94-220 is hereby amended by increasing the expenditure appropriation in the Park-Developer Easement Fund in the total amount of $7,162.00.

Section 2. Ordinance No. 94-219 is hereby amended by increasing the revenue appropriation of the Park-Developer Easement Fund in the total amount of $7,162.00. The source of these funds is unappropriated and unreserved fund balance.

Section 3. City Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ___________ day of

___________________, 1995.

____
Mayor

ATTEST:

____
City Clerk

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO .80 ACRES LOCATED NORTHWEST OF BEECH AVENUE AND FIRST STREET AT 36 FIRST STREET

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The zoning map of the City of Colorado Springs is hereby amended by rezoning the real property described in Exhibit A, attached hereto and made a part hereof by reference, from OR/CR (Office/Residential with conditions of record) to OR (Office/Residential), pursuant to the Zoning Ordinance of the City of Colorado Springs, subject to the following conditions:

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the Office of the City Clerk.

Introduced, read, passed on first reading and ordered published this______day of___________, 1995.

____
Mayor

ATTEST:

____
City Clerk

CPC P 95-224

DEVELOPMENT SERVICES DIVISION
LEGAL DESCRIPTION FORM

FOR OFFICIAL USE ONLY

DATE REC'D 7/24/95

FILE NO P95-224

CHECKED (FOR LOG & CONFIG.) 7/24/95

STAFF mm

Part of Lots 2 and 3 in Block 13 in Broadmoor, described as follows: Beginning at a point on the Westerly line of said Lot 3, 46.5 feet South of the Northwest corner thereof, thence angle left 100° 52' Northeasterly in a straight line to the point of intersection with the Easterly line of said Lot 2, thence Southerly along the Easterly line of said Lots 2 and 3 to the Southeast corner of said Lot 3, thence Southwesterly and Northwesterly along the Southerly line of said Lot 3 to the Southwest corner of said Lot 3, thence Northerly along the Westerly line of said Lot 3 to the place of beginning;

CITY PLANNING COMMISSION

<u>STAFF: Quinn Peitz</u>
<u>FILE NO(S): CPC P 95-224 - Quasi-Judicial</u>

PROJECT: 36 First Street

APPLICANT: NES, Inc.

OWNER: The Broadmoor Hotel, Inc.

PROJECT DESCRIPTION:
To allow a single family dwelling in an OR zone.

STAFF'S RECOMMENDATION:
Above the request. Single family residential is compatible with surrounding land uses. The are no objections to this request.

SUMMARY:
Request conforms to Comprehensive Plan Policy 5.1.3.

BACKGROUND:

Existing Zoning/Land Use - OR/CR/Single Family Residence

Surrounding Zoning/Land Use -
North - R-Estate/Single Family Residential
South - R & C-5/Single Family Residential and parking for Broadmoor Hotel
East - R-Estate/Single Family Residential
West - C-5/Carriage House Museum

Annexation - Southwest Annexation, October 1980.

Zoning - Established R-Estate at time of annexation. Changed to OR/CR, P 85-155, Ordinance 85-139, 6/25/85.

Subdivision - Broadmoor Subdivision.

Zoning Enforcement Action - None.

Master Plan - Broadmoor Master Plan.

DEPARTMENTAL REPORTS:

Standard or no comment.

PETITIONER'S JUSTIFICATION: See attachment

ANALYSIS OF MAJOR ISSUES:

CONFORMANCE WITH COMPREHENSIVE PLAN POLICY 5.1.3

Policy 5.1.3 states, "Grant zoning changes only when it can be demonstrated that rezoning will result in a community or neighborhood benefit which will outweigh any potential adverse impact upon surrounding properties. Conformance with the policies of the Comprehensive Plan and other adopted City plans may be used as a basis for demonstrating community or neighborhood benefit."

When this property was rezoned to OR a condition a record was placed on the property only allowing offices. This condition was poorly written because it was never the intent of the ordinance to disallow single family residential use. In addition, the neighbors are in support of this request.

36 FIRST STREET

This is a request to remove a condition of record for the lot at 36 First Street. The existing condition of record (ORD 85-B9) restricts use of the property to offices. The owner wishes to sell the existing residence for a single family home. At the time the restriction was placed on the property, residential uses were a conditional use in the OR zone. The current code permits residential use by right. This change is in keeping with the current and proposed use of the property, as well as being compatible with surrounding land use.

Ordinance No. 85-139

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS, RELATING TO .80 ACRE SITUATED NORTHWEST OF FIRST STREET AND BEECH AVENUE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The zoning map of the City of Colorado Springs is hereby amended by rezoning the real property described in Exhibit A, attached hereto and made a part hereof by reference, from R to OR, pursuant to the Zoning Ordinance of the City of Colorado Springs, subject to the following conditions and restrictions:

1. The principal permitted use shall be limited to offices.

2. That the required parking shall be allowed off-site.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

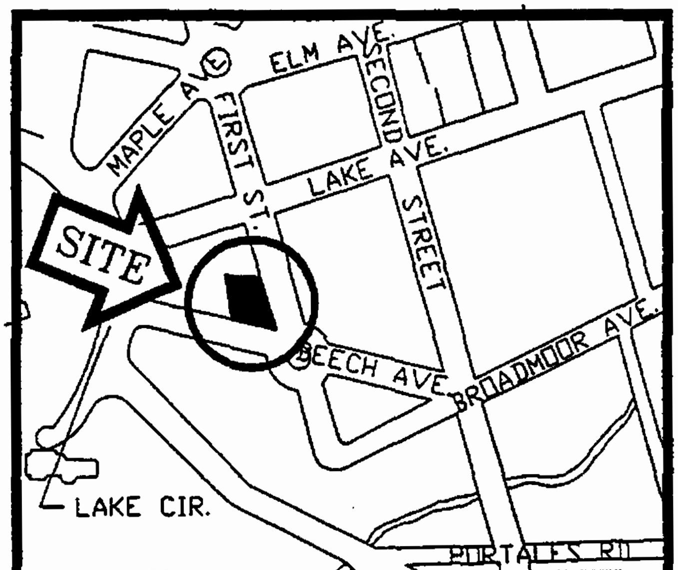
Introduced, read, passed on first reading and ordered published this 25th day of June, 1985.

Mayor

ATTEST:

City Clerk

6/27/85 a 30



REQUESTED BY:
NES INC.

STAFF PEITZ QUASI-JUDICIAL

FILE NO.	REQUEST
P95-224	FOR APPROVAL OF A CHANGE OF ZONE CLASS.

FROM: OR/CR (OFFICE/RESIDENTIAL WITH CONDITIONS OF RECORD) TO: OR/CR OFFICE/RESIDENTIAL WITH AMENDED CONDITIONS OF RECORD) 0.8 AC.

CHANGED PAGES
8/8/95

CITY OF COLORADO SPRINGS, COLORADO

UTILITIES SYSTEM REVENUE BONDS

SERIES 1995A

DATED AS OF AUGUST 1, 1995

$48,915,000

1995A UTILITIES BOND ORDINANCE

ITEM No. 5

(67) "Paying Agent" means Norwest Bank Colorado, National Association, in Denver, Colorado, and being an agent of the City for the payment of the Bond Requirements due in connection with the Bonds, the registrar for the Bonds and for other administration of moneys pertaining to the Bonds, and includes any successor commercial bank as paying agent.

(68) "Person" means a corporation, firm, other body corporate (including, without limitation, the Federal Government, the State, or any other body corporate and politic other than the City), partnership, association or individual, and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

(69) "Project" means the Capital Improvements, the cost of which is to be defrayed with the proceeds of the Bonds and which constitutes an Improvement Project.

(70) "Purchasers" means J.P. Morgan Securities Inc. and associates.

(71) "Rebate Fund" means the special account designated as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A Rebate Fund" created in Section 509 hereof.

(72) "Record Date" means the 1st day of the calendar month in which each regularly scheduled interest payment date for the Bonds occurs.

(73) "Redemption Date" means the date fixed for the redemption prior to their respective maturities of any Bonds or other designated securities payable from Net Pledged Revenues in any notice of prior redemption or otherwise fixed and designated by the City.

(74) "Redemption Price" means, when used with respect to a Bond or any other designated security payable from Net Pledged Revenues, the principal amount thereof plus the applicable premium, if any, payable upon the redemption thereof prior to the stated maturity date of such security on a Redemption Date in the manner contemplated in accordance with the security's terms.

(75) "Repository" means (i) each NRMSIR and (ii) any SID.

(76) "Reserve Fund" means the special account designated as the "City of Colorado Springs, Colorado, Utilities System Parity Bonds Reserve Fund" created in Section 506 of the 1985A Bond Ordinance and continued pursuant to the Funds Ordinance.

(77) "Rule" means Rule 15c2-12, as amended, promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

(78) "SEC" means the Securities and Exchange Commission.

upon this ordinance or any other ordinance pertaining thereto, against any individual member of the Council or any officer, employee or other agent of the City, past, present or future, either directly or indirectly through the Council, or the City, or otherwise, whether by virtue of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bonds and as part of the consideration of their issuance specially waived and released.

Section 207. No Election Nor Other Preliminaries. The Bonds shall be issued without their being authorized at an election by any electors of the City and without any other preliminaries being taken except as herein stated.

Section 208. Authorization of the Project. The Council, on behalf of the City, does hereby determine to undertake the Project, which is hereby authorized, and the proceeds of the Bonds shall be used therefor.

Section 209. Terms of Bond Sale. The Purchasers' offer to purchase the Bonds as provided in the Official Bid Form is hereby formally accepted; and the Bonds shall be sold and delivered to the Purchasers in accordance therewith. The City hereby waives all irregularities and informalities in the bid of the Purchasers. The Mayor and the Clerk are hereby authorized and directed to execute and deliver the Official Bid Form in the form filed with the City on the date hereof.

Section 210. Enterprise Status. The Council, on behalf of the City, hereby confirms its intention that the Utilities shall be an "enterprise" for the purposes of Section 7-90 of the Charter and of Article X, Section 20 of the State Constitution. In particular, the Utilities shall be owned by the City and shall have the power to issue revenue bonds in manner and payable from the sources set forth in this ordinance and the Charter.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF BONDS

Section 301. Authorization of Bonds. For the purpose of protecting the public health, conserving the property and advancing the general welfare of the citizens of the City and of defraying wholly or in part the cost of the Project, the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A" in the aggregate principal amount of $48,915,000 are hereby authorized to be issued; and the City pledges irrevocably, but not necessarily exclusively, the Net Pledged Revenues to the payment of the Bond Requirements of the Bonds.

Section 302. Bond Details.

A. Basic Provisions. The Bonds shall be issuable as fully registered Bonds and shall be in denominations of $5,000 and any integral multiple thereof. The Bonds shall be lettered "R" and shall be numbered separately from 1 upward. The Bonds shall be dated as of August 1, 1995. The Bonds shall bear interest from the most recent interest payment date to which interest has been paid, or if no interest has been paid, from the date of the Bonds. Interest shall be payable on each May 15 and November 15, commencing November 15, 1995. The Bonds shall bear interest at the rates per annum and shall mature on November 15 in the years and in the principal amounts as follows:

Year	Principal Amount	Interest Rate (per annum)	Year	Principal Amount	Interest Rate (per annum)
1996	$ 140,000	5.00%	2007	$ 250,000	5.30%
1997	150,000	5.00	2008	265,000	5.40
1998	160,000	5.00	2009	275,000	5.50
1999	170,000	5.00	2010	295,000	5.50
2000	175,000	5.00	2011	310,000	5.70
2001	185,000	5.00	2012	330,000	5.75
2002	195,000	5.00	2013	345,000	5.75
2003	205,000	5.00	2014	365,000	5.75
2004	215,000	5.00	2015	390,000	5.75
2005	225,000	5.00	2020	2,320,000	6.00
2006	235,000	5.125	2024	41,715,000	6.10

The principal of each Bond shall be payable at the principal office of the Paying Agent, or at such other office as the Paying Agent directs in writing to the Bondholders, or at the principal office of its successor, upon presentation and surrender of the Bond. Payment of interest on any Bond shall be made to the Person who is the registered holder thereof at the close of business on the Record Date for such interest payment date by check mailed by the Paying Agent to such registered holder at his or her address as it appears on the registration records kept by the Paying Agent, but any such interest not so timely paid shall cease to be payable to the Person who is the registered holder thereof at the close of business on the Record Date and shall be payable to the Person who is the registered holder thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date shall be fixed whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the registered holders of the Bonds not less than ten days prior thereto by first-class postage prepaid mail to each such registered holder as shown on the registration records, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to in writing between the registered holder of such Bond and the Paying Agent. If any Bond is not paid upon its presentation and surrender at or after its maturity or prior redemption, interest shall continue at its stated rate per annum until the principal thereof is paid in full. Interest on the Bonds shall be calculated based on a 360-day year, consisting of twelve 30-day months. All such payments shall be made in lawful money of the United States of America.

B. Mandatory Sinking Fund Redemption. The Bonds maturing on November 15, 2020 and November 15, 2024, respectively, are subject to mandatory sinking fund redemption at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. As and for a sinking fund for the redemption of the Bonds maturing on November 15, 2020, there shall be redeemed (after credit as provided below) on the following dates the following principal amounts of Bonds maturing on November 15, 2020:

November 15 of the Year	Principal Amount
2016	$410,000
2017	435,000
2018	465,000
2019	490,000
2020*	520,000

* maturity date

As and for a sinking fund for the redemption of the Bonds maturing on November 15, 2024, there shall be redeemed (after credit as provided below) on the following dates the following principal amounts of Bonds maturing on November 15, 2024:

November 15 of the Year	Principal Amount
2021	$ 555,000
2022	585,000
2023	30,930,000
2024*	9,645,000

* maturity date

On or before the fortieth day prior to the sinking fund Redemption Date, the Paying Agent shall proceed to select for redemption (by lot in such manner as the Paying Agent shall deem equitable and fair) from all Bonds Outstanding maturing on November 15, 2020 or November 15, 2024, respectively, $5,000 units of Bonds maturing on November 15, 2020 or November 15, 2024, as the case may be, equal in the aggregate to the total principal amount of Bonds maturing on November 15, 2020 or November 15, 2024, as the case may be, redeemable with the required sinking fund payment, and shall call such Bonds, or portions thereof, for redemption from the sinking fund on the next November 15, and give notice of such call, as provided in Section 304 hereof. At the option of the City to be exercised by delivery of a written certificate to the Paying Agent on or before the forty-fifth day next preceding any sinking fund Redemption Date, it may (i) deliver to the Paying Agent for cancellation Bonds maturing on November 15, 2020 or November 15, 2024, as the case may be, or portions thereof ($5,000 or any integral multiple thereof) in an aggregate principal amount desired by the City or (ii) specify a principal amount of Bonds maturing on November 15, 2020 or November 15, 2024, as the case may be, or portions thereof ($5,000 or any integral multiple thereof) which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation for Bonds maturing on November 15, 2020 or November 15, 2024, as the case may be. Each Bond or portion thereof so delivered or previously redeemed shall be credited by the Paying Agent at 100% of the principal amount thereof against the obligation of the City on such sinking fund Redemption Date and any excess over such amount shall be credited against future sinking fund redemption obligations for the Bonds maturing on November 15, 2020 or November 15, 2024, as the case may be, in chronological order or any other order specified by the City. In the event the City shall avail itself of the provisions of clause (i) of the second sentence of this paragraph, the certificate required by the second sentence of this paragraph shall be accompanied by the Bonds or portions thereof to be cancelled.

Section 303. Optional Prior Redemption. The Bonds maturing on and after November 15, 2006 shall be subject to redemption prior to maturity, at the option of the City, on November 15, 2005 or any date thereafter in whole or in part at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest thereon to the Redemption Date.

(FORM OF BOND)

UNITED STATES OF AMERICA

STATE OF COLORADO | COUNTY OF EL PASO

CITY OF COLORADO SPRINGS, COLORADO
UTILITIES SYSTEM REVENUE BOND
SERIES 1995A

No. R- $__________

Interest Rate	Maturity Date	Dated	CUSIP
____%	November 15, ___	August 1, 1995	

REGISTERED OWNER:
PRINCIPAL AMOUNT: DOLLARS

The City of Colorado Springs (the "City"), in the County of El Paso and State of Colorado (the "State"), for value received, hereby promises to pay to the registered owner specified above, or registered assigns, solely from the special funds provided therefor, as hereinafter set forth, the principal amount set forth above on the maturity date specified above (unless this Bond shall have been called for prior redemption, in which case on the redemption date) and to pay solely from such special funds interest at the interest rate per annum specified above until the payment of the principal hereof has been made or provided for, payable on May 15 and November 15 in each year, commencing November 15, 1995. This Bond will bear interest from the most recent interest payment date to which interest has been paid, or, if no interest has been paid, from the date of this Bond. The principal of this Bond is payable upon the presentation and surrender hereof at the principal office of Norwest Bank Colorado, National Association, Denver, Colorado, as Paying Agent, <u>or at such other office as it may direct in writing to the registered owner hereof</u>, or at the principal office of its successor (the "Paying Agent"). Interest on this Bond will be paid on each interest payment date (or, if such interest payment date is not a business day, on the next succeeding business day), by check mailed to the person in whose name this Bond is registered (the "registered holder") on the registration records of the City maintained by the Paying Agent at the address appearing thereon at the close of business on the first day of the calendar month in which such interest payment date occurs (the "Record Date"). Any such interest not so timely paid shall cease to be payable to the person who is the registered holder hereof at the close of business on the Record Date and shall be payable to the person who is the registered holder hereof at the close of business on a Special Record Date (as defined in the hereinafter referred to Ordinance) for the payment of any defaulted interest. Such Special Record Date shall be fixed by the Paying Agent whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the registered holder of this Bond not less than ten days prior thereto. Alternative means of payment of interest may be used if mutually agreed to in writing between the registered holder of any Bond and the Paying Agent. If this Bond is not paid upon presentation and surrender at or after its maturity or prior redemption, interest shall continue at the above stated rate per annum until the principal hereof is paid in full. Interest on this Bond shall be calculated based on a 360-day year, consisting of twelve 30-day months. All such payments shall be made in lawful money of the United States of America.

[May be printed on back of Bond]

This Bond is one of a series of bonds issued pursuant to the 1995A Utilities Bond Ordinance (the "Ordinance") designated as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A" in the aggregate principal amount of $48,915,000 (the "Bonds"). The Bonds have been duly authorized for the purpose of providing moneys to defray a portion of the cost of extending, bettering or otherwise improving and equipping the municipal water system, electric light and power system, gas system and wastewater system, collectively comprising the City's utilities system (the "System").

The Bonds maturing on November 15, 2020 and November 15, 2024 are subject to redemption by lot in such manner as the Paying Agent may determine pursuant to the terms of the mandatory sinking funds provided in the Ordinance at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date.

The Bonds maturing on and after November 15, 2006 are subject to redemption prior to maturity, at the option of the City, on November 15, 2005 or any date thereafter in whole or in part, from any maturities specified by the City (and by lot within a maturity) at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon to the redemption date.

Upon any partial prior redemption of the Bonds, Cede & Co., in its discretion, may request the Paying Agent to authenticate a new Bond or shall make an appropriate notation on this Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this Bond must be presented to the Paying Agent prior to payment.

In the case of a Bond of a denomination larger than $5,000, a portion of such Bond ($5,000 or any integral multiple thereof) may be redeemed, in which case the Paying Agent shall, without charge to the registered holder of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof. Notice of the call for any redemption shall be given by the Paying Agent by mailing a copy of the redemption notice by first-class postage prepaid mail not more than forty-five nor less than thirty days prior to the redemption date to the registered holder of each Bond to be redeemed at his or her address as shown on the registration records kept by the Paying Agent, as provided in the Ordinance. All Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their payment are on deposit at the place of payment at that time.

ARTICLE IV

USE OF BOND PROCEEDS AND OTHER MONEYS

Section 401. Disposition of Bond Proceeds and Other Moneys. The proceeds of the Bonds, upon the receipt thereof, shall be accounted for in the following manner and priority and are hereby pledged therefor:

A. Bond Fund. All moneys received as accrued interest on the Bonds from the date of the Bonds to the date of their delivery to the Purchasers shall be credited to the Bond Fund.

B. Acquisition Fund. The amount of $48,060,000 of the proceeds derived from the sale of the Bonds shall be credited to the special and separate account hereby created and to be known as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A Acquisition Fund". Except as otherwise provided herein, the moneys in the Acquisition Fund shall be used solely for the purpose of paying the Cost of the Project.

C. Income Fund. The remaining proceeds derived from the sale of the Bonds shall be credited to the Income Fund.

Section 402. Payment of Expenses. The moneys deposited in the Income Fund pursuant to Section 401C hereof shall be used and paid out by the City to defray the administrative costs of the Project, including, without limitation, amounts to be paid to the Paying Agent, for custodial fees, legal fees, accounting fees, financial advisory fees, printing costs and rating fees. The City may defray any such administrative costs from time to time as operation and maintenance expenses to the extent the moneys deposited in the Income Fund pursuant to Section 401C hereof are insufficient therefor.

Section 403. Completion of Project. When the Project is completed in accordance with the relevant plans and specifications and all amounts due therefor, including all proper incidental expenses, are paid, or for which full provision is made, the Controller, upon the receipt from the Director of a certificate so stating and ordering, shall cause to be transferred to the Reserve Fund all surplus moneys remaining in the Acquisition Fund, if any, except for any moneys designated in the certificate to be retained to pay any unpaid accrued costs or contingent obligations and except for any moneys designated in the certificate to be transferred to the Rebate Fund; but (subject to the provisions of Section 834 hereof):

A. Periodic Transfers. Nothing herein prevents the transfer from the Acquisition Fund to the Reserve Fund, at any time prior to the termination of the Acquisition Fund, of any moneys which the Director by certificate determines will not be necessary for the Project and will not be designated to be transferred to the Rebate Fund; and extent not so applied shall (together with the proceeds of any such use and occupancy insurance) be deposited in the Income Fund by the City as revenues derived from the operation of the System. If the costs of such repair and replacement of the damaged property exceed the proceeds of such insurance available for the payment of the same, moneys in the Income Fund shall be used to the extent necessary for such purposes, as permitted by Section 511 hereof.

Section 834. Federal Income Tax Exemption. The City covenants for the benefit of the holders of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the City or any facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present State law. In furtherance of this covenant, the City agrees to comply with the procedures set forth in the Tax Compliance Certificate. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the City in fulfilling the above covenant under the Code and Colorado law have been met.

Section 835. Continuing Disclosure Undertaking.

A. Commencing with respect to the fiscal year ended December 31, 1996 and annually thereafter, the City will provide or cause to be provided to each Repository the Annual Financial Information and the Audited Financial Statements. Such Annual Financial Information shall be provided to each Repository on or before May 1 of each year or, in the event of a change in the Fiscal Year, on or before 120 days after the end of the Fiscal Year, and such Audited Financial Statements shall be provided to each Repository annually reasonably promptly after receipt by the City.

B. The City may provide Annual Financial Information and Audited Financial Statements by specific reference to documents previously provided to each Repository or filed with the SEC; provided, however, that if the document so referenced is a final official statement within the meaning of the Rule, such final official statement must be available from the MSRB.

C. The City shall provide, in a timely manner, to the MSRB and each Repository notice of any of the following events with respect to the Bonds if such event is material:

(i) Principal and interest payment delinquencies;

(ii) Nonpayment related defaults;

CITY OF COLORADO SPRINGS, COLORADO

UTILITIES SYSTEM REVENUE BONDS

SERIES 1995A

DATED AS OF AUGUST 1, 1995

$48,915,000

1995A UTILITIES BOND ORDINANCE

ITEM NO. 5

1995A UTILITIES BOND ORDINANCE

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(This Table of Contents is not a part of this 1995A Utilities Bond Ordinance and is only for convenience of reference)

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AMENDMENT OF ORDINANCE

STATE OF COLORADO)
)
COUNTY OF EL PASO) SS.
)
CITY OF COLORADO SPRINGS)

The City Council of the City of Colorado Springs, El Paso County, Colorado met in public, regular session in full conformity with law and the ordinances and rules of the City Council at the City Administration Building in the City, on Tuesday, August 8, 1995 at 9:30 a.m. Upon roll call the following were found to be present, constituting a quorum:

Present:

Mayor:	Robert M. Isaac
Vice-Mayor:	Leon Young
Other Council Members:	Lisa Aré Cook
	Jack Forrest
	Cheryl D. Gillaspie
	William F. Guman
	John G. Hazlehurst
	Mary Lou Makepeace
	Randall W. B. Purvis

Absent: ________________________

constituting all the members thereof.

There were also present:

City Manager:	Richard E. Zickefoose
City Clerk:	Kathryn M. Young
City Attorney:	James G. Colvin, II

Thereupon, Council Member ________________ introduced the following ordinance:

ORDINANCE NO. 95-___

AN EMERGENCY ORDINANCE

AN ORDINANCE DESIGNATED BY THE SHORT TITLE "1995A UTILITIES BOND ORDINANCE"; CONCERNING THE CITY OF COLORADO SPRINGS WATER SYSTEM, ELECTRIC LIGHT AND POWER SYSTEM, GAS SYSTEM AND WASTEWATER SYSTEM, CONSTITUTING THE UTILITIES SYSTEM OF THE CITY; PROVIDING FOR THE EXTENSION, BETTERMENT, OTHER IMPROVEMENT AND EQUIPMENT OF THE UTILITIES SYSTEM; DECLARING THE NECESSITY FOR ISSUING UTILITIES SYSTEM REVENUE BONDS, SERIES 1995A PAYABLE SOLELY OUT OF THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE UTILITIES SYSTEM; AUTHORIZING THE ISSUANCE AND SALE OF SUCH REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF $48,915,000; PROVIDING FOR THE DISPOSITION OF THE REVENUES TO BE DERIVED FROM THE OPERATION OF THE UTILITIES SYSTEM; PROVIDING OTHER DETAILS CONCERNING THE BONDS AND THE UTILITIES SYSTEM, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING SUCH IMPROVEMENT PROJECT AND THE 1995A BONDS; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Colorado Springs, El Paso County, Colorado (the "City") is a municipal corporation duly organized and existing under the laws of the State of Colorado and in particular under the provisions of Article XX of the Constitution of the State of Colorado and the City's Charter (the "Charter"); and

WHEREAS, the City now owns and operates a municipal water system, electric light and power system, gas system and wastewater system (the "System"), constituting the Utilities created by the Charter; and

WHEREAS, prior to the issuance of the bonds authorized by this ordinance, the sole first-lien parity securities Outstanding (as defined in Section 102A hereof) payable from any revenues derived from the operation of the System or any part thereof and for the payment of which such revenues are pledged are the bonds in the aggregate principal amount of $442,155,000 of the following issues:

Issue	Authorizing Ordinance	Outstanding Bonds
1985A Bonds	1985A Bond Ordinance	$205,090,000
1991B Bonds	1991 Bond Ordinance	6,655,000
1991C Bonds	1991 Bond Ordinance	36,155,000
1992A Bonds	1992 Bond Ordinance	75,785,000
1994A Bonds	1994 Bond Ordinance	118,470,000

(the 1985A Bond Ordinance, the 1991 Bond Ordinance, the 1992 Bond Ordinance and the 1994 Bond Ordinance collectively, the "Existing Bond Ordinances"); and

WHEREAS, the 1985A Bonds, the 1991B Bonds, the 1991C Bonds, the 1992A Bonds and the 1994A Bonds (collectively, the "Outstanding First Lien Bonds") are special obligations of the City payable from the gross revenues derived from the operation of the System (the "Gross Pledged Revenues"), after provision is made for the payment of the operation and maintenance expenses of the System (such remaining revenues the "Net Pledged Revenues"); and the payment of the Outstanding First Lien Bonds is secured by a pledge of and by an irrevocable first lien (but not necessarily an exclusively first lien) on the Net Pledged Revenues; provided, that on the Crossover Date (as defined in Section 102A hereof), the principal of the 1985A Bonds maturing on and after November 15, 1996 will be payable from amounts on deposit in the Crossover Escrow Fund (as defined in the 1991 Bond Ordinance) and on and prior to the Crossover Date, the Bond Requirements (as defined in Section 102A hereof) of the 1991A Bonds (as defined in Section 102A hereof) will be payable from amounts on deposit in the Crossover Escrow Fund; and

WHEREAS, the City proposes to extend, better, otherwise improve and equip the System (the "Project") and to issue its "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A" (the "Bonds") to defray in part the cost of the Project; and

WHEREAS, except as hereinabove provided, the City has never pledged nor in any way hypothecated revenues derived and to be derived directly or indirectly from the operation of the System to the payment of any securities or for any other purpose (excluding (a) securities which have heretofore been redeemed in full, as to all Bond Requirements, or are otherwise not Outstanding and (b) obligations with a lien expressly subordinated to the Outstanding First Lien Bonds, to the Bonds and to future parity securities), with the result that the Net Pledged Revenues may now be pledged lawfully and irrevocably for the payment of the Bonds, and they may be made payable from the Net Pledged Revenues; and

WHEREAS, the 1985A Bond Ordinance provides in relevant part:

"Section 703. Issuance of Parity Securities. Nothing herein prevents the issuance by the City of additional securities payable from the Net Pledged Revenues and constituting a lien thereon on a parity with, but not prior nor superior to, the lien thereon of the Bonds; but before any such additional parity securities, except as provided in Sections 708 and 709 hereof, are authorized or actually issued:

"A. Absence of Default. At the time of the adoption of the ordinance authorizing the issuance of the additional securities, the City shall not be in default in making any payments required by Article V hereof.

"B. Capital Improvements - Historic Earnings Test. If the additional parity securities are to be issued to finance Capital Improvements, the Net Pledged Revenues derived in the Fiscal Year immediately preceding the date of issuance of the additional parity securities shall be not less than 130% of the average annual principal and interest requirements of the Outstanding Bonds, any Outstanding parity securities and the parity securities proposed to be issued, except as hereinafter otherwise expressly provided.

* * *

"D. Adjustment of Gross Pledged Revenues. In any computation under subsections B or C of this section, the amount of the Gross Pledged Revenues for the applicable period shall be decreased and may be increased by the amount of loss or gain conservatively estimated by an Independent Accountant, Independent Engineer or the City, as the case may be, which results from any changes which became effective not less than 60 days prior to the last day of the period for which Gross Pledged Revenues are determined in any schedule of fees, rates and other charges constituting Gross Pledged Revenues based on the number of users during the applicable period as if such modified schedule of fees, rates and other charges shall have been in effect during such entire time period. But the Gross Pledged Revenues need not be decreased by the amount of any such estimated loss to the extent the Independent Accountant, the Independent Engineer or the Director estimates the loss is temporary in nature or will be offset within a reasonable temporary period by an increase in revenues or a reduction in operation and maintenance expenses not otherwise included in the calculations under this Section, but not by a reduction of any such net loss to below zero, and estimates any loss under this sentence will not at any time materially and adversely affect the City's apparent ability to comply with the rate maintenance covenant stated in Section 823 hereof without modification because of any restrictive legislation, regulation or other action under the police power exercised by any governmental body.

"E. Reduction of Annual Requirements. The respective annual Bond Requirements (including as such a requirement the amount of any prior redemption premiums due on any Redemption Date as of which the City shall have exercised or shall have obligated itself to exercise its prior redemption option by a call of securities for payment then) shall be reduced to the extent such Bond Requirements are scheduled to be paid in each of the respective Bond Years with moneys held in trust or in escrow for that purpose by any trust bank located within or without the State, including the known minimum yield from any investment in Federal Securities and any bank deposits, including any certificate of deposit.

"F. Consideration of Additional Expenses. In determining whether or not additional parity securities may be issued as aforesaid, consideration shall be given to any probable increase (but not reduction) in the operation and maintenance expenses of the System as estimated by the Director that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the additional securities; but the Director may reduce any such increase in operation and maintenance expenses but not below zero by the amount of any increase in revenues or any reduction in operation and maintenance expenses resulting from the Capital Improvements or Capital Additions to which such expenditure relates and not otherwise included in the calculations under this section, if the Director also opines that any such reduction in any such increase in operation and maintenance expenses will not materially and adversely affect the City's apparent ability to comply with the rate maintenance covenant stated in Section 823 hereof without modification because of any restrictive legislation, regulation or other action under the police power exercised by any governmental body.

"Section 704. Certification of Revenues. A written certificate or written opinion by an Independent Accountant under Section 703B and Section 703(C)(i), an Independent Engineer under Section 703(C)(i) and the City and the Independent Engineer under Section 703(C)(ii) that such annual revenues, when adjusted as hereinabove provided in subsections D, E and F of Section 703 hereof, are sufficient to pay such amounts, as provided in subsection B or C of Section 703 hereof, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver additional securities on a parity with the Bonds.

* * *

"Section 707. Use of Proceeds. The proceeds of any additional parity securities (other than any parity refunding securities issued to refund parity securities, subordinate securities, parity Credit Facility Obligations or subordinate Credit Facility Obligations) payable from any Net Pledged Revenues shall be used only to pay the Cost of an Improvement Project."

; and

WHEREAS, the 1991 Bond Ordinance, the 1992 Bond Ordinance and the 1994 Bond Ordinance contain provisions identical to the provisions of the 1985A Bond Ordinance set forth above; and

WHEREAS, the City Council (the "Council") has determined, and does hereby declare, that the proposal submitted by the Purchasers, as defined in Section 102A hereof, for the purchase of the Bonds at the purchase price as set forth, and otherwise upon the terms and provisions provided, in the Official Bid Form submitted by the Purchasers to the City, is a responsible proposal to the best advantage of the City; and

WHEREAS, the Council has determined and does hereby declare:

A. In order to meet the present and future needs of the City, it is necessary to extend, better, otherwise improve and equip the System;

B. The Bonds shall be issued for the Project;

C. The City is not in default in making any payments required by Article V of each of the Existing Bond Ordinances at the time of the adoption of this ordinance;

D. The Project constitutes "Capital Improvements", as defined by the Existing Bond Ordinances;

E. The Net Pledged Revenues derived in the Fiscal Year ending on December 31, 1994 are not less than 130% of the average annual principal and interest requirements (as such terms are defined in the Existing Bond Ordinances) of the 1985A Bonds, the 1991A Bonds, the 1991B Bonds, the 1991C Bonds, the 1992A Bonds, the 1994A Bonds and the Bonds;

F. The schedules of fees, rates and other charges pertaining to the System were not changed in the 60 days prior to December 31, 1994;

G. The Bond Requirements of the 1985A Bonds becoming due in each Bond Year commencing on and after November 16, 1995 and the Bond Requirements of the 1991A Bonds becoming due in each Bond Year ending prior to and on the Crossover Date, in each case involved in the calculations designated above in paragraph E of this preamble, have been reduced to the extent such Bond Requirements are scheduled to be paid in each of such respective Bond Years with moneys held under the Crossover Escrow Agreement, as required by Section 703E of the Existing Bond Ordinances;

H. The Director has estimated that there will be an increase of not to exceed $900,000 in the annual operation and maintenance expenses of the System as a result of the expenditure of the funds proposed to be derived from the issuance and sale of the Bonds; and

I. All action preliminary to the authorization of the issuance of the Bonds has been taken.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

ARTICLE I

DEFINITIONS, INTERPRETATION, RATIFICATION AND EFFECTIVE DATE

Section 101. Short Title. This ordinance shall be known as and may be cited by the short title "1995A Utilities Bond Ordinance" (the "ordinance").

Section 102. Meanings and Construction.

A. Definitions. The terms in this section for all purposes of this ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and of any other ordinance or any other document pertaining hereto, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

(1) "acquire" or "acquisition" means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the Federal Government, the State, any body corporate and politic therein, or any other Person, the endowment, bequest, devise, transfer, assignment, option to purchase, other contract, or other acquisition, or any combination thereof, of any properties pertaining to the System, or an interest therein, or any other properties herein designated.

(2) "Acquisition Fund" means any special account heretofore or hereafter created by the City into which proceeds of parity securities are deposited to defray the Cost of an Improvement Project in whole or in part, including, without limitation, the special account known as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A Acquisition Fund" created in Section 401B hereof.

(3) "Annual Financial Information" means the financial information or operating data with respect to the City of the type contained in the Official Statement in the following portions: under (i) "THE CITY OF COLORADO SPRINGS UTILITIES," the tables under "Nature of the Utilities," "Summary of Operations," "Outstanding Utilities Revenue Bonds," and "Debt Service Coverage"; (ii) "THE ELECTRIC DEPARTMENT," the sections entitled "Book Costs of Electric Department Facilities," "Electric Rates," and "Electric Sales and Revenues"; (iii) "THE WATER RESOURCES DEPARTMENT-WATER," the sections entitled "Book Costs of Water Facilities," "Water Rates," and "Water Sales and Revenues"; (iv) "THE WATER RESOURCES DEPARTMENT-WASTEWATER," the sections entitled "Book Costs of Wastewater Facilities," "Wastewater Rates" and "Wastewater Revenues"; and (v) "THE GAS DEPARTMENT," the sections entitled "Book Costs of Gas Department Facilities," "Gas Rates," and "Gas Sales and Revenues."

(4) "Audited Financial Statements" means the City's annual financial statements, prepared in accordance with Sections 830 and 831 hereof.

(5) "average annual principal and interest requirements" means the sum of the principal of and interest on the Bonds and any other Outstanding designated parity securities, excluding any securities the principal of which is payable within less than one year from the date on which issued, but including any proposed parity securities in the computation of an earnings test pertaining thereto under Section 703 hereof, to be paid during each Bond Year for the period beginning with the Bond Year in which such computation is made and ending with the Bond Year in which any Bond or other such parity security last becomes due at maturity or on a Redemption Date on which any Bond or other such parity security thereafter maturing is called for prior redemption, whichever time is later, (but excluding any reserve requirement to secure such payments unless otherwise expressly provided) divided by the number of full Bond Years during the period beginning with the Bond Year in which such computation is made and ending with the last Bond Year in which any Bond or other such parity security last becomes due at maturity or on a Redemption Date on which any Bond or other such parity security thereafter maturing is called for prior redemption, whichever time is later. The word "principal," as used in the preceding sentence, means for all purposes of this paragraph, the principal which must be paid to security holders, whether on stated maturity dates or on mandatory redemption dates, or otherwise. Any such computation shall be adjusted for all purposes in the same manner as is provided in Section 703E hereof. For the purposes of this computation, it shall be assumed that (a) Variable Rate Bonds Outstanding at the time of such determination will bear interest during any period (i) if the interest rate such Variable Rate Bonds bear or shall bear during such period has not been determined, at the fixed interest rate estimated by the remarketing agent for such Variable Rate Bonds and approved by the Controller or, if there is no such remarketing agent, by the Controller that, having due regard for prevailing financial market conditions, is necessary, but does not exceed the interest rate necessary, to sell such Variable Rate Bonds at 100% of the principal amount thereof in an open market transaction, assuming the Variable Rate Bonds had a term equal to the then remaining term of the Variable Rate Bonds (taking into account any mandatory redemption for such Variable Rate Bonds) or (ii) if the interest rate such Variable Rate Bonds bear or shall bear during such period has been determined and is not subject to fluctuation, at such interest rate thus determined, and (b) any Tender Bonds Outstanding at the time of such determination shall mature on the stated maturity or mandatory redemption date or dates thereof.

(6) "Balloon Bonds" means any securities payable from Net Pledged Revenues 25% or more of the original principal amount of which matures during any consecutive twelve month period if such maturing principal amount is not required to be amortized by mandatory redemption or prepayment prior to such period and if such twelve month period occurs in the Bond Year in which the combined maximum annual principal and interest requirements occur (without regard to the assumptions contained in clause (c) of the definition of combined maximum annual principal and interest requirements).

(7) "Bond Fund" means the special account known as the "City of Colorado Springs, Colorado, Utilities System Parity Bonds Retirement Fund" created in Section 401A of the 1985A Bond Ordinance and continued pursuant to the Funds Ordinance.

(8) "Bond Requirements" means the principal of, any prior redemption premiums due in connection with, and the interest on any Bonds or other securities payable from the Net Pledged Revenues and heretofore or hereafter issued, if any, or such part of such securities as may be designated.

(9) "Bond Year" means the 12 months commencing on the 16th day of November of any calendar year and ending on the 15th day of November of the next succeeding calendar year.

(10) "Bonds" means those securities issued hereunder and designated as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A."

(11) "Capital Additions" means those properties and facilities which by their nature, and as incorporated into the System (a) will add additional capacity, or are to replace existing capacity, of the System, or substantially increase revenue-producing capabilities, or constitute new transmission facilities and (b) which upon completion will have an estimated net book value in excess of 15% of net book value of the net utilities plant (without regard to such Capital Addition), as shown on the City's most recent audited financial statements for the System.

(12) "Capital Improvements" means those property improvements or any combination of property improvements which will constitute enlargements, extensions or betterments to the System and will be incorporated into the System.

(13) "Charter" means the home rule charter of the City, as from time to time amended.

(14) "City" means the City of Colorado Springs, a municipal corporation located in the County of El Paso and State of Colorado, and being a political subdivision thereof, or any successor municipal corporation owning the System; and where the context so indicates, also means the geographical area comprising the City of Colorado Springs.

(15) "Clerk" means the de jure or de facto city clerk of the City, or his or her successor in functions, if any.

(16) "Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(17) "combined maximum annual principal and interest requirements" means the largest sum of the principal of and interest on the Bonds and any other Outstanding designated parity securities, excluding any securities the principal of which is payable within less than one year from the date on which issued, to be paid during any one Bond Year for the period beginning with the Bond Year in which such computation is made and ending with the Bond Year in which any Bond or other such parity security last becomes due at maturity or on a Redemption

Date on which any Bond or other such parity security thereafter maturing is called for prior redemption, whichever time is later, (but excluding any reserve requirement to secure such payments unless otherwise expressly provided). The word "principal," as used in the preceding sentence, means for all purposes of this paragraph, the principal which must be paid to security holders, whether on stated maturity dates or on mandatory Redemption Dates, or otherwise. Any such computation shall be adjusted for all purposes in the same manner as is provided in Section 703E hereof. For the purposes of this computation, it shall be assumed that (a) Variable Rate Bonds Outstanding at the time of such determination will bear interest during any period (i) if the interest rate such Variable Rate Bonds bear or shall bear during such period has not been determined, at the fixed interest rate estimated by the remarketing agent for such Variable Rate Bonds and approved by the Controller or, if there is no such remarketing agent, by the Controller that, having due regard for prevailing financial market conditions, is necessary, but does not exceed the interest rate necessary, to sell such Variable Rate Bonds at 100% of the principal amount thereof in an open market transaction, assuming the Variable Rate Bonds had a term equal to the then remaining term of the Variable Rate Bonds (taking into account any mandatory redemption for such Variable Rate Bonds) or (ii) if the interest rate such Variable Rate Bonds bear or shall bear during such period has been determined and is not subject to fluctuation, at such interest rate thus determined, (b) any Tender Bonds Outstanding at the time of such determination shall mature on the stated maturity or mandatory redemption date or dates thereof and (c) any Balloon Bonds Outstanding at the time of such determination will mature over 30 years from the date of issuance of the Balloon Bonds, will bear interest on the unpaid principal amount thereof at the fixed rate of interest equal to the Bond Buyer 30 Year Revenue Index of 25 Revenue Bonds as published in the most recent issue of The Bond Buyer (or any successor thereto) preceding the date of such determination or if such Index is no longer published, of a comparable index selected by the Council and will be payable on a level annual debt service basis over a thirty year period.

(18) "commercial bank" means a state or national bank or trust company which is a member of the Federal Deposit Insurance Corporation (or any successors thereto) and of the Federal Reserve System, which has a capital and surplus of $10,000,000 or more, and which is located within the United States of America.

(19) "Comparable Bond Year" means, in connection with any Fiscal Year, the Bond Year which commences in the Fiscal Year.

(20) "Controller" means the de jure or de facto financial officer of the System, presently the Director of Finance and Management Services, or his or her designate, responsible for the daily investment of funds, or his or her successor in functions, if any.

(21) "Cost of an Improvement Project" or "Cost of the Project" means all costs, as designated by the City, of an Improvement Project, including, without limitation, equipment, or any interest therein, which cost, at the option of the Council (except as may be otherwise limited by law) may include all, any one or other portion of the incidental costs pertaining to an Improvement Project, including, without limitation:

(a) All preliminary expenses or other costs advanced by the City or advanced by the Federal Government, the State or by any other Person from any source, with the approval of the Council, or any combination thereof, or otherwise;

(b) The costs of making surveys and tests, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;

(c) The costs of contingencies;

(d) The costs of premiums on any builders' risk insurance and performance bonds during the construction, installation and other acquisition of an Improvement Project, or a reasonably allocated share thereof;

(e) The costs of appraising, printing, estimates, advice, inspection, other services of engineers, architects, financial consultants, attorneys at law, clerical help and other agents and employees;

(f) The costs of making, publishing, posting, mailing and otherwise giving any notice in connection with an Improvement Project, the taking of options and the issuance of any securities pertaining to an Improvement Project;

(g) Bank fees and expenses, any fees, premiums, expenses or other costs to be paid to provide Credit Facilities for securities issued to finance an Improvement Project and fees or expenses of a remarketing, tender, indexing or similar agent engaged in connection with securities issued to finance an Improvement Project, all during the period estimated by the Council to effect an Improvement Project;

(h) The costs of any capitalization with the proceeds of any such securities of any operation and maintenance expenses and any other expenses pertaining to the System, of interest on the securities for any period not exceeding the period estimated by the Council to effect an Improvement Project plus one year, of any discount on the securities, of any reserves for the payment of the Bond Requirements of the securities and for replacement expenses, and of any other costs of issuance of the securities;

(i) The costs of the filing or recording of instruments and the cost of any title insurance premiums;

(j) The costs of funding any construction loans and other temporary loans pertaining to an Improvement Project and of the incidental expenses incurred in connection with such loans;

(k) The costs of demolishing, removing, or relocating any buildings, structures, or other facilities on land acquired for an Improvement Project, and of acquiring lands to which such buildings, structures or other facilities may be moved or relocated;

(l) The costs of any properties, rights, easements or other interests in properties, or any licenses, privileges, agreements and franchises;

(m) The costs of amending any ordinance, resolution or other instrument pertaining to any securities or otherwise to the System; and

(n) All other expenses necessary or desirable and pertaining to an Improvement Project, as estimated or otherwise ascertained by the City.

(22) "Council" means the city council of the City, which is its governing body exercising legislative powers, and any successor governing body of the municipal corporation owning the System.

(23) "Credit Facility" means any letter or line of credit, policy of bond insurance, surety bond or guarantee or similar instrument issued by a financial, insurance or other institution and which specifically provides security and/or liquidity in respect of securities payable from Net Pledged Revenues.

(24) "Credit Facility Obligations" means repayment or other obligations incurred by the City in respect of draws or other payments or disbursements made under a Credit Facility.

(25) "Crossover Date" means, with respect to the 1991A Bonds, November 15, 1995, and with respect to any other Crossover Refunding Bonds, the date on which the principal portion of the related Crossover Refunded Indebtedness Outstanding as of such date is to be paid or redeemed (assuming any conditions thereto are satisfied) from the escrowed proceeds of such Crossover Refunding Bonds or other funds available to the City and irrevocably deposited in such escrow for such purpose.

(26) "Crossover Refunded Indebtedness" means the 1985A Bonds or any other securities payable from Net Pledged Revenues intended to be refunded by Crossover Refunding Bonds or other funds available to the City (assuming any conditions thereto are satisfied), and as to which an irrevocable escrow sufficient for such purpose is in existence.

(27) "Crossover Refunding Bonds" means the 1991A Bonds and any other securities issued by the City if the proceeds of such securities are irrevocably deposited in escrow to secure the payment on a Crossover Date of principal or Redemption Price of the Crossover Refunded Indebtedness (or the principal or Redemption Price of such securities under certain

conditions) and the escrow deposit (including investment earnings thereon) is required to be applied to pay the Bond Requirements of such securities until and on the Crossover Date and, after the Crossover Date, the Bond Requirements of such securities are required to be payable from Net Pledged Revenues.

(28) "Director" means the de jure or de facto director of utilities of the City, and constituting the chief administrative officer of the Utilities, or his or her successor in functions, if any.

(29) "Event Information" means the information referred to in Section 835C hereof.

(30) "events of default" means the events stated in Section 1003 hereof.

(31) "Existing Bond Ordinances" means, collectively, the 1985A Bond Ordinance, the 1991 Bond Ordinance, the 1992 Bond Ordinance and the 1994 Bond Ordinance.

(32) "Federal Government" means the United States of America and any agency, instrumentality or corporation thereof.

(33) "Federal Securities" means bills, certificates of indebtedness, notes, or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America.

(34) "Fiscal Year" means the twelve months commencing on the first day of January of any calendar year and ending on the last day of December of the same calendar year.

(35) "Funds Ordinance" means Ordinance No. 91-58 adopted by the City Council on April 23, 1991 continuing the Income Fund, the Bond Fund and the Reserve Fund on and after the Crossover Date for the 1991A Bonds.

(36) "Gross Pledged Revenues" means all income, charges and revenues derived directly or indirectly by the City from the operation and use of and otherwise pertaining to the System, or any part thereof, whether resulting from Capital Improvements, Capital Additions, or otherwise, and includes all income, charges and revenues received by the City from the System, including without limitation:

> (a) All fees, rates and other charges for the use of the System, or for any service rendered by the City in the operation thereof, directly or indirectly, the availability of any such service, or the sale or other disposal of any commodities derived therefrom, including, without limitation, connection charges, but:

(i) Excluding (subject to the provisions of Section 501 hereof) any moneys borrowed and used for the acquisition of Capital Improvements or Capital Additions or for the refunding of securities, including the proceeds of Crossover Refunding Bonds and all income or other gain from any investment of such borrowed moneys,

(ii) Excluding any moneys received as grants, appropriations or gifts from the Federal Government, the State, or other sources, the use of which is limited by the grantor or donor to the construction of Capital Improvements or Capital Additions, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom, and

(iii) Excluding any income and revenue from any Special Facilities which have not been transferred by the City, in its sole discretion, to the System and excluding any revenues from any special rates and charges imposed to finance any such untransferred Special Facilities;

(b) All income or other gain from any investment of Gross Pledged Revenues (including without limitation the income or gain from any investment of all moneys in the Bond Fund and Reserve Fund and of all Net Pledged Revenues, but excluding borrowed moneys and all income or other gain thereon in an Acquisition Fund or any escrow fund for any other securities heretofore or hereafter issued), unless the Council or the qualified electors of the City otherwise provide by ordinance, or such electors by Charter amendment, and

(c) All income and revenues derived from the operation of any other utility or other income-producing facilities added to the System and to which the pledge and lien herein provided are extended by ordinance adopted by the Council or the qualified electors of the City or by Charter amendment adopted by such electors.

(37) The terms "hereby," "herein," "hereinabove," "hereinafter," "hereinbefore," "hereof," "hereto," "hereunder" and any similar term refer to this ordinance and not solely to the particular portion thereof in which such word is used; "heretofore" means before the adoption of this ordinance; and "hereafter" means after the adoption of this ordinance.

(38) "holder" means the registered owner of any designated Bond or other designated security.

(39) "improve" or "improvement" means the extension, reconstruction, alteration, betterment or other improvement by the construction, purchase or other acquisition of

facilities, including, without limitation, appurtenant machinery, apparatus, fixtures, structures and buildings.

(40) "Improvement Project" means a Capital Addition and/or a Capital Improvement, the cost of which may be defrayed with the proceeds of securities issued by the City.

(41) "Improvements" means the land, facilities and rights constructed, installed, purchased and otherwise acquired as part of an Improvement Project.

(42) "Income Fund" means the special account designated as the "City of Colorado Springs, Colorado, Utilities System Gross Income Fund" created in Section 502 of the 1985A Bond Ordinance and continued pursuant to the Funds Ordinance.

(43) "Independent Accountant" means any certified public accountant, or any firm of certified public accountants, duly licensed to practice and practicing as such under the laws of the State:

(a) Who is, in fact, independent and not under the domination of the City;

(b) Who does not have any substantial interest, direct or indirect, with the City, and

(c) Who is not connected with the City as an officer or employee thereof, but who may be regularly retained to make annual or similar audits of any books or records of the City.

(44) "Independent Engineer" means an individual, firm or corporation engaged in the engineering profession of recognized good standing and having specific experience in respect of business and properties of a character similar to those of the System, which individual, firm or corporation has no substantial interest, direct or indirect, in the City and in the case of an individual, is not a member of the Council, or an officer or employee of the City, and in the case of a firm or corporation, does not have a partner, director, officer or employee who is a member of the Council or an officer or employee of the City.

(45) "Investment Securities" means the securities and other obligations referred to in Section 603 hereof in which moneys in certain accounts created hereunder and under the Existing Bond Ordinances (and continued pursuant to the Funds Ordinance) may be invested.

(46) "Manager" means the de jure or de facto chief administrative officer of the City and designated as such by the Council, or his or her successor in functions, if any.

(47) "Mayor" means the de jure or de facto mayor of the City and the titular head thereof, or his or her successor in functions.

(48) "Minimum Bond Reserve" means, subject to the provisions of the last sentence of Section 602 hereof, an amount equal to not less than the average annual principal and interest requirements. Under no circumstances shall principal or interest payable on subordinate securities be taken into account in the computation of "Minimum Bond Reserve".

(49) "MSRB" means the Municipal Securities Rulemaking Board.

(50) "Net Pledged Revenues" means the Gross Pledged Revenues remaining after the payment of the operation and maintenance expenses of the System.

(51) "1985A Bonds" means the City of Colorado Springs, Colorado, Utilities System Refunding Revenue Bonds, Series 1985A originally issued in the aggregate principal amount of $227,775,000.

(52) "1991A Bonds" means the City of Colorado Springs, Colorado, Utilities System Refunding Revenue Bonds, Series 1991A originally issued in the aggregate principal amount of $236,950,000.

(53) "1991B Bonds" means the City of Colorado Springs, Colorado, Utilities System Refunding Revenue Bonds, Series 1991B originally issued in the aggregate principal amount of $42,835,000.

(54) "1991C Bonds" means the City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1991C originally issued in the aggregate principal amount of $65,090,000.

(55) "1992A Bonds" means the City of Colorado Springs, Colorado, Utilities System Refunding Revenue Bonds, Series 1992A originally issued in the aggregate principal amount of $76,080,000.

(56) "1994A Bonds" means the City of Colorado Springs, Colorado, Utilities System Improvement and Refunding Bonds, Series 1994A originally issued in the aggregate principal amount of $118,470,000.

(57) "1985A Bond Ordinance" means the ordinance authorizing the issuance of the 1985A Bonds and any amendments thereto.

(58) "1991 Bond Ordinance" means the ordinance authorizing the issuance of the 1991A Bonds, 1991B Bonds and 1991C Bonds and any amendments thereto.

(59) "1992 Bond Ordinance" means the ordinance authorizing the issuance of the 1992A Bonds and any amendments thereto.

(60) "1994 Bond Ordinance" means the ordinance authorizing the issuance of the 1994A Bonds and any amendments thereto.

(61) "NRMSIR" means each nationally recognized municipal securities information repository recognized by the SEC from time to time pursuant to the Rule. Such NRMSIRs currently include Kenny Information Systems, Inc., 65 Broadway, 16th Floor, New York, New York 10006; Thomson Municipal Services, Inc, 395 Hudson Street, New York, New York 10004, Bloomberg Municipal Repositories, P. O. Box 840, Princeton, New Jersey 08542-0840, Moody's NRMSIR Public Finance Information Center, 99 Church Street, New York, New York 10007, and Disclosure Incorporated, 5161 River Drive, Bethesda, Maryland 20816.

(62) "Official Statement" means the Official Statement dated August 8, 1995 delivered in connection with the original issuance and sale of the Bonds.

(63) "operation and maintenance expenses" means all reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System or any component division or other part thereof, or any other designated facilities in connection with which such term is used including, without limitation, all salaries, labor, materials and repairs necessary to render efficient service; and the term includes, at the option of the City, acting by and through the Council, except as limited by law, without limitation:

(a) Engineering, auditing, reporting, legal and other overhead expenses of the various departments of the City directly related and reasonably allocable to the administration, operation and maintenance of the System;

(b) Fidelity bond premiums and property and liability insurance premiums pertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the System;

(c) Payments to pension, retirement, health and hospitalization funds, other insurance, and to any self-insurance fund;

(d) Any general (ad valorem) taxes, assessments, excise taxes or other charges which may be lawfully imposed on the City, the System, revenues therefrom, or the City's income from or operations of any properties under its control and pertaining to the System, or any privilege in connection with the System or its operation (but no payments made in lieu of taxes);

(e) The reasonable charges of the Paying Agent, any alternate Paying Agent, any paying agents or escrow agent for any securities payable from the

Net Pledged Revenues which have been or will be refunded, and any other depositary bank pertaining to the Bonds and any other securities payable from the Net Pledged Revenues or otherwise pertaining to the System and any periodic fees, premiums, expenses or other costs incurred in connection with any Credit Facilities or with respect to a remarketing, tender, indexing or similar agent (other than those charges, fees, premiums, expenses or other costs included as a Cost of an Improvement Project);

(f) Contractual services, professional services, salaries, other administrative expenses and costs of materials, supplies, repairs and labor pertaining to the System or to the issuance of the Bonds or any other securities relating to the System, including, without limitation, the expenses and compensation of any trustee, receiver or other fiduciary;

(g) The costs incurred by the Council in the collection and any refunds of all or any part of the Gross Pledged Revenues;

(h) Any costs of utility services furnished to the System by the City or otherwise, including, without limitation, the contracting by the City for water, electricity, or gas, or any combination thereof, from any Person, for distribution through the System or for the transmission or treatment of water, electricity, or gas for use by the City and its customers and the obligations due under any contract pertaining thereto on a take-and-pay basis or take-or-pay basis or otherwise; and

(i) All other administrative, general and commercial expenses pertaining to the System and all other current expenses pertaining to the System which are properly classified as operation and maintenance expenses under generally accepted accounting principles; but

(i) Excluding any allowance for depreciation;

(ii) Excluding any costs of Capital Additions and Capital Improvements (or any combination thereof);

(iii) Excluding any reserves for major capital replacements (other than normal repairs);

(iv) Excluding any reserves for operation, maintenance or repair of the System;

(v) Excluding any allowance for the redemption of any Bond or other security evidencing a loan or other obligation, or the payment of any interest thereon, or any prior redemption premium due in connection therewith, or any reserve therefor;

(vi) Excluding any liabilities incurred in the acquisition or improvement of any properties comprising any project or any existing facilities (or any combination thereof) incorporated into the System, or otherwise; and

(vii) Excluding any liabilities incurred by the City as the result of its negligence in the operation of the System or any other ground of legal liability not based on contract.

(64) "Outstanding" when used with reference to the Bonds or any other designated securities and as of any particular date means all the Bonds or any such other securities payable from the Net Pledged Revenues or otherwise pertaining to the System, as the case may be, in any manner theretofore and thereupon being executed and delivered:

(a) Except any Bond or other security canceled by the City, by any paying agent, or otherwise on the City's behalf, at or before such date;

(b) Except any Bond or other security (not deemed to be paid as provided in Section 901 hereof) during such period when its Bond Requirements are scheduled to be paid with moneys held in trust or escrow for that purpose by any trust bank located within or without the State, including the known minimum yield from any investment in Federal Securities; provided, however, that the foregoing shall not apply with respect to determinations of Bonds or other securities "Outstanding" for the purposes of Articles X or XI hereof;

(c) Except any Bond or other security deemed to be paid as provided in Section 901 hereof or any similar provision of the ordinance authorizing the issuance of such other security; and

(d) Except any Bond or other security in lieu of or in substitution for which another Bond or other security shall have been executed and delivered pursuant to Sections 308, 309 or 1108 hereof.

(65) "parity Credit Facility Obligations" means any Credit Facility Obligations payable from the Net Pledged Revenues on a parity with the Bonds.

(66) "parity securities" means securities payable from and having an irrevocable and first lien upon the Net Pledged Revenues on a parity with the Bonds but does not include any Credit Facility Obligations relating to any such securities.

(67) "Paying Agent" means Norwest Bank Colorado, National Association, in Denver, Colorado, and being an agent of the City for the payment of the Bond Requirements due in connection with the Bonds, the registrar for the Bonds and for other administration of moneys pertaining to the Bonds, and includes any successor commercial bank as paying agent.

(68) "Person" means a corporation, firm, other body corporate (including, without limitation, the Federal Government, the State, or any other body corporate and politic other than the City), partnership, association or individual, and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

(69) "Project" means the Capital Improvements, the cost of which is to be defrayed with the proceeds of the Bonds and which constitutes an Improvement Project.

(70) "Purchasers" means ____________________________ and associates.

(71) "Rebate Fund" means the special account designated as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A Rebate Fund" created in Section 509 hereof.

(72) "Record Date" means the 1st day of the calendar month in which each regularly scheduled interest payment date for the Bonds occurs.

(73) "Redemption Date" means the date fixed for the redemption prior to their respective maturities of any Bonds or other designated securities payable from Net Pledged Revenues in any notice of prior redemption or otherwise fixed and designated by the City.

(74) "Redemption Price" means, when used with respect to a Bond or any other designated security payable from Net Pledged Revenues, the principal amount thereof plus the applicable premium, if any, payable upon the redemption thereof prior to the stated maturity date of such security on a Redemption Date in the manner contemplated in accordance with the security's terms.

(75) "Repository" means (i) each NRMSIR and (ii) any SID.

(76) "Reserve Fund" means the special account designated as the "City of Colorado Springs, Colorado, Utilities System Parity Bonds Reserve Fund" created in Section 506 of the 1985A Bond Ordinance and continued pursuant to the Funds Ordinance.

(77) "Rule" means Rule 15c2-12, as amended, promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

(78) "SEC" means the Securities and Exchange Commission.

(79) "SID" means any state information depository operated or designated by the State that receives information from all issuers within the State.

(80) "Special Facility" means any construction or acquisition project undertaken by or on behalf of the City, including any interest therein, for the generation or transmission of electricity, the supply, treatment or transmission of water, the treatment of sanitary waste or the production or transmission of gas, including all facilities relating or incidental thereto:

(a) which may be hereafter constructed or acquired in whole or in part by the City; and

(b) which is financed wholly or in part with proceeds of Special Facility Obligations.

Any interest of the City in any such facility resulting from the City's participation in any entity (including, without limitation an entity which has the attributes of a municipal corporation or political subdivision (e.g., a joint action authority) or which may issue obligations on which the interest is exempt from Federal income taxation) and which owns any such facility or interest therein, is neither a "Special Facility" nor a part of the System within the meaning of this ordinance.

(81) "Special Facility Obligations" means any bonds or other obligations issued by the City and payable solely or in part from, and secured by a pledge of, any income, charge or revenue from, or relating to designated Special Facilities, including but not necessarily limited to (a) income, charges and revenues from sales of excess electrical energy and power produced or transmitted by, excess waste, water, or both, treatment capability of, or excess water or gas produced, supplied or transmitted by, such Special Facilities to any Person for resale and (b) income, charges and revenues from any special rates and other charges to finance the construction or other acquisition of any Special Facilities, which the City may hereafter impose upon users of the facilities of the System (any such rates and other charges to be additional to any other rates and charges presently or hereafter imposed with respect to the System). The determination by the Council (by ordinance or resolution) that any electrical energy and power, treatment or transmission capability, water or gas is excess (within the meaning of clause (a) of the preceding sentence) shall be conclusive. Such special rates and other charges described in clause (b) of the first sentence of this paragraph may include, but are not necessarily limited to, amounts necessary or sufficient to pay operation and maintenance expenses of such Special Facilities, annual debt service and reserve funds for such Special Facility Obligations, the costs of renewal and replacements for such Special Facilities (including reserves therefor) and amounts necessary or sufficient to produce annual revenues from such Special Facilities necessary to meet any rate maintenance test or parity lien bond test and, in the judgment of the City, necessary to maintain such income and revenues of such Special Facilities at acceptable levels.

(82) "Special Record Date" means a special date fixed by the Paying Agent to determine the names and addresses of holders of Bonds for the purpose of paying interest on a

special interest payment date for the payment of defaulted interest, all as further provided in Section 302 hereof.

(83) "State" means the State of Colorado.

(84) "subordinate Credit Facility Obligations" means any Credit Facility Obligations payable from Net Pledged Revenues subordinate and junior to the lien thereon of the Bonds.

(85) "subordinate securities" means securities payable from the Net Pledged Revenues subordinate and junior to the lien thereon of the Bonds but does not include any Credit Facility Obligations relating to any such securities.

(86) "superior securities" means securities payable from the Net Pledged Revenues superior to the lien thereon of the Bonds.

(87) "System" means the municipal water system, electric light and power system, gas system and wastewater system, which systems are under the jurisdiction of the City's Utilities and are collectively designated as the Utilities System of the City, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City, through purchase, construction and otherwise, and used in connection with such system of the City, and in any way pertaining thereto, whether or not located within or without or both within and without the boundaries of the City; and such defined term includes any other utility or other income-producing facilities added to the Utilities System and to which the lien and pledge herein provided are extended by ordinance adopted by the Council or the qualified electors of the City or by Charter amendment adopted by such electors; but such term does not include any Special Facilities which may hereafter be acquired by the City unless the City, in its sole discretion, hereafter expressly authorizes any such Special Facilities to become a part of the System.

(88) "Tax Compliance Certificate" means the Tax Compliance Certificate executed by the City in connection with the initial issuance and delivery of the Bonds as it may from time to time be modified pursuant to its terms.

(89) "Tender Bonds" means any securities payable from Net Pledged Revenues which by their terms may be required to be tendered for purchase, or which may be tendered by and at the option of the holder thereof for purchase, prior to the stated maturity thereof.

(90) "Treasurer" means the de jure or de facto treasurer of the City, or his or her successor in functions, if any.

(91) "trust bank" means a commercial bank which is authorized to exercise and is exercising trust powers, and also means any branch of the Federal Reserve Bank.

(92) "Variable Rate Bonds" means any securities payable from Net Pledged Revenues issued with a variable, adjustable, convertible or other similar interest rate which is not fixed in percentage for the entire term thereof at the date of issue.

B. City-Held Securities. Any securities payable from any Net Pledged Revenues held by the City shall not be deemed to be Outstanding for the purpose of redemption nor Outstanding for the purpose of consents hereunder or for any other purpose herein.

Section 103. Parties Interested Herein. Nothing herein expressed or implied confers any right, remedy or claim upon any Person, other than the City, the Council, the Paying Agent, the holders of the Bonds and the holders of any other securities payable from the Net Pledged Revenues when reference is expressly made thereto. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Council, the Paying Agent, the holders of the Bonds and the holders of any such other securities in the event of such a reference.

Section 104. Ratification. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council, the officers of the City and otherwise taken by the City directed toward the Project and the sale and delivery of the Bonds for such purpose, be, and the same hereby is, ratified, approved and confirmed, including, without limitation, the distribution of the Official Notice of Sale relating to the public sale of the Bonds and the distribution of the Preliminary Official Statement dated July 24, 1995. The preparation of the Official Statement in substantially the form of the Preliminary Official Statement is hereby authorized. The Director and the Controller are hereby authorized to approve, on behalf of the City, the final Official Statement. The execution of the final Official Statement by such persons shall be conclusively deemed to evidence the approval of the form and contents thereof by the City. The designation of such Preliminary Official Statement by the Controller as a "nearly final Official Statement" for purposes of the Rule is hereby ratified, approved and confirmed.

Section 105. Repealer. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed. All rules of the Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the Council be, and the same hereby are, suspended.

Section 106. Severability. If any section, subsection, paragraph, clause or other provision of this ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this ordinance.

Section 107. Ordinance Irrepealable. After any of the Bonds are issued, this ordinance shall constitute an irrevocable contract between the City and the holder or holders of the

Bonds and this ordinance shall be and shall remain irrepealable until the Bonds, as to all Bond Requirements, shall be fully paid, canceled, and discharged, except as herein otherwise provided.

Section 108. Emergency Statement, Effective Date and Publication. Because, on advice of the personnel of the Utilities, the Council has determined that (1) the Project and its early completion are vital to the life, health and property of the City and its inhabitants, and it is important that the City be assured now of the receipt of the Bond proceeds to meet costs as they become due for immediately necessary components of the Project and purposes of budgetary planning, and (2) present and future uncertainties exist as to the municipal bond market and the City's ability to sell its securities on advantageous terms for the Project, the Council has been advised that it should proceed immediately with this issue for the needs of the Utilities and therefore a public emergency is declared to exist, this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety, and this ordinance shall be in full force and effect immediately upon final passage and adoption at a single meeting upon Council approval as required by the Charter. This ordinance upon such final passage shall be entered upon the journal of the Council's proceedings, shall be kept in the book marked "Ordinance Record" and authenticated as required by the Charter, and on the day following its passage shall be published in a daily, legal newspaper of general circulation in the City. The Council hereby determines that it is appropriate that publication of this ordinance by title with a summary written by the Clerk, together with a statement that the ordinance is available for public inspection and acquisition in the office of the Clerk, shall be sufficient publication pursuant to Section 3-80 of the Charter and this ordinance shall be so published.

ARTICLE II

DETERMINATION OF THE CITY'S AUTHORITY AND OBLIGATIONS

Section 201. Authority for This Ordinance. This ordinance is adopted by virtue of the City's powers as a home rule city reorganized and operating pursuant to Article XX of the State Constitution and the Charter thereunder and pursuant to their provisions. Pursuant to Article XX of the State Constitution and the Charter, all statutes of the State which might otherwise apply in connection with the Project or the Bonds are hereby superseded.

Section 202. Bonds Equally Secured. The covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the holders of any and all of the Outstanding Bonds and any Outstanding parity securities heretofore or hereafter authorized and issued and any parity Credit Facility Obligations relating thereto, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of such securities over any other thereof, except as otherwise expressly provided in or pursuant to this ordinance.

Section 203. Special Obligations. All of the Bonds, as to all Bond Requirements, shall be payable and collectible solely out of the Net Pledged Revenues, which revenues are so pledged; the holder or holders thereof may not look to any general or other fund for the payment of such Bond Requirements, except the herein designated special funds pledged therefor; the Bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional, Charter or statutory provision or limitation; and the Bonds shall not be considered or held to be general obligations of the City but shall constitute its special obligations. No Charter, statutory or constitutional provision enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the City to comply with the provisions of this ordinance or to pay the Bond Requirements of the Bonds as herein provided.

Section 204. Character of Agreement. None of the covenants, agreements, representations and warranties contained herein or in the Bonds shall ever impose or shall be construed as imposing any liability, obligation or charge against the City (except the special funds pledged therefor), or against its general credit, or as payable out of its general fund or out of any funds derived from taxation.

Section 205. No Pledge of Property. The payment of the Bonds is not secured by an encumbrance, mortgage or other pledge of property of the City, except for its Net Pledged Revenues and other moneys pledged for the payment of the Bonds. No property of the City, subject to such exception, shall be liable to be forfeited or taken in payment of the Bonds.

Section 206. No Recourse Against Officers and Agents. No recourse shall be had for the payment of the Bond Requirements of the Bonds or for any claim based thereon or otherwise upon this ordinance or any other ordinance pertaining thereto, against any individual member of the Council or any officer, employee or other agent of the City, past, present or future, either directly or indirectly through the Council, or the City, or otherwise, whether by virtue of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bonds and as part of the consideration of their issuance specially waived and released.

Section 207. No Election Nor Other Preliminaries. The Bonds shall be issued without their being authorized at an election by any electors of the City and without any other preliminaries being taken except as herein stated.

Section 208. Authorization of the Project. The Council, on behalf of the City, does hereby determine to undertake the Project, which is hereby authorized, and the proceeds of the Bonds shall be used therefor.

Section 209. Terms of Bond Sale. The Purchasers' offer to purchase the Bonds as provided in the Official Bid Form is hereby formally accepted; and the Bonds shall be sold and delivered to the Purchasers in accordance therewith. The Mayor and the Clerk are hereby authorized and directed to execute and deliver the Official Bid Form in the form filed with the City on the date hereof.

Section 210. Enterprise Status. The Council, on behalf of the City, hereby confirms its intention that the Utilities shall be an "enterprise" for the purposes of Section 7-90 of the Charter and of Article X, Section 20 of the State Constitution. In particular, the Utilities shall be owned by the City and shall have the power to issue revenue bonds in manner and payable from the sources set forth in this ordinance and the Charter.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF BONDS

Section 301. Authorization of Bonds. For the purpose of protecting the public health, conserving the property and advancing the general welfare of the citizens of the City and of defraying wholly or in part the cost of the Project, the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A" in the aggregate principal amount of $48,915,000 are hereby authorized to be issued; and the City pledges irrevocably, but not necessarily exclusively, the Net Pledged Revenues to the payment of the Bond Requirements of the Bonds.

Section 302. Bond Details.

A. Basic Provisions. The Bonds shall be issuable as fully registered Bonds and shall be in denominations of $5,000 and any integral multiple thereof. The Bonds shall be lettered "R" and shall be numbered separately from 1 upward. The Bonds shall be dated as of August 1, 1995. The Bonds shall bear interest from the most recent interest payment date to which interest has been paid, or if no interest has been paid, from the date of the Bonds. Interest shall be payable on each May 15 and November 15, commencing November 15, 1995. The Bonds shall bear interest at the rates per annum and shall mature on November 15 in the years and in the principal amounts as follows:

Interest Rate (per annum)	Principal Maturing	Years Maturing
%		

The principal of each Bond shall be payable at the principal office of the Paying Agent or at the principal office of its successor, upon presentation and surrender of the Bond. Payment of interest on any Bond shall be made to the Person who is the registered holder thereof at the close of business on the Record Date for such interest payment date by check mailed by the Paying Agent to such registered holder at his or her address as it appears on the registration records kept by the Paying Agent, but any such interest not so timely paid shall cease to be payable to the Person who is the registered holder thereof at the close of business on the Record Date and shall be payable to the Person who is the registered holder thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date shall be fixed whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the registered holders of the Bonds not less than ten days prior thereto by first-class postage prepaid mail to each such registered holder as shown on the registration records, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to in writing between the registered holder of such Bond and the Paying Agent. If any Bond is not paid upon its presentation and surrender at or after its maturity or prior redemption, interest shall continue at its stated rate per annum until the principal thereof is paid in full. Interest on the Bonds shall be calculated based on a 360-day year, consisting of twelve 30-day months. All such payments shall be made in lawful money of the United States of America.

B. Mandatory Sinking Fund Redemption. The Bonds maturing on November 15, ____ are subject to mandatory sinking fund redemption at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. As and for a sinking fund for the redemption of the Bonds maturing on November 15, ____, there shall be redeemed (after credit as provided below) on the following dates the following principal amounts of Bonds maturing on November 15, ____:

November 15 of the Year	Principal Amount
*	$

* maturity date

On or before the fortieth day prior to the sinking fund Redemption Date, the Paying Agent shall proceed to select for redemption (by lot in such manner as the Paying Agent shall deem equitable and fair) from all Bonds Outstanding maturing on November 15, ____, $5,000 units of such Bonds equal in the aggregate to the total principal amount of such Bonds redeemable with the required sinking fund payment, and shall call such Bonds, or portions thereof, for redemption from the sinking fund on the next November 15, and give notice of such call, as provided in Section 304 hereof. At the option of the City to be exercised by delivery of a written certificate to the Paying Agent on or before the forty-fifth day next preceding any sinking fund Redemption Date, it may (i) deliver to the Paying Agent for cancellation Bonds maturing on November 15, ____, or portions thereof ($5,000 or any integral multiple thereof) in an aggregate principal amount desired by the City or (ii) specify a principal amount of Bonds maturing on November 15, ____, or portions thereof ($5,000 or any integral multiple thereof) which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond or portion thereof so delivered or previously redeemed shall be credited by the Paying Agent at 100% of the principal amount thereof against the obligation of the City on such sinking fund Redemption Date and any excess over such amount shall be credited against future sinking fund redemption obligations for the Bonds of such maturity in chronological order or any other order specified by the City. In the event the City shall avail itself of the provisions of clause (i) of the second sentence of this paragraph, the certificate required by the second sentence of this paragraph shall be accompanied by the Bonds or portions thereof to be cancelled.

Section 303. Optional Prior Redemption. The Bonds maturing on and after November 15, 2006 shall be subject to redemption prior to maturity, at the option of the City, on November 15, 2005 or any date thereafter in whole or in part at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest thereon to the Redemption Date.

In the event that less than all of the Outstanding Bonds shall be redeemed as provided in this Section, the Bonds redeemed shall be redeemed from any maturities specified by the City. If less than all of the Bonds of a single maturity are to be redeemed, they shall be selected by lot in such manner as the Paying Agent may determine. The Paying Agent shall not be required to give notice of any such optional prior redemption unless it has received written instructions from the City in regard thereto at least 60 days prior to such Redemption Date.

Section 304. Notice of Prior Redemption. Notice of any prior redemption (mandatory or optional) shall be given by the Paying Agent on behalf of the City by mailing a copy of the redemption notice by first-class postage prepaid mail, not less than 30 or more than 45 days prior to the Redemption Date to the holders of the Bonds to be redeemed at their addresses as shown on the registration records kept by the Paying Agent. Such notice shall specify the number or numbers of the Bonds to be so redeemed (if less than all are to be redeemed), the Redemption Price to be paid and the date fixed for redemption; and such notice shall further state that on the Redemption Date there will become and will be due and payable upon each Bond or portion thereof ($5,000 or any integral multiple thereof) so to be redeemed at the Paying Agent (designated by name) the Redemption Price, and that from and after such date interest on the Bonds (or portions thereof) called for redemption will cease to accrue. Notice having been given in the manner hereinabove provided, the Bond or Bonds so called for redemption shall become due and payable on the Redemption Date so designated and upon presentation thereof at the Paying Agent, the City will pay the Bond or Bonds so called for redemption. No further interest shall accrue on the principal of any such Bond (or portion thereof) called for redemption from and after the Redemption Date, provided sufficient funds are on deposit with the Paying Agent on the Redemption Date. Except as provided in Section 310 hereof, upon surrender of any Bond redeemed in part only, the Paying Agent shall execute and deliver to the holder thereof, at no expense to such holder, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered.

Section 305. Execution of Bonds. The Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor, shall be sealed with the corporate seal of the City or a facsimile thereof thereunto affixed, imprinted, engraved or otherwise reproduced and shall be attested by the manual or facsimile signature of the Clerk. Any Bond may be signed (manually or by facsimile), sealed or attested on behalf of the City by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of authentication, issuance or delivery, such person may have ceased to hold such office. The Mayor and the Clerk may adopt as and for his or her own facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears on any of the Bonds. Before the execution of any Bond, the Mayor and the Clerk shall each file with the Secretary of State of the State his or her manual signature certified by him or her under oath.

Section 306. Paying Agent's Authentication Certificate. The authentication certificate upon the Bonds shall be substantially in the form and tenor provided in the form of the Bonds contained in this ordinance. No Bond shall be secured hereby or entitled to the benefit hereof, nor shall any Bond be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Paying Agent; and such certificate of the Paying Agent upon any Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder. The Paying Agent's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds.

Section 307. Registration and Payment. The Paying Agent shall keep or cause to be kept sufficient records for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City. Upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said records, Bonds as herein provided. The person in whose name any Bond shall be registered on the registration records kept by the Paying Agent shall be deemed and regarded as the absolute owner thereof for the purpose of making payment of the Bond Requirements thereof and for all other purposes; and payment of or on account of the Bond Requirements of any Bond shall be made only to the registered holder thereof or his or her legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid. The foregoing provisions of this Section are subject to the provisions of Section 310 hereof.

Section 308. Transfer and Exchange. Any Bond may be transferred upon the records required to be kept pursuant to the provisions of Section 307 hereof by the Person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. Whenever any Bond or Bonds shall be surrendered for transfer, the Paying Agent shall authenticate and deliver a new Bond or Bonds for a like aggregate principal amount of Bonds of the same maturity and of any authorized denominations. The Bonds may be exchanged by the Paying Agent for a like aggregate principal amount of Bonds of the same maturity and of other authorized denominations. The execution by the City of any Bond of any denomination shall constitute full and due authorization of such denomination and the Paying Agent shall thereby be authorized to authenticate and deliver such Bond.

The Paying Agent shall not be required to transfer or exchange (i) any Bond subject to redemption during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day such notice is mailed, or (ii) any Bond so selected for redemption in whole or in part after the mailing of notice calling such Bond or any portion thereof for prior redemption except the unredeemed portion of Bonds being redeemed in part.

The Paying Agent shall require the payment by any holder requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer, and may charge a sum sufficient to pay the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the City or the Paying Agent incurred in connection therewith.

The foregoing provisions of this Section are subject to the provisions of Section 310 hereof.

Section 309. Bond Replacement. Upon receipt by the City and the Paying Agent of evidence satisfactory to them of the ownership of and the loss, theft, destruction or mutilation of any Bond and, in the case of a lost, stolen or destroyed Bond, of indemnity satisfactory to them, and in the case of a mutilated Bond upon surrender and cancellation of the Bond, (i) the City shall execute and the Paying Agent shall authenticate and deliver a new Bond of the same date, maturity and denomination in lieu of such lost, stolen, destroyed or mutilated Bond or (ii) if such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the City may pay such Bond. Any such new Bond shall bear a number not previously assigned. The applicant for any such new Bond may be required to pay all expenses and charges of the City and of the Paying Agent in connection with the issuance of such Bond. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds, negotiable instruments or other securities.

Section 310. Custodial Deposit. Notwithstanding the provisions of Sections 307 and 308 hereof, the Bonds shall initially be evidenced by one Bond for each year in which the Bonds mature in denominations equal to the aggregate principal amount of the Bonds maturing in that year. Such initially delivered Bonds shall be registered in the name of "Cede & Co.," as nominee for The Depository Trust Company ("DTC"), the securities depository for the Bonds. So long as the Bonds are held by DTC, the Paying Agent and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the Bond Requirements of the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to the holders under this ordinance, registering the transfer of such Bonds, obtaining any consent or other action to be taken by the holders and for all other purposes whatsoever, and neither the Paying Agent nor the City shall be affected by any notice to the contrary. Neither the Paying Agent nor the City shall have any responsibility or obligation to any DTC participant or indirect participant, any beneficial owner of the Bonds, or any other Person which is not shown on the registration records of the Paying Agent as being a holder, with respect to the accuracy of any records maintained by DTC or any DTC participant or indirect participant; the payment by DTC or any DTC participant or indirect participant of any amount in respect of the Bond Requirements of the Bonds; any notice which is permitted or required to be given to the holders under this ordinance; the selection by DTC or any DTC participant or indirect participant of any Person to receive payment in the event of a partial redemption of the Bonds or any consent given or other action taken by DTC as holder. After such initial issuance of the Bonds, the Bonds may not thereafter be transferred or exchanged except:

A. to any successor of DTC or its nominee, which successor must be both a "clearing corporation" as defined in Section 4-8-102(3), Colorado Revised Statutes, as amended, and a qualified and registered "clearing agency" under Section 17A of the Securities Exchange Act of 1934, as amended; or

B. upon the resignation of DTC or a successor or new depository under paragraph A or this paragraph B, or a determination by the City that DTC or such successor or new depository is no longer able to carry out its functions, and the designation by the City of another depository institution acceptable to the depository then holding the Bonds, which new depository institution must be both a "clearing corporation" as defined in Section 4-8-102(3), Colorado Revised Statutes, as amended, and a qualified and registered "clearing agency" under Section 17A of the Securities Exchange Act of 1934, as amended, to carry out the functions of DTC or such successor or new depository; or

C. upon the resignation of DTC or a successor or new depository under paragraph A or paragraph B, or a determination by the City that DTC or such successor or new depository is no longer able to carry out its functions, and the failure by the City, after reasonable investigation, within 90 days thereafter to locate another qualified depository institution under paragraph B to carry out such depository functions or upon a determination by the City that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain Bond certificates and the delivery by the City of written notice thereof to the Paying Agent.

In the case of a transfer to a successor of DTC or its nominee as referred to in paragraph A above or designation of a new depository pursuant to paragraph B above, upon receipt of the Bonds by the Paying Agent, together with written instructions for transfer satisfactory to the Paying Agent, a new Bond for each maturity shall be issued to such successor or new depository, as the case may be, or its nominee, as is specified in such written transfer instructions. In the case of a resignation or determination under paragraph C above and, if applicable, the failure after reasonable investigation within 90 days thereafter to locate another qualified depository institution for the Bonds as provided in paragraph C above, and upon receipt of the Bonds by the Paying Agent, together with written instructions for transfer satisfactory to the Paying Agent, new Bonds shall be issued in the denominations of $5,000 or any integral multiple thereof, as provided in and subject to the limitations of Section 302 hereof, registered in the names of such Persons, and in such denominations as are requested in such written transfer instructions; provided, however, the Paying

Agent shall not be required to deliver such new Bonds within a period of less than 60 days from the date of receipt of such written transfer instructions.

The City and the Paying Agent shall endeavor to cooperate with DTC or any successor or new depository named pursuant to paragraph A or B above in effectuating payment of the Bond Requirements of the Bonds by arranging for payment in such a manner that funds representing such payments are available to the depository on the date they are due.

Upon any partial redemption of any maturity of any of the Bonds, Cede & Co. (or its successor) in its discretion may request the City to issue and authenticate a new Bond or shall make an appropriate notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment.

Section 311. Bond Cancellation. Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled and destroyed by the Paying Agent, and a certificate of such cancellation and destruction shall be furnished by the Paying Agent to the City.

Section 312. Incontestable Recital in Bonds. Pursuant to Article XX of the State Constitution and pursuant to this ordinance, each Bond shall recite that it is issued under the authority of this ordinance and that it is the intention of the City that such recital shall conclusively impart full compliance with all the provisions of this ordinance and that all the Bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Section 313. Bond Form. Subject to the provisions of this ordinance, each Bond shall be in substantially the following form, with such omissions, insertions, endorsements and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this ordinance, be consistent with this ordinance or be necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto:

(FORM OF BOND)

UNITED STATES OF AMERICA

STATE OF COLORADO   COUNTY OF EL PASO

CITY OF COLORADO SPRINGS, COLORADO
UTILITIES SYSTEM REVENUE BOND
SERIES 1995A

No. R- $__________

Interest Rate	Maturity Date	Dated	CUSIP
____%	November 15, ___	August 1, 1995	

REGISTERED OWNER:
PRINCIPAL AMOUNT: DOLLARS

The City of Colorado Springs (the "City"), in the County of El Paso and State of Colorado (the "State"), for value received, hereby promises to pay to the registered owner specified above, or registered assigns, solely from the special funds provided therefor, as hereinafter set forth, the principal amount set forth above on the maturity date specified above (unless this Bond shall have been called for prior redemption, in which case on the redemption date) and to pay solely from such special funds interest at the interest rate per annum specified above until the payment of the principal hereof has been made or provided for, payable on May 15 and November 15 in each year, commencing November 15, 1995. This Bond will bear interest from the most recent interest payment date to which interest has been paid, or, if no interest has been paid, from the date of this Bond. The principal of this Bond is payable upon the presentation and surrender hereof at the principal office of Norwest Bank Colorado, National Association, Denver, Colorado, as Paying Agent, or at the principal office of its successor (the "Paying Agent"). Interest on this Bond will be paid on each interest payment date (or, if such interest payment date is not a business day, on the next succeeding business day), by check mailed to the person in whose name this Bond is registered (the "registered holder") on the registration records of the City maintained by the Paying Agent at the address appearing thereon at the close of business on the first day of the calendar month in which such interest payment date occurs (the "Record Date"). Any such interest not so timely paid shall cease to be payable to the person who is the registered holder hereof at the close of business on the Record Date and shall be payable to the person who is the registered holder hereof at the close of business on a Special Record Date (as defined in the hereinafter referred to Ordinance) for the payment of any defaulted interest. Such Special Record Date shall be fixed by the Paying Agent whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the registered holder of this Bond not less than ten days prior thereto.

Alternative means of payment of interest may be used if mutually agreed to in writing between the registered holder of any Bond and the Paying Agent. If this Bond is not paid upon presentation and surrender at or after its maturity or prior redemption, interest shall continue at the above stated rate per annum until the principal hereof is paid in full. Interest on this Bond shall be calculated based on a 360-day year, consisting of twelve 30-day months. All such payments shall be made in lawful money of the United States of America.

[May be printed on back of Bond]

This Bond is one of a series of bonds issued pursuant to the 1995A Utilities Bond Ordinance (the "Ordinance") designated as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A" in the aggregate principal amount of $48,915,000 (the "Bonds"). The Bonds have been duly authorized for the purpose of providing moneys to defray a portion of the cost of extending, bettering or otherwise improving and equipping the municipal water system, electric light and power system, gas system and wastewater system, collectively comprising the City's utilities system (the "System").

The Bonds maturing on November 15, ____ are subject to redemption by lot in such manner as the Paying Agent may determine pursuant to the terms of the mandatory sinking fund provided in the Ordinance at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date.

The Bonds maturing on and after November 15, 2006 are subject to redemption prior to maturity, at the option of the City, on November 15, 2005 or any date thereafter in whole or in part, from any maturities specified by the City (and by lot within a maturity) at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon to the redemption date.

Upon any partial prior redemption of the Bonds, Cede & Co., in its discretion, may request the Paying Agent to authenticate a new Bond or shall make an appropriate notation on this Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this Bond must be presented to the Paying Agent prior to payment.

In the case of a Bond of a denomination larger than $5,000, a portion of such Bond ($5,000 or any integral multiple thereof) may be redeemed, in which case the Paying Agent shall, without charge to the registered holder of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof. Notice of the call for any redemption shall be given by the Paying Agent by mailing a copy of the redemption notice by first-class postage prepaid mail not more than forty-five nor less than thirty days prior to the redemption date to the registered holder of each Bond to be redeemed at his or her address as shown on the registration records kept by the Paying Agent, as provided in the Ordinance. All Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their payment are on deposit at the place of payment at that time.

The Bonds are issuable as fully registered bonds in denominations of $5,000 and any integral multiple thereof and are exchangeable for an equal aggregate principal amount of fully registered Bonds of the same maturity of other authorized denominations at the aforesaid office of the Paying Agent but only in the manner and subject to the limitations and on payment of the charges provided in the Ordinance.

This Bond is fully transferable by the registered holder hereof in person or by his or her duly authorized attorney on the registration records kept by the Paying Agent upon surrender of this Bond together with a duly executed written instrument of transfer satisfactory to the Paying Agent. Upon such transfer a new fully registered Bond or Bonds of authorized denomination or denominations of the same maturity and aggregate principal amount will be issued to the transferee in exchange herefor, subject to the terms and conditions set forth in the Ordinance, including, without limitation, the payment by the person requesting the transfer of the cost of preparing each new Bond and any other expenses of the City or the Paying Agent incurred in connection therewith.

The City and the Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, for the purpose of making payment (except to the extent otherwise provided hereinabove and in the Ordinance with respect to Record Dates and Special Record Dates for the payment of interest) and for all other purposes, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The Paying Agent will not be required to transfer or exchange (i) any Bond subject to redemption during a period beginning at the opening of business 15 days before the day of the mailing by the Paying Agent of a notice of redemption of Bonds and ending at the close of business on the day such notice is mailed, or (ii) any Bond so selected for redemption in whole or in part after the mailing of notice calling such Bond or any portion thereof for prior redemption except the unredeemed portion of any Bond redeemed in part.

The Bonds shall not be transferable or exchangeable except as set forth in the Ordinance.

The Bonds do not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter or statutory provision or limitation and shall not be considered or held to be general obligations of the City. The Bonds are special obligations of the City payable and collectible solely out of and secured by an irrevocable pledge of net revenues derived from the operation and use of the System, which revenues are so pledged; the System does not include any Special Facilities, as defined in the Ordinance, and will not include any Special Facilities unless hereafter they shall have been expressly made a part of the System by the City; and the registered holder hereof may not look to any general or other fund for payment of the principal of or interest on this Bond (the "Bond Requirements") except the special funds pledged therefor.

Payment of the Bond Requirements of the Bonds shall be made solely from and as security for such payment there are irrevocably (but not exclusively) pledged, pursuant to the

Ordinance, special accounts into which the City covenants to pay from the revenues derived from the operation and use of and otherwise pertaining to the System (the "Gross Pledged Revenues"), after provision is made only for the payment of all necessary and reasonable expenses of the operation and maintenance of the System (such remaining revenues the "Net Pledged Revenues"), sums sufficient to pay when due the Bond Requirements of the Bonds and any parity securities heretofore or hereafter issued and payable from such revenues and to create and to maintain reasonable reserves.

The Bonds are equitably and ratably secured by a lien on the Gross Pledged Revenues, and the Bonds constitute an irrevocable and first lien (but not necessarily an exclusively first lien) upon the Net Pledged Revenues on a parity with the lien thereon of certain outstanding Utilities System Revenue Bonds of the City. Securities, in addition to the Bonds, subject to expressed conditions, may be issued and made payable from the Net Pledged Revenues having a lien thereon subordinated and junior to the lien, or subject to additional expressed conditions having a lien thereon on a parity with the lien, of the Bonds in accordance with the provisions of the Ordinance.

The City covenants and agrees with the registered holder of this Bond and with each and every person who may become the registered holder hereof that it will keep and will perform all of the covenants of the Ordinance, including, without limitation, its covenant against the sale or mortgage of the System unless provision shall be made for the payment of the Bond Requirements of the Bonds and its covenant that it will fix, maintain and collect charges for services rendered by and use of the System at least sufficient to produce Gross Pledged Revenues annually to pay the annual operation and maintenance expenses of the System and one hundred thirty percent (130%) of both the principal of and the interest on the Bonds and any other parity securities payable annually from the Net Pledged Revenues (excluding reserves therefor).

Reference is made to the Ordinance and any and all modifications and amendments thereof for an additional description of the nature and extent of the security for the Bonds, the accounts, funds or revenues pledged, the nature and extent and manner of enforcement of the pledge, the rights and remedies of the registered holders of the Bonds with respect thereto, the terms and conditions upon which the Bonds are issued, and a statement of the rights, duties, immunities and obligations of the City, and other rights and remedies of the registered holders of the Bonds. A copy of the Ordinance is on file in the office of the City Clerk.

To the extent and in the respects permitted by the Ordinance, the provisions of the Ordinance or any ordinance amendatory thereof or supplemental thereto may be modified or amended by action of the City taken in the manner and subject to the conditions and exceptions prescribed in the Ordinance. The pledge of revenues and other securities of the City under the Ordinance may be discharged at or prior to the maturity or the prior redemption of the Bonds upon the making of provision for the payment thereof on the terms and conditions set forth in the Ordinance.

[To be printed on front of Bond]

This Bond shall not be valid or obligatory for any purpose until an authorized signatory of the Paying Agent shall have manually signed the certificate of authentication hereon.

It is certified, recited and warranted that all the requirements of law have been fully complied with by the proper officers of the City in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the Constitution of the State, with the Charter of the City, and with the Ordinance and any ordinances supplemental thereto; and that this Bond does not contravene any Constitutional, statutory or Charter limitation.

It is also certified, recited, and warranted that this Bond and each of the other Bonds are issued under the authority of the Ordinance. It is the intention of the City, as expressed in the Ordinance, that this recital shall conclusively impart full compliance with all of the provisions of the Ordinance and that all of the Bonds issued are incontestable for any cause whatsoever after their delivery for value.

IN WITNESS WHEREOF, the City has caused this Bond to be signed and executed in its name and upon its behalf with the facsimile signature of its Mayor, has caused the facsimile of the seal of the City to be affixed hereon and has caused this Bond to be signed, executed and attested with the facsimile signature of its City Clerk, all as of the date specified above.

CITY OF COLORADO SPRINGS,
COLORADO

By (For Facsimile Signature)
Mayor

(FACSIMILE SEAL)

Attest:

(For Facsimile Signature)
City Clerk

(END OF FORM OF BOND)

* Insert only if the Bonds are delivered pursuant to paragraph C of Section 310 of this ordinance.

** Insert only if the Bonds are initially delivered to The Depository Trust Company pursuant to the first paragraph of Section 310 of this ordinance.

(FORM OF CERTIFICATE OF AUTHENTICATION)

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within mentioned Ordinance.

NORWEST BANK COLORADO,
NATIONAL ASSOCIATION,
as Paying Agent

By______________________________
Authorized Signatory

Date of Authentication
and Registration:____________________

(END OF FORM OF CERTIFICATE OF AUTHENTICATION)

(FORM OF ASSIGNMENT)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto __________________________ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints __________________________ to transfer the within Bond on the records kept for the registration thereof with full power of substitution in the premises.

Dated: ________________________ ____________________________________

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed by an eligible guarantor institution as defined in 17 CFR § 240.17 Ad-15(a)(2).

Signature Guaranteed:

____

Address of Transferee:

____

____

____

Social Security or other tax identification number of transferee:

____

(END OF FORM OF ASSIGNMENT)

(FORM OF PREPAYMENT PANEL)

PREPAYMENT PANEL

The following installments of principal (or portions thereof) of this Bond have been prepaid in accordance with the terms of the Ordinance.

Date of Prepayment	Principal Prepaid	Signature of Authorized Representative of DTC

(END OF FORM OF PREPAYMENT PANEL)

ARTICLE IV

USE OF BOND PROCEEDS AND OTHER MONEYS

Section 401. Disposition of Bond Proceeds and Other Moneys. The proceeds of the Bonds, upon the receipt thereof, shall be accounted for in the following manner and priority and are hereby pledged therefor:

A. Bond Fund. All moneys received as accrued interest on the Bonds from the date of the Bonds to the date of their delivery to the Purchasers shall be credited to the Bond Fund.

B. Acquisition Fund. The amount of $__________ of the proceeds derived from the sale of the Bonds shall be credited to the special and separate account hereby created and to be known as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A Acquisition Fund". Except as otherwise provided herein, the moneys in the Acquisition Fund shall be used solely for the purpose of paying the Cost of the Project.

C. Income Fund. The remaining proceeds derived from the sale of the Bonds shall be credited to the Income Fund.

Section 402. Payment of Expenses. The moneys deposited in the Income Fund pursuant to Section 401C hereof shall be used and paid out by the City to defray the administrative costs of the Project, including, without limitation, amounts to be paid to the Paying Agent, for custodial fees, legal fees, accounting fees, financial advisory fees, printing costs and rating fees. The City may defray any such administrative costs from time to time as operation and maintenance expenses to the extent the moneys deposited in the Income Fund pursuant to Section 401C hereof are insufficient therefor.

Section 403. Completion of Project. When the Project is completed in accordance with the relevant plans and specifications and all amounts due therefor, including all proper incidental expenses, are paid, or for which full provision is made, the Controller, upon the receipt from the Director of a certificate so stating and ordering, shall cause to be transferred to the Reserve Fund all surplus moneys remaining in the Acquisition Fund, if any, except for any moneys designated in the certificate to be retained to pay any unpaid accrued costs or contingent obligations and except for any moneys designated in the certificate to be transferred to the Rebate Fund; but (subject to the provisions of Section 834 hereof):

A. Periodic Transfers. Nothing herein prevents the transfer from the Acquisition Fund to the Reserve Fund, at any time prior to the termination of the Acquisition Fund, of any moneys which the Director by certificate determines will not be necessary for the Project and will not be designated to be transferred to the Rebate Fund; and

B. *Limitations upon Transfers*. Nothing herein requires the transfer to the Reserve Fund or the Rebate Fund of any surplus moneys (other than Bond proceeds) received as grants, appropriations or gifts the use of which moneys is limited by the grantor or donor to the construction of capital improvements or otherwise so that such surplus moneys (other than Bond proceeds) may not be properly transferred to the Reserve Fund or the Rebate Fund under the terms of such grants, appropriations or gifts.

Section 404. Lien on Bond Proceeds. Until the proceeds of the Bonds deposited in the Acquisition Fund are applied as herein provided, such Bond proceeds are subject to a lien thereon and pledge thereof for the benefit of the holders of the Outstanding Bonds as provided in Section 501 hereof.

Section 405. Purchasers Not Responsible. The validity of the Bonds is not dependent upon nor affected by the validity or regularity of any proceedings relating to the application of the Bond proceeds. The Purchasers and any subsequent holders of any of the Bonds are in no manner responsible for the application or disposal by the City or by any of its officers, agents and employees of the moneys derived from the sale of the Bonds or of any other moneys herein designated.

ARTICLE V

ADMINISTRATION OF AND ACCOUNTING FOR PLEDGED REVENUES

Section 501. Pledge Securing Bonds. Subject only to the right of the City to cause amounts to be withdrawn and paid on account of operation and maintenance expenses of the System and to be withdrawn to pay the Cost of the Project as provided herein, the Gross Pledged Revenues and all moneys and securities paid or to be paid to or held or to be held in any account under this Article or under Section 401A and B hereof, other than moneys and securities held in the Rebate Fund to the extent such amounts are required to be paid to the United States, are hereby pledged to secure the payment of the Bond Requirements of the Outstanding Bonds; and this pledge shall be valid and binding from and after the date of the first delivery of any Bonds, and the moneys as received by the City and hereby pledged shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing, or further act, and the lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the City, except for any Outstanding parity securities heretofore or hereafter authorized and any parity Credit Facility Obligations relating thereto, the liens of which on the Gross Pledged Revenues shall be on a parity with the lien thereon of the Outstanding Bonds; and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City (except as herein otherwise provided) irrespective of whether such parties have notice thereof.

Section 502. Income Fund Deposits. So long as any of the Bonds shall be Outstanding, as to any Bond Requirements, the entire Gross Pledged Revenues, upon their receipt from time to time by the City, shall be set aside and credited immediately to the Income Fund.

Section 503. Administration of Income Fund. So long as any of the Bonds shall be Outstanding, as to any Bond Requirements, the following payments shall be made from the Income Fund, as provided in Sections 504 through 511 hereof.

Section 504. Operation and Maintenance Expenses. Firstly, as a first charge on the Income Fund, from time to time there shall continue to be held therein moneys sufficient to pay operation and maintenance expenses, as they become due and payable, and thereupon they shall be promptly paid. Any surplus remaining in the Income Fund at the end of the Fiscal Year and not needed for operation and maintenance expenses shall be used for other purposes of the Income Fund as herein provided.

Section 505. Bond Fund Payments. Secondly, from any moneys remaining in the Income Fund, i.e., from the Net Pledged Revenues, there shall be credited to the Bond Fund the following amounts:

A. Interest Payments. Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the Bonds and any parity securities hereafter authorized, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, including, without limitation, the moneys, if any, provided in Section 401A hereof, to pay the next maturing installment of interest on the Bonds and any parity securities then Outstanding; provided however that if any parity Variable Rate Bonds, parity Balloon Bonds or parity Credit Facility Obligations are Outstanding, the amount to be deposited in the Bond Fund to pay the next maturing installment of interest on such parity Variable Rate Bonds or parity Balloon Bonds or interest or similar payments with respect to such parity Credit Facility Obligations shall be the amount specified in the ordinance pursuant to which such parity Variable Rate Bonds or parity Balloon Bonds or parity Credit Facility Obligations are authorized.

B. Principal Payments. Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the Bonds and any parity securities hereafter authorized, or commencing one year next prior to the first principal payment date of the Bonds or of any parity securities hereafter delivered, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next due installment of principal (whether at maturity, or upon mandatory prior redemption, or upon prior redemption whenever the City shall have exercised or shall have obligated itself to exercise a prior redemption option pertaining thereto) of the Bonds then Outstanding and any parity securities then Outstanding; provided however that if any parity Balloon Bonds or parity Credit Facility Obligations are Outstanding, the amount to be deposited in the Bond Fund and the dates of such deposit to pay the next due installment of principal or similar payment shall be the amounts and dates specified in the ordinance pursuant to which such parity Balloon Bonds or parity Credit Facility Obligations are authorized. For the purposes of this paragraph, parity Tender Bonds shall be assumed to mature on the stated maturity or mandatory redemption date or dates thereof.

The moneys credited to the Bond Fund shall be used to pay the Bond Requirements of the Bonds and any parity securities then Outstanding and any parity Credit Facility Obligations relating to any parity securities then Outstanding, as such Bond Requirements and parity Credit Facility Obligations become due, except as provided in Sections 507 and 901 hereof.

Section 506. Reserve Fund Payments. Thirdly, and concurrently with the monthly payments into the Bond Fund required by Section 505 hereof, except as provided in Sections 507 and 508 hereof, from any moneys remaining in the Income Fund there shall be credited to the Reserve Fund monthly, commencing on the first day of the month next succeeding each date on which any Bonds or any parity securities hereafter authorized are delivered or on which the moneys accounted for in the Reserve Fund for any other reason are less than the Minimum Bond Reserve, such amounts in substantially equal monthly payments on the first day of each month to accumulate or reaccumulate the Minimum Bond Reserve by not more than 60 such monthly payments. The Minimum Bond Reserve shall be accumulated and, if necessary, reaccumulated from time to time, in the Reserve Fund from Net Pledged Revenues, except to the extent other moneys are credited to the Reserve Fund, and maintained as a continuing reserve to be used, except as hereinafter provided in Sections 507, 508, 605 and 901 hereof, only to prevent deficiencies in the payment of the Bond Requirements of the Bonds and any parity securities Outstanding from time to time from the failure to deposit into the Bond Fund sufficient moneys to pay such Bond Requirements as the same accrue and become due. No payment need be made into the Reserve Fund at any time so long as the moneys therein equal not less than the Minimum Bond Reserve.

Section 507. Termination of Deposits. No payment need be made into the Bond Fund or the Reserve Fund if the amount in the Bond Fund and the amount in the Reserve Fund total a sum at least equal to the entire amount of the Outstanding Bonds and any Outstanding parity securities, as to all Bond Requirements, to their respective maturities or to any Redemption Date or Redemption Dates on which the City shall have exercised or shall have obligated itself to exercise its option to redeem prior to their respective maturities any Bonds and any parity securities then Outstanding and thereafter maturing, and both accrued and not accrued, except for any such Bond Requirements to be paid with moneys, Federal Securities and bank deposits (or any combination thereof) accounted for in any other account or accounts for such purpose, in which case moneys in those two accounts in an amount (except for any known interest or other gain to accrue from any investment of moneys in Federal Securities or bank deposit pursuant to Article VI hereof from the time of any such investment or deposit to the time or respective times the proceeds of any such investment or deposit shall be needed for such payment at least equal to such Bond Requirements) shall be used together with any such gain from such investments and deposits solely to pay such Bond Requirements as the same become due; and any moneys in excess thereof in those two accounts and any other moneys derived from the Net Pledged Revenues or otherwise pertaining to the System may be used to make required payments into the Rebate Fund or in any other lawful manner determined by the Council.

Section 508. Defraying Delinquencies. If at any time the City shall for any reason fail to pay into the Bond Fund the full amount above stipulated from the Net Pledged Revenues, then an amount shall be paid into the Bond Fund at such time from the Reserve Fund equal to the difference between that paid from the Net Pledged Revenues and the full amount so stipulated. The money so used shall be replaced as provided in Section 506 hereof in the Reserve Fund from the first Net Pledged Revenues thereafter received and not required to be otherwise applied by Section 505 hereof. If at any time the City shall for any reason fail to pay into the Reserve Fund the full amount above stipulated from the Net Pledged Revenues, the difference between the amount paid and the amount so stipulated shall in a like manner be paid as provided in Section 506 hereof in the Reserve Fund from the first Net Pledged Revenues thereafter received and not required to be applied otherwise by Section 505 hereof. Except as provided in Section 507 hereof, the moneys in the Bond Fund and in the Reserve Fund shall be used solely and only for the purpose of paying the Bond Requirements of the Bonds and any parity securities Outstanding from time to time; but at any time any moneys in excess of the Minimum Bond Reserve in the Reserve Fund may be withdrawn therefrom. Moneys in the Reserve Fund may be used to pay Credit Facility Obligations only if no Bonds or other parity securities payable from Net Pledged Revenues are Outstanding.

Section 509. Rebate Fund. Fourthly, there shall be deposited into the special and separate account hereby created and to be known as the "City of Colorado Springs, Colorado, Utilities System Revenue Bonds, Series 1995A Rebate Fund" moneys in the amounts and at the times specified in the Tax Compliance Certificate so as to enable the City to comply with Section 834 hereof. Amounts on deposit in the Rebate Fund shall not be subject to the lien and pledge of this ordinance to the extent that such amounts are required to be paid to the United States Treasury. The City shall cause amounts on deposit in the Rebate Fund to be forwarded to the United States Treasury (at the address provided in the Tax Compliance Certificate) at the times and in the amounts set forth in the Tax Compliance Certificate.

If the moneys on deposit in the Rebate Fund are insufficient for the purposes thereof, the City shall transfer moneys in the amount of the insufficiency to the Rebate Fund from the Acquisition Fund and, to the extent permitted by Section 507 hereof, from the Reserve Fund and the Bond Fund. Upon receipt by the City of an opinion of nationally recognized bond counsel acceptable to the City to the effect that the amount in the Rebate Fund is in excess of the amount required to be contained therein, such excess shall be transferred to the Income Fund.

Section 510. Payment of Additional Securities. Fifthly, and subject to the provisions hereinabove in this Article, but subsequent to the payments required by Sections 505, 506 and 509 hereof, any moneys remaining in the Income Fund may be used by the City for the payment of Bond Requirements of subordinate securities, including reasonable reserves for such subordinate securities and for rebate of amounts to the United States Treasury with respect to such subordinate securities, and any subordinate Credit Facility Obligations.

Section 511. Use of Remaining Revenues. After the payments hereinabove required to be made by Sections 502 through 510 hereof are made, any remaining Net Pledged Revenues in the Income Fund shall be used, firstly, for any one or any combination of necessary purposes relating to the operation, improvement or debt management of the System and, secondly, to the extent of any remaining surplus, for any one or any combination of lawful purposes as the Council may from time to time conclusively determine.

ARTICLE VI

GENERAL ADMINISTRATION

Section 601. Administration of Accounts. The special accounts designated in Articles IV and V hereof shall be administered as provided in this Article (but not any account under Section 901 hereof).

Section 602. Places and Times of Deposits. Except as hereinafter provided, each of such special accounts shall be maintained as a book account and kept separate from all other accounts as a trust account solely for the purposes herein designated therefor. The moneys accounted for in such special book accounts shall be in one bank account or more in one or more commercial banks; provided that with respect to the Income Fund an amount not exceeding an aggregate of $75,000 may be in one or more banks which is not a commercial bank. Each such bank account shall be continuously secured to the fullest extent required or permitted by the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes. Each periodic payment shall be credited to the proper book account not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding secular day. Notwithstanding any other provision herein to the contrary, (i) moneys shall be deposited with the Paying Agent for the Bonds, and the paying agent or agents for the parity securities, at least one day prior to each interest payment date herein designated in amounts sufficient to pay the Bond Requirements then becoming due on the Outstanding securities and (ii) if required by the ordinance pursuant to which any parity securities are authorized, moneys to be deposited in the Bond Fund or the Reserve Fund with respect to such parity securities may be deposited with the paying agent for such parity securities at the times designated by such ordinance and held by such paying agent in separate subaccounts of the Bond Fund and the Reserve Fund for the benefit of the holders of such parity securities which separate subaccounts shall, for all purposes of this ordinance, be part of the Bond Fund or the Reserve Fund, as the case may be but, if so provided in the ordinance pursuant to which such parity securities are issued, shall not be available to pay the Bond Requirements of any securities other than the designated parity securities. If any separate subaccounts shall not be available to pay the Bond Requirements of any securities other than the designated parity securities pursuant to clause (ii) of the immediately preceding sentence, the Reserve Fund, without regard to any such separate subaccount, shall be accumulated and reaccumulated in accordance with Section 506 hereof to the Minimum Bond Reserve with respect to all parity securities Outstanding other than the designated parity securities for which the separate subaccount is established.

Section 603. Investment of Moneys. Any moneys in such special accounts and not needed for immediate use shall be invested or reinvested by the Controller in:

A. Federal Securities;

B. Bonds or other interest bearing obligations which are a direct obligation of the State, any county or school district of the State, or any city, county or city and county of the State which are rated AA or its equivalent or higher by a nationally recognized rating agency;

C. Repurchase agreements which are fully secured by Federal Securities which Federal Securities are in the physical possession of the City or of the trust department of any bank or savings and loan association insured by the Federal Deposit Insurance Corporation (or any successor thereto) pursuant to a written agreement with the City or in which Federal Securities the City or such trust department has the sole, fully perfected first priority security interest; and

D. Time deposits or demand deposits in and certificates of deposits of banks and savings and loan associations appropriately secured according to the laws of the State.

All such investments shall (i) either be subject to redemption at any time at a fixed value by the holder thereof at the option of such holder, or (ii) mature not later than the estimated date or respective dates on which the proceeds are to be expended as estimated by the Controller at the time of such investment or reinvestment, but such Investment Securities shall mature from the date of such investment or reinvestment not later than the respective times hereinafter designated for the respective accounts, as follows:

	Accounts	Maximum Period
(1)	The Reserve Fund:	10 years
(2)	Any account or accounts to which are credited only surpluses under Section 511 hereof:	15 years
(3)	The Rebate Fund:	5 years
(4)	All other accounts other than any account governed by Section 901 hereof:	2 years

For the purpose of any such investment or reinvestment, Investment Securities shall be deemed to mature at the earliest date on which the obligor is, on demand, obligated to pay a fixed sum in discharge of the whole of such obligations.

Section 604. Scheduling Acquisition Fund Disbursements. Before there are invested or reinvested any moneys accounted for in an Acquisition Fund, the Director shall furnish to the Controller a schedule of the amounts and times when funds are estimated by the Director to be needed to pay the Cost of an Improvement Project. The Controller may conclusively rely upon the estimates contained in such schedule or any addendum thereto, and shall have no liability or responsibility for any loss on any investment or reinvestment made or changed in accordance with any such schedule or any addendum thereto.

Section 605. Accounting for Investments. The Investment Securities so purchased as an investment or reinvestment of moneys in any such account hereunder shall be deemed at all times to be a part of the account. Except as herein otherwise provided, any interest or other gain from any investments and reinvestments in Investment Securities pursuant to this Article shall be credited to the account, and any loss in any account resulting from any such investments or reinvestments in Investment Securities shall be charged or debited to the account; but any gain from any investment or reinvestment of moneys accounted for in the Reserve Fund in excess of the Minimum Bond Reserve (as well as any such excess resulting from other than any investments or reinvestments) shall be credited to the Income Fund and whenever the Minimum Bond Reserve is not fully accumulated or reaccumulated, if the City is current in its accumulation or reaccumulation of the Minimum Bond Reserve at the rate or rates provided in Section 506 hereof, any gain from the investment or reinvestment of moneys accounted for in the Reserve Fund may be directly credited to the Income Fund or remain in the Reserve Fund for subsequent transfer to the Income Fund or the Rebate Fund as permitted by Section 507 hereof, as the Controller may from time to time determine. No loss or profit in any account on any investments or reinvestments in Investment Securities shall be deemed to take place as a result of market fluctuations of the Investment Securities prior to the sale or maturity thereof. In the computation of the amount in any account for any purpose hereunder, except as herein otherwise expressly provided or for rebate purposes, as described in the Tax Compliance Certificate, Investment Securities shall be valued at the cost thereof (including any amount paid as accrued interest at the time of purchase of the obligation); provided that any time or demand deposits shall be valued at the amounts deposited, in each case exclusive of any accrued interest or any other gain to the City until such gain is realized by the presentation of matured coupons for payment or otherwise.

Section 606. Redemption or Sale of Investment Securities. The Controller shall present for redemption or sale on the prevailing market at the best price obtainable any Investment Securities so purchased as an investment or reinvestment of moneys in the account whenever it shall be necessary in order to provide moneys to meet any withdrawal, payment or transfer from such account. Neither the Controller or any other officer of the City shall be liable or responsible for any loss resulting from any such investment or reinvestment made in accordance with this ordinance. The Controller shall promptly notify the Director and the Manager of any gain or loss in any account and the Council of any substantial loss in any account.

Section 607. Character of Funds. The moneys in any account herein authorized shall consist either of lawful money of the United States or Investment Securities, or both such money and such Investment Securities. Moneys deposited in a demand or time deposit account in a bank or savings and loan association, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.

Section 608. Accelerated Payments. Nothing herein prevents the accumulation in any account herein designated of any monetary requirements at a faster rate than the rate or minimum rate provided therefor in Article V hereof, as the case may be; but no payment shall be so accelerated if such acceleration shall cause the City to default in the payment of any obligation of the City pertaining to the Gross Pledged Revenues or the System.

Section 609. Payment of Securities Requirements. The moneys credited to any account designated in Article V hereof for the payment of the Bond Requirements due in connection with the Bonds or other securities payable from the Net Pledged Revenues or Credit Facility Obligations relating thereto and herein or hereafter authorized shall be used, without requisition, voucher, warrant or further order or authority (other than is contained herein), or any other preliminaries, to pay promptly the Bond Requirements payable from such account as such securities become due, upon the respective Redemption Dates, if any, on which the City is obligated to pay such securities, and upon the respective interest payment and maturity dates of such securities, as provided therefor herein or otherwise and to pay promptly the Person providing any Credit Facility the Credit Facility Obligations owed to such Person when due as provided in the ordinance authorizing the securities to which the Credit Facility relates, except to the extent any other moneys are available therefor.

Section 610. Payment of Redemption Premiums. Notwithstanding any other provision herein, this ordinance requires the accumulation in any account designated in Article V hereof for the payment of the Bonds or other securities payable from the Net Pledged Revenues of amounts sufficient to pay not only the principal thereof and interest thereon but also the prior redemption premiums due in connection therewith, as the same become due, whenever the City shall have exercised or shall have obligated itself to exercise a prior redemption option pertaining thereto, except to the extent provision is otherwise made therefor, if any prior redemption premium is due in connection therewith. In such event moneys shall be deposited into such account in due time for the payment of all such Bond Requirements without default as the same become due.

ARTICLE VII

SECURITIES LIENS AND ADDITIONAL SECURITIES

Section 701. First Lien Bonds. The Bonds, subject to the payment of all necessary and reasonable operation and maintenance expenses of the System, constitute an irrevocable and first lien (but not necessarily an exclusively first lien) upon the Net Pledged Revenues.

Section 702. Equality of Bonds. The Bonds and any parity securities heretofore issued or hereafter authorized to be issued and from time to time Outstanding and any parity Credit Facility Obligations relating thereto are equitably and ratably secured by a lien on the Net Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Net Pledged Revenues regardless of the time or times of the issuance of the Bonds and any other such parity securities or parity Credit Facility Obligations, it being the intention of the Council that there shall be no priority among the Bonds and any such parity securities and any parity Credit Facility Obligations relating thereto regardless of the fact that they may be actually issued and delivered at different times, except that moneys in an Acquisition Fund shall secure only the series of parity securities and parity Credit Facility Obligations relating to such Acquisition Fund.

Section 703. Issuance of Parity Securities. Nothing herein prevents the issuance by the City of additional securities payable from the Net Pledged Revenues and constituting a lien thereon on a parity with, but not prior nor superior to, the lien thereon of the Bonds; but before any such additional parity securities, except as provided in Sections 708 and 709 hereof, are authorized or actually issued:

A. Absence of Default. At the time of the adoption of the ordinance authorizing the issuance of the additional securities, the City shall not be in default in making any payments required by Article V hereof.

B. Capital Improvements - Historic Earnings Test. If the additional parity securities are to be issued to finance Capital Improvements, the Net Pledged Revenues derived in the Fiscal Year immediately preceding the date of issuance of the additional parity securities shall be not less than 130% of the average annual principal and interest requirements of the Outstanding Bonds, any Outstanding parity securities and the parity securities proposed to be issued, except as hereinafter otherwise expressly provided.

C. Capital Additions - Engineering Report. (i) Initial Issue. If the additional parity securities are to be issued to finance a Capital Addition, the City shall have complied with the conditions set forth in subsections A and B above and, in addition, the City shall have obtained:

(a) from an Independent Engineer a comprehensive engineering report for the Capital Addition to be financed ("Engineering Report"), which report shall (i) contain (1) detailed estimates of the cost of acquiring and constructing the Capital Addition, (2) the estimated date the acquisition and construction of the Capital Addition will be completed and commercially operative, and (3) a detailed analysis of the impact of the Capital Addition on the financial operations of the System during the construction thereof and for at least three Fiscal Years after the date the Capital Addition is estimated to become commercially operative, and (ii) conclude that (1) the Capital Addition is necessary and will substantially increase the capacity, or is needed to replace existing facilities, or constitutes new transmission facilities to meet current and projected demands for the service or product to be provided thereby, and (2) the estimated cost of providing the service or product from the Capital Addition will be reasonable in comparison with projected costs for furnishing such service or product from other reasonably available sources; and

(b) a certificate of an Independent Engineer to the effect that, based on the Engineering Report prepared for the Capital Addition, the projected Net Pledged Revenues for each of the three Fiscal Years subsequent to the date the Capital Addition is estimated to become commercially operative (as estimated in the Engineering Report) will be not less than 130% of the average annual principal and interest requirements of the Outstanding Bonds, any Outstanding parity securities and the parity securities proposed to be issued, and all parity securities estimated to be issued, if any, during the period from the date the first series of parity securities for the Capital Addition is to be delivered through the third Fiscal Year subsequent to the date the Capital Addition is estimated to become commercially operative, for all Capital Improvements and for all Capital Additions then in progress or then being initiated.

(ii) Completion Issues. Once a Capital Addition has been initiated by meeting the conditions precedent of this subsection C and the initial parity securities delivered therefor, the City reserves the right to issue additional parity securities to finance the costs of such Capital Addition in such amounts as may be necessary to complete the acquisition and construction thereof and make the same commercially operative upon compliance with the condition set forth in subsection A above but without satisfaction of any other conditions precedent of this subsection C except as hereafter provided but subject to satisfaction of the following conditions precedent:

(a) the City shall make a forecast (the "Forecast") of the operations of the System demonstrating the System's ability to pay all obligations payable from the Net Pledged Revenues to be Outstanding after the issuance of the additional parity securities then being issued for the period (the "Forecast Period") of each ensuing Fiscal Year through the third Fiscal Year subsequent to the latest estimated date the Capital Addition then being financed is expected to be commercially operative, and

(b) an Independent Engineer shall review such Forecast and execute a certificate to the effect that such Forecast is reasonable, that the conclusions set forth in the Engineering Report with respect to the requirements of subparagraph (i)(a)(ii) of this subsection C continue to exist and, based on the Forecast (and such other factors deemed to be relevant), the Net Pledged Revenues will be adequate to pay all the obligations payable from the Net Pledged Revenues to be Outstanding after the issuance of the additional parity securities then being issued for the Forecast Period.

With reference to the securities anticipated and estimated to be issued or incurred, the annual principal and interest requirements therefor shall be those estimated and computed by the Controller. In the preparation of the Engineering Report required in subparagraph (i)(a) above of this subsection C, the Independent Engineer may rely on other experts or professionals, including those in the employment of the City, provided such Engineering Report discloses the extent of such reliance. In connection with the issuance of additional parity securities for Capital Additions, the certificate of the Controller and Independent Engineer, together with the Engineering Report and the certificates evidencing compliance with subsections A and B above for the initial issue and the Forecast, the certificate evidencing compliance with subsection A and the certificate of the Independent Engineer for a subsequent issue, shall be conclusive evidence and the only evidence required to show compliance with the provisions and requirements of this subsection C.

D. Adjustment of Gross Pledged Revenues. In any computation under subsections B or C of this Section, the amount of the Gross Pledged Revenues for the applicable period shall be decreased and may be increased by the amount of loss or gain conservatively estimated by an Independent Accountant, Independent Engineer or the City, as the case may be, which results from any changes which became effective not less than 60 days prior to the last day of the period for which Gross Pledged Revenues are determined in any schedule of fees, rates and other charges constituting Gross Pledged Revenues based on the number of users during the applicable period as if such modified schedule of fees, rates and other charges shall have been in effect during such entire time period. But the Gross Pledged Revenues need not be decreased by the amount of any such estimated loss to the extent the Independent Accountant, the Independent Engineer or the Director estimates the loss is temporary in nature or will be offset within a reasonable temporary period by an increase in revenues or a reduction in operation and maintenance expenses not otherwise included in the calculations under this Section, but not by a reduction of any such net loss to below zero, and estimates any loss under this sentence will not at any time materially and adversely affect the City's apparent ability to comply with the rate maintenance covenant stated in Section 823 hereof without modification because of any restrictive legislation, regulation or other action under the police power exercised by any governmental body.

E. Reduction of Annual Requirements. The respective annual Bond Requirements (including as such a requirement the amount of any prior redemption premiums due on any Redemption Date as of which the City shall have exercised or shall have obligated itself to exercise its prior redemption option by a call of securities for payment then) shall be reduced to the extent such Bond Requirements are scheduled to be paid in each of the respective Bond Years with moneys held in trust or in escrow for that purpose by any trust bank located within or without the State, including the known minimum yield from any investment in Federal Securities and any bank deposits, including any certificate of deposit.

F. Consideration of Additional Expenses. In determining whether or not additional parity securities may be issued as aforesaid, consideration shall be given to any probable increase (but not reduction) in the operation and maintenance expenses of the System as estimated by the Director that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the additional securities; but the Director may reduce any such increase in operation and maintenance expenses but not below zero by the amount of any increase in revenues or any reduction in operation and maintenance expenses resulting from the Capital Improvements or Capital Additions to which such expenditure relates and not otherwise included in the calculations under this Section, if the Director also opines that any such reduction in any such increase in operation and maintenance expenses will not materially and adversely affect the City's apparent ability to comply with the rate maintenance covenant stated in Section 823 hereof without modification because of any restrictive legislation, regulation or other action under the police power exercised by any governmental body.

Section 704. Certification of Revenues. A written certificate or written opinion by an Independent Accountant under Section 703B and Section 703(C)(i) hereof, an Independent Engineer under Section 703(C)(i) hereof and the City and the Independent Engineer under Section 703(C)(ii) hereof that such annual revenues, when adjusted as hereinabove provided in subsections D, E and F of Section 703 hereof, are sufficient to pay such amounts, as provided in subsection B or C of Section 703 hereof, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver additional securities on a parity with the Bonds.

Section 705. Subordinate Securities Permitted. Nothing herein prevents the City from issuing additional securities payable from the Net Pledged Revenues and having a lien thereon subordinate, inferior and junior to the lien thereon of the Bonds.

Section 706. Superior Securities Prohibited. Nothing herein permits the City to issue additional securities payable from the Net Pledged Revenues and having a lien thereon prior and superior to the lien thereon of the Bonds.

Section 707. Use of Proceeds. The proceeds of any additional parity securities (other than any parity refunding securities issued to refund parity securities, subordinate securities, parity Credit Facility Obligations or subordinate Credit Facility Obligations) payable from any Net Pledged Revenues shall be used only to pay the Cost of an Improvement Project.

Section 708. Issuance of Refunding Securities. At any time after the Bonds, or any part thereof, are issued and remain Outstanding, if the Council shall find it desirable to refund any Outstanding Bonds or any subordinate securities heretofore or hereafter issued, such Bonds or such subordinate securities, or any part thereof, may be refunded, subject to the provisions of Section 709 hereof, if (1) the Bonds or subordinate securities so to be refunded, at the time or times of their required surrender for payment, shall then mature or shall be then callable for prior redemption at the City's option upon proper call, or (2) the holder or holders of all Outstanding Bonds or such subordinate securities so to be refunded consent to such surrender and payment.

Section 709. Protection of Securities Not Refunded. Any refunding securities payable from any Net Pledged Revenues shall be issued with such details as the Council may by ordinance provide so long as there is no impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such Outstanding securities of any one or more issues; but so long as the Bonds, or any part thereof, are Outstanding, refunding securities payable from any Net Pledged Revenues may be issued on a parity with the unrefunded Bonds only if:

A. Prior Consent. The City first receives the consent of the holder or holders of the unrefunded portion of such Bonds; or

B. Requirements Not Increased. The combined maximum annual principal and interest requirements for all Bonds and other parity securities Outstanding immediately after the issuance of the refunding securities is not greater than the combined maximum annual principal and interest requirements for all Bonds and other parity securities Outstanding immediately prior to the issuance of the refunding securities and the lien of any refunding parity securities on the Net Pledged Revenues is not raised to a higher priority than the lien thereon of any securities thereby refunded; or

C. Earnings Test. The refunding securities are issued in compliance with Section 703B hereof; provided that any refunding securities issued to refund securities which were issued to finance a Capital Addition, or to refund refunding securities which were issued to refund securities which were issued to finance a Capital Addition, may be issued prior to the commercial operation date of such Capital Addition upon compliance with the test stated in Section 703C(ii) hereof.

ARTICLE VIII

MISCELLANEOUS PROTECTIVE COVENANTS

Section 801. General. The City hereby particularly covenants and agrees with the holders of the Bonds and makes provisions which shall be a part of its contract with such holders to the effect and with the purpose set forth in the following provisions and Sections of this Article.

Section 802. Performance of Duties. The City, acting by and through the Council or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Gross Pledged Revenues and the System required by the Constitution and laws of the State and the Charter and various ordinances of the City, including, without limitation, the making and collection of reasonable and sufficient fees, rates and other charges for services rendered or furnished by or the use of the System, as herein provided, and the proper segregation of the proceeds of the Bonds and of any securities hereafter authorized and the Gross Pledged Revenues and their application from time to time to the respective accounts provided therefor.

Section 803. Contractual Obligations. The City shall perform all contractual obligations undertaken by it under any agreements relating to the Bonds, the Gross Pledged Revenues, the Project or the System, or any combination thereof, with any other Persons.

Section 804. Further Assurances. At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Gross Pledged Revenues and other moneys and accounts hereby pledged or assigned, or intended so to be, or which the City may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this ordinance and to comply with any instrument of the City amendatory thereof, or supplemental thereto and the Charter. The City, acting by and through the Council, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Gross Pledged Revenues and other moneys and accounts pledged hereunder and all the rights of every holder of any Bond hereunder against all claims and demands of all Persons whomsoever.

Section 805. Conditions Precedent. Upon the date of issuance of any Bonds, all conditions, acts and things required by the Federal or State Constitution or the Charter of the City or by this ordinance to exist, to have happened and to have been performed precedent to or in the issuance of the Bonds shall exist, have happened, and have been performed; and the Bonds, together with all other obligations of the City, shall not contravene any debt or other limitation prescribed by the State Constitution or the Charter of the City.

Section 806. Efficient Operation and Maintenance. The City shall at all times operate the System properly and in a sound and economical manner; and the City shall maintain, preserve and keep the same properly or cause the same so to be maintained, preserved and kept, with the appurtenances and every part and parcel thereof in good repair, working order and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the City in connection with the maintenance, repair and operation of the System shall be reasonable and proper.

Section 807. Rules, Regulations and Other Details. The City, acting by and through the Council, shall establish and enforce reasonable rules and regulations governing the operation, use and services of the System. The City shall observe and perform all of the terms and conditions contained in this ordinance and the Charter, except to the extent it is superseded by any other ordinance of the City or by the Charter, and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System or to the City.

Section 808. Payment of Governmental Charges. The City shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System, or upon any part thereof, or upon any portion of the Gross Pledged Revenues, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The City shall not create or suffer to be created any lien upon the System, or any part thereof, or upon the Gross Pledged Revenues, except the pledge and lien created by this ordinance for the payment of the Bond Requirements due in connection with the Bonds, and except as herein otherwise permitted. The City shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within 60 days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System, or any part thereof, or the Gross Pledged Revenues; but nothing herein requires the City to pay or cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

Section 809. Protection of Security. The City, the officers, agents and employees of the City, and the Council shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Bond Requirements of the Bonds and any other securities payable from the Net Pledged Revenues or any Credit Facility Obligation relating thereto according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any holder of any Bond or other security payable from Net Pledged Revenues or any Credit Facility Obligation relating thereto might be prejudicially and materially impaired or diminished.

Section 810. Prompt Payment of Bonds. The City shall promptly pay the Bond Requirements of every Bond issued hereunder and secured hereby at the places, on the dates and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

Section 811. Use of Bond and Reserve Funds. The Bond Fund and the Reserve Fund shall be used solely and only and the moneys credited to such accounts are hereby pledged for the purpose of paying the Bond Requirements of the Bonds and any parity securities heretofore issued or hereafter authorized and Outstanding to their respective maturities or any Redemption Date or Redemption Dates on which the City is obligated to redeem the Bonds and any parity securities and for the purpose of paying any parity Credit Facility Obligation relating to any parity securities on the dates due, subject to the provisions of Sections 506, 507, 508, 605 and 901 hereof.

Section 812. Other Liens. Other than as provided herein, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Gross Pledged Revenues on a parity with or superior to the lien thereon of the Bonds.

Section 813. Corporate Existence. The City shall maintain its corporate identity and existence so long as any of the Bonds remain Outstanding, unless another body corporate and politic by operation of law succeeds to the powers, privileges, rights, liabilities, disabilities, duties and immunities of the City and is obligated by law to operate and maintain the System and to fix and collect the Gross Pledged Revenues as herein provided without adversely and materially affecting at any time the privileges and rights of any holder of any Outstanding Bond or other Outstanding security payable from any Net Pledged Revenues or any Credit Facility Obligation relating thereto.

Section 814. Disposal of System Prohibited. Except for the use of the System and services pertaining thereto in the normal course of business, neither all nor a substantial part of the System shall be sold, leased, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until all the Bonds have been paid in full, as to all Bond Requirements, or unless provision has been made therefor, or until the Bonds have otherwise been redeemed, including, without limitation, the termination of the pledge as herein authorized; and the City shall not dispose of its title to the System or to any useful part thereof, including any property necessary to the operation and use of the System and the lands and interests in lands comprising the sites of the System, except as provided in Section 815 hereof.

Section 815. Disposal of Unnecessary Property. The City at any time and from time to time may sell, exchange, lease or otherwise dispose of any property constituting a part of the System and not useful in the construction, reconstruction or operation thereof, or which shall cease to be necessary for the efficient operation of the System, or which shall have been replaced by other property of at least equal value. Any proceeds of any such sale, exchange or other disposition received and not used to replace such property so sold or so exchanged or otherwise so disposed of, shall be deposited by the City in the Income Fund or into a special book account for betterment, enlargement, extension, other improvement and equipment of the System, or any combination thereof, as the Council may determine, and any proceeds of any such lease received shall be deposited by the City as Gross Pledged Revenues in the Income Fund.

Section 816. Competing System. So long as any of the Bonds are Outstanding, the City shall not grant any franchise or license to any competing facilities so that the Gross Pledged Revenues shall not be sufficient to meet the minimum requirement of the rate maintenance covenant in Section 823 hereof.

Section 817. Loss From Condemnation. If any part of the System is taken by the exercise of the power of eminent domain, the amount of any award received by the City as a result of such taking shall be paid into the Income Fund or such a capital improvement account pertaining to the System for the purposes thereof, or shall be applied to the redemption of the Outstanding Bonds and any Outstanding parity securities or parity Credit Facility Obligations relating thereto in accordance with the provisions hereof and of any other ordinance pertaining to the issuance of such parity securities at maturity or prior thereto if the authorizing proceedings authorize the prior redemption of such securities, including the Bonds, respectively, or held as a reserve for deposit subsequently into such a capital improvement account or for such prior redemption of securities or for both such deposit and such redemption, as the Council may determine.

Section 818. Competent Management. The City shall employ experienced and competent management personnel for the System, who shall have full control over the System and shall operate the System for the City, subject to the reasonable control and direction of the Council.

Section 819. Employment of Management Engineers. If the City defaults in paying the Bond Requirements of the Bonds and any other securities or Credit Facility Obligations relating thereto payable from the Gross Pledged Revenues promptly as the same fall due, or in the keeping of any covenants herein contained, and if such default continues for a period of 60 days, or if the Net Pledged Revenues in any Fiscal Year fail to equal at least the amount of the Bond Requirements of the Outstanding Bonds and any other securities (including all reserves therefor specified in the authorizing proceedings, including, without limitation, this ordinance) or Credit Facility Obligations relating thereto payable from the Net Pledged Revenues in the Comparable Bond Year, the City shall retain a firm of competent management engineers skilled in the operation of such facilities to assist the management of the System so long as such default continues or so long as the Net Pledged Revenues are less than the amount hereinabove designated in this Section.

Section 820. Fidelity Bonds. Each official of the City or other individual having custody of any Gross Pledged Revenues or of any other moneys pertaining to the System, including, without limitation, Bond proceeds, or responsible for the handling of such moneys shall be fully bonded at all times, which bond shall be conditioned upon the proper application of such moneys (but need not necessarily be limited thereto).

Section 821. Budgets. The Council and officials of the City shall annually and at such other times as may be provided by law prepare and adopt a budget pertaining to the System.

Section 822. Reasonable and Adequate Charges. While the Bonds and any other securities payable from the Net Pledged Revenues or Credit Facility Obligations relating thereto remain Outstanding and unpaid, the fees, rates and other charges due to the City for the use of or otherwise pertaining to and services rendered by the System to the City, to its inhabitants and to all other users within and without the boundaries of the City shall be reasonable and just, taking into account and consideration public interests and needs, the cost and value of the System, the operation and maintenance expenses thereof, and the amounts necessary to meet the Bond Requirements of all Bonds and any other securities payable from the Net Pledged Revenues, including, without limitation, reserves and any replacement accounts therefor, and, without duplication, Credit Facility Obligations relating thereto.

Section 823. Adequacy and Applicability of Charges. There shall be charged against users of service pertaining to and users of the System, including the City, except as provided by Section 824 hereof, such fees, rates and other charges so that the Gross Pledged Revenues shall be adequate to meet the requirements of this and the preceding Sections hereof. Such charges pertaining to the System shall be at least sufficient so that the Gross Pledged Revenues annually are sufficient to pay in each Fiscal Year:

A. Operation and Maintenance Expenses. An amount equal to the annual operation and maintenance expenses for such Fiscal Year,

B. Principal and Interest. An amount equal to 130% of both the principal and interest on the Bonds and any other parity securities then Outstanding payable from the Net Pledged Revenues in the Comparable Bond Year (excluding the reserves therefor) using the same assumptions as are set forth in Section 505 hereof with respect to Variable Rate Bonds, Balloon Bonds and Tender Bonds and, without duplication, parity Credit Facility Obligations relating to any such other securities, and

C. Deficiencies. Any amounts required to meet then existing deficiencies pertaining to any fund or account relating to the Gross Pledged Revenues or any securities payable therefrom.

Section 824. Limitations Upon Free Service. No free service or facilities shall be furnished by the System, except as hereinafter provided. If the City elects to use for municipal purposes any water, water facilities, electricity, gas or sanitary sewer facilities or otherwise to use the System or any part thereof, any such use will be paid for from the City's general fund or from other available revenues other than Gross Pledged Revenues at the reasonable value of the use so made, but during any month in which surplus revenues from the System are available for use pursuant to Section 511 hereof, the City need not pay for any such use by the City of any facilities of the water system. All the income so derived from the City shall be deemed to be income derived from the operation of the System, to be used and to be accounted for in the same manner as any other income derived from the operation of the System.

Section 825. Levy of Charges. The City shall forthwith and in any event prior to the delivery of any of the Bonds, fix, establish and levy the fees, rates and other charges which are required by Section 823 of this ordinance, if such action is necessary therefor. No reduction in any initial or existing rate schedule for the System may be made:

A. Proper Application. Unless the City has fully complied with the provisions of Article V of this ordinance for at least the full Fiscal Year immediately preceding such reduction of the initial or any other existing rate schedule; and

B. Sufficient Revenues. Unless the audit required by the Independent Accountant by Section 830 hereof for the full Fiscal Year immediately preceding such reduction discloses that the estimated revenues resulting from the proposed rate schedule for the System, after the schedule's proposed reduction, shall be at least sufficient to pay:

(1) An amount equal to the operation and maintenance expenses of the System for the next subsequent Fiscal Year, and

(2) An amount sufficient to satisfy the covenant contained in Section 823B and C hereof.

Section 826. Collection of Charges. The City shall cause all fees, rates and other charges pertaining to the System to be collected as soon as is reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment of such charges, and for the use of the System, and shall provide methods of collection and penalties, to the end that the Gross Pledged Revenues shall be adequate to meet the requirements of this ordinance and any other ordinance supplemental thereto.

Section 827. Procedure for Collecting Charges. All bills for water, electric, gas and wastewater service or facilities furnished or served by or through the System shall be rendered to customers on a regularly established basis. The fees, rates and other charges due shall be collected in a lawful manner, including, without limitation, discontinuance of service.

Section 828. Maintenance of Records. So long as any of the Bonds and any other securities or Credit Facility Obligations relating thereto payable from the Gross Pledged Revenues remain Outstanding, proper books of record and account shall be kept by the City, separate and apart from all other records and accounts.

Section 829. Inspection of Records. The Purchasers shall have the right at all reasonable times to inspect all records, accounts and data relating thereto, concerning the System or the Gross Pledged Revenues, or both, to make copies of such records, accounts and data, and to inspect the System and all properties comprising the System.

Section 830. Audits Required. The City, within 60 days following the close of each Fiscal Year, shall order an audit for the Fiscal Year of such books and accounts to be made forthwith by an Independent Accountant, and order an audit report showing the receipts and disbursements for each account pertaining to the System or to the Gross Pledged Revenues, or to both. Each such audit report shall be available for inspection by the Purchasers or any holder of any of the Bonds.

Section 831. Accounting Principles. System records and accounts, and audits thereof, shall be currently kept and made, as nearly as practicable, in accordance with the then generally accepted accounting principles, methods and terminology followed and construed for utility operations comparable to the System, except as may be otherwise provided herein or required by applicable law or regulation or by contractual obligation existing on the effective date of this ordinance.

Section 832. Distribution of Audit Reports. The City agrees to furnish by first-class mail, postage prepaid, forthwith, and in any event within 90 days from the time each audit report is prepared and filed with the City, a copy of such report to any holder owning not less than $100,000 in aggregate principal amount of any of the Outstanding Bonds or any other Outstanding securities payable from the Gross Pledged Revenues at his or her request, and without request to:

A. Purchasers. The Purchasers, or any successor thereof known to the Treasurer,

B. Paying Agent. The Paying Agent, or any successor thereof known to the Treasurer, and

C. Others. Any other Person designated in any ordinance or other proceedings pertaining to any Outstanding securities or Credit Facility Obligations payable from the Net Pledged Revenues.

A copy of each such report shall be kept on file in the records of the City for public inspection, and any such holder or other recipient of such report shall have the right to discuss with the Independent Accountant or with the individual making the audit report the contents thereof.

Section 833. Insurance and Reconstruction. Except to the extent of any self-insurance, the City shall at all times maintain with responsible insurers fire and extended coverage insurance, workmen's compensation insurance, public liability insurance and all such other insurance as is customarily maintained with respect to utilities of like character against loss of or damage to the System and against loss of revenues and against public and other liability to the extent reasonably necessary to protect the interests of the City and of each holder of a Bond or any other securities payable from Net Pledged Revenues. If any useful part of the System shall be damaged or destroyed, the City shall, as expeditiously as may be possible, commence and diligently prosecute the repair or replacement of the damaged property so as to restore the same to use. The proceeds of any such insurance shall be payable to the City and (except for proceeds of any use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement and to the extent not so applied shall (together with the proceeds of any such use and occupancy insurance) be deposited in the Income Fund by the City as revenues derived from the operation of the System. If the costs of such repair and replacement of the damaged property exceed the proceeds of such insurance available for the payment of the same, moneys in the Income Fund shall be used to the extent necessary for such purposes, as permitted by Section 511 hereof.

Section 834. Federal Income Tax Exemption. The City covenants for the benefit of the holders of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the City or any facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present State law. In furtherance of this covenant, the City agrees to comply with the procedures set forth in the Tax Compliance Certificate. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the City in fulfilling the above covenant under the Code and Colorado law have been met.

Section 835. Continuing Disclosure Undertaking.

A. Commencing with respect to the fiscal year ended December 31, 1996 and annually thereafter, the City will provide or cause to be provided to each Repository the Annual Financial Information and the Audited Financial Statements. Such Annual Financial Information shall be provided to each Repository on or before May 1 of each year or, in the event of a change in the Fiscal Year, on or before 120 days after the end of the Fiscal Year, and such Audited Financial Statements shall be provided to each Repository annually reasonably promptly after receipt by the City.

B. The City may provide Annual Financial Information and Audited Financial Statements by specific reference to documents previously provided to each Repository or filed with the SEC; provided, however, that if the document so referenced is a final official statement within the meaning of the Rule, such final official statement must be available from the MSRB.

C. The City shall provide, in a timely manner, to the MSRB and each Repository notice of any of the following events with respect to the Bonds, if in the judgment of the City, such event is material:

(i) Principal and interest payment delinquencies;

(ii) Nonpayment related defaults;

(iii) Unscheduled draws on debt service reserves reflecting financial difficulties;

(iv) Unscheduled draws on credit enhancements reflecting financial difficulties;

(v) Substitution of credit or liquidity providers, or their failure to perform;

(vi) Adverse tax opinions or events affecting the tax-exempt status of the Bonds;

(vii) Modifications to rights of Bondholders;

(viii) Bond calls (other than mandatory sinking fund redemptions);

(ix) Defeasances;

(x) Release, substitution or sale of property, if any, securing repayment of the Bonds; and

(xi) Rating changes.

D. The City shall provide, in a timely manner, to the MSRB and each Repository notice of any failure of the City to timely provide the Annual Financial Information as specified in subsection A of this Section.

E. The obligations of the City under this Section shall be for the benefit of the holders of the Bonds. Any holder of the Bonds then Outstanding may enforce specific performance of such obligations by any judicial proceeding available. Breach of the obligations of the City under this Section shall not constitute an event of default under Section 1003 hereof and none of the rights and remedies provided by Section 1004 hereof shall be available to the Bondholders in the event of such breach.

F. The undertaking contained in this Section shall be in effect from and after the issuance and delivery of the Bonds and shall extend to the earlier of (i) the date all principal and interest on the Bonds shall have been deemed paid pursuant to the terms of this ordinance; (ii) the date that the City shall no longer constitute an "obligated person" within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this written undertaking are held to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds.

ARTICLE IX

MISCELLANEOUS

Section 901. Defeasance. When all Bond Requirements of the Bonds have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be Outstanding within the meaning of this ordinance. There shall be deemed to be such due payment when the City has placed in escrow or in trust with a trust bank located within or without the State, an amount sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to meet all Bond Requirements of the Bonds, as the same become due to the final maturities of the Bonds or upon any Redemption Date as of which the City shall have exercised or shall have obligated itself to exercise its prior redemption option by a call of Bonds for payment then. The Federal Securities shall become due prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow or trust, or the Federal Securities shall be subject to redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule.

Section 902. Delegated Powers. The officers and employees of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including, without limitation:

A. Final Certificates. The execution of such certificates as may be reasonably required by the Purchasers, relating, inter alia, to:

(1) The signing of the Bonds,

(2) The tenure and identity of the officials of the City,

(3) The exclusion of interest on the Bonds from gross income for federal income tax purposes,

(4) The delivery of the Bonds and the receipt of the purchase price, and

(5) If it is in accordance with fact, the absence of litigation, pending or threatened, affecting the validity thereof; and

B. Paying Agency Agreement. The execution and delivery of an agreement with the Paying Agent necessary or desirable to evidence the acceptance by the Paying Agent of its duties hereunder.

Section 903. Evidence of Bondholders. Any request, consent or other instrument which this ordinance may require or may permit to be signed and to be executed by the holder of any Bonds or other securities may be in one or more instruments of similar tenor and shall be signed or shall be executed by each such holder in person or by his or her attorney appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the holding by any Person of the securities shall be sufficient for any purpose of this ordinance (except as otherwise herein expressly provided) if made in the following manner:

A. Proof of Execution. The fact and the date of the execution by any holder of any Bonds or other securities or his or her attorney of such instrument may be provided by a certificate, which need not be acknowledged or verified, of an officer of a bank or trust company satisfactory to the Clerk or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act, that the individual signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer; the authority of the individual or individuals executing any such instrument on behalf of a corporate holder of any securities may be established without further proof if such instrument is signed by an individual purporting to be the president or vice president of such corporation with a corporate seal affixed and attested by an individual purporting to be its secretary or an assistant secretary; and the authority of any Person or Persons executing any such instrument in any fiduciary or representative capacity may be established without further proof if such instrument is signed by a Person or Persons purporting to act in such fiduciary or representative capacity; and

B. Proof of Holdings. The amount of Bonds or other securities held by any Person and the numbers, date and other identification thereof, together with the date of his or her holding the securities, shall be proved by the registration records maintained by the Paying Agent or any paying agent for such other securities.

Section 904. Warranty Upon Issuance of Bonds. Any Bonds authorized as herein provided, when duly executed and delivered for the purpose provided for in this ordinance, shall constitute a warranty by and on behalf of the City for the benefit of each and every future holder of any of the Bonds that the Bonds have been issued for a valuable consideration in full conformity with law.

Section 905. Immunities of Purchasers. The Purchasers are under no obligation to any holder of the Bonds for any action that they may or may not take or in respect of anything that they may or may not do by reason of any information contained in any reports or other documents received by them under the provisions of this ordinance. The immunities and exemptions from liability of the Purchasers hereunder extend to their partners, directors, successors, employees and agents.

Section 906. Prior Contracts. If any provision herein is inconsistent with any provision in any existing contract pertaining to the City so as to affect prejudicially and materially the rights and privileges thereunder, so long as such contract shall remain viable and in effect such provision therein shall control such inconsistent provision herein and the latter provision shall be subject and subordinate to such provision in such existing contract.

ARTICLE X

PRIVILEGES, RIGHTS AND REMEDIES

Section 1001. Bondholders' Remedies. Each holder of any Bond shall be entitled to all of the privileges, rights and remedies provided or permitted in the Charter and this ordinance, and as otherwise provided or permitted by law or in equity or by any statutes, except as provided in Sections 202 through 206 hereof, but subject to the provisions herein concerning the pledge of and the covenants and the other contractual provisions concerning the Gross Pledged Revenues and the proceeds of the Bonds.

Section 1002. Right to Enforce Payment. Nothing in this Article affects or impairs the right of any holder of any Bond to enforce the payment of the Bond Requirements due in connection with his or her Bond or the obligation of the City to pay the Bond Requirements of each Bond to the holder thereof at the time and the place expressed in the Bond.

Section 1003. Events of Default. Each of the following events is hereby declared an "event of default," that is to say:

A. Nonpayment of Principal. Payment of the principal of the Bonds is not made when the same becomes due and payable, either at maturity or by proceedings for prior redemption, or otherwise;

B. Nonpayment of Interest. Payment of any installment of interest is not made when the same becomes due and payable or within 30 days thereafter;

C. Incapable to Perform. The City for any reason is rendered incapable of fulfilling its obligations hereunder;

D. Nonperformance of Duties. The City fails to carry out and to perform (or in good faith to begin the performance of) all acts and things lawfully required to be carried out or to be performed by it under any contract relating to the Gross Pledged Revenues or to the System, or otherwise, including, without limitation, this ordinance, and such failure continues for 60 days after receipt of notice from the holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding;

E. Failure to Reconstruct. The City unreasonably delays or fails to carry out with reasonable dispatch the reconstruction of any part of the System which is destroyed or damaged and is not promptly repaired or replaced (whether such failure promptly to repair the same is due to impracticability of such repair or replacement or is due to a lack of moneys therefor or for any other reason), but it shall not be an event of default if such reconstruction is not essential to the efficient operation of the System;

F. Appointment of Receiver. An order or decree is entered by a court of competent jurisdiction with the consent or acquiescence of the City appointing a receiver or receivers for the System or for the Gross Pledged Revenues and any other moneys subject to the lien to secure the payment of the Bonds, or if an order or decree having been entered without the consent or acquiescence of the City is not vacated or discharged or stayed on appeal within 60 days after entry; and

G. Default of Any Provision. The City makes any default in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions contained in the Bonds or in this ordinance on its part to be performed (other than Section 835 hereof), and if such default continues for 60 days after written notice specifying such default and requiring the same to be remedied is given to the City by the holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding.

Section 1004. Remedies for Defaults. Upon the happening and continuance of any of the events of default, as provided in Section 1003 hereof, then and in every case the holder or holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding, including, without limitation, a trustee or trustees therefor, may proceed against the City and its agents, officers and employees to protect and to enforce the rights of any holder of Bonds under this ordinance by mandamus or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award of execution of any power herein granted for the enforcement of any proper legal or equitable remedy as such holder or holders may deem most effectual to protect and to enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any holder of any Bond, or to require the City to act as if it were the trustee of an expressed trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds and any other parity securities and any parity Credit Facility Obligation relating thereto.

Section 1005. Receiver's Rights and Privileges. Any receiver appointed in any proceedings to protect the rights of such holders hereunder, the consent to any such appointment being hereby expressly granted by the City, may enter and may take possession of the System, may operate and maintain the same, may prescribe fees, rates and other charges, and may collect, receive and apply all Gross Pledged Revenues arising after the appointment of such receiver in the same manner as the City itself might do.

Section 1006. Rights and Privileges Cumulative. The failure of any holder of any Outstanding Bond to proceed in any manner herein provided shall not relieve the City, or any of its officers, agents or employees of any liability for failure to perform or carry out any duty, obligation or other commitment. Each right or privilege of any such holder (or trustee thereof) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege thereof.

Section 1007. Duties upon Defaults. Upon the happening of any of the events of default as provided in Section 1003 hereof, the City shall do and perform all proper acts on behalf of and for the holders of Bonds to protect and to preserve the security created for the payment of their Bonds and to insure the payment of the Bond Requirements promptly as the same become due. During any period of default, so long as any of the Bonds issued hereunder are Outstanding, except to the extent it may be unlawful to do so, all Gross Pledged Revenues shall be paid into the Bond Fund. If the City fails or refuses to proceed as in this Section provided, the holder or holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and to enforce the rights of the holders of the Bonds as hereinabove provided, and to that end any such holders of the Outstanding Bonds shall be subrogated to all rights of the City under any agreement, lease or other contract involving the System or the Gross Pledged Revenues entered into prior to the effective date of this ordinance or thereafter while any of the Bonds are Outstanding.

Section 1008. Duties in User's Bankruptcy Proceedings. If any user of the System proceeds under any laws of the United States relating to bankruptcy, including any action under any law providing for corporate reorganization, it shall be the duty of the City, and its appropriate officers are hereby authorized and directed, to take all necessary steps for the benefit of the holders of the Bonds in such proceedings, including, without limitation, the filing of any claims for unpaid fees, rates, other charges and other payments due to the City or otherwise arising from the breach of any of the covenants, terms or conditions of any contract involving the System, unless the Council by resolution or other instrument determines that the costs of such action are likely to exceed the amounts to be thereby recovered from such obligor.

ARTICLE XI

AMENDMENT OF ORDINANCE

Section 1101. Privilege of Amendments. Except as hereafter provided, this ordinance may be amended or supplemented by ordinances adopted by the Council in accordance with law, including the Charter, without receipt by the City of any additional consideration, but with the written consent of the holders of not less than 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance excluding, pursuant to Section 102B hereof, any Bonds which may then be held or owned for the account of the City. Notwithstanding the foregoing, no such ordinance shall permit:

A. Changing Payment. A change in the maturity, terms of redemption or interest payment of any Outstanding Bond; or

B. Reducing Return. A reduction in the principal amount of any Bond or the rate of interest thereon, without the consent of the holder of the Bond; or

C. Prior Lien. The creation of a lien upon or a pledge of revenues ranking prior to the lien or to the pledge created by this ordinance; or

D. Modifying Any Bond. A reduction of the principal amount or percentages or otherwise affecting the description of Bonds the consent of the holders of which is required for any such modification or amendment; or

E. Priorities Between Bonds. The establishment of priorities as between Bonds issued and Outstanding.

Notwithstanding the foregoing provisions of this Section, this ordinance and the rights and obligations of the City and of the holders of the Bonds may also be modified or amended at any time, without the consent of any holders of the Bonds, but only to the extent permitted by law and only for any or all of the following purposes:

(i) to add to the covenants and agreements of the City in this ordinance contained other covenants and agreements thereafter to be observed; or

(ii) to make such provisions for the purpose of curing any ambiguity or of curing or correcting any formal defect or omission in this ordinance, or in regard to questions arising under this ordinance, as the City may deem necessary or desirable, and which shall not adversely affect the interests of the holders of the Bonds.

Notwithstanding the foregoing provisions of this Section, Section 835 hereof and the definitions of terms related to the Rule used in such Section may not be modified or amended except in compliance with the Rule and/or the interpretation thereof by the SEC.

Section 1102. Notice of Amendment. Whenever the Council proposes to amend or modify this ordinance under the provisions of this Article, it shall cause notice of the proposed amendment to be mailed to holders of all Outstanding Bonds at their addresses as the same last appear on the registration records maintained by the Paying Agent. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory ordinance is on file in the office of the Clerk for public inspection.

Section 1103. Time for Amendment. If the ordinance is required to be consented to by the holders of the Bonds, whenever at any time within one year from the date of the giving of such notice there shall be filed in the office of the Clerk an instrument or instruments executed by the holders of at least 66% in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed amendatory ordinance described in such notice and shall specifically consent to and approve the adoption of such ordinance, the Council may adopt such amendatory ordinance and such ordinance shall become effective. If the ordinance is not required to be consented to by the holders of the Bonds, the amendatory ordinance may be adopted by the Council at any time.

Section 1104. Binding Consent to Amendment. If the holders of not less than 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory ordinance requiring consent of the holders of the Bonds, or the predecessors in title of such holders, shall have consented to and approved the adoption thereof as herein provided, no holder of any Bond, whether or not such holder shall have consented to or shall have revoked any consent as in this Article provided, shall have any right or interest to object to the adoption of such amendatory ordinance or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the City from taking any action pursuant to the provisions thereof.

Section 1105. Time Consent Binding. Any consent given by the holder of a Bond pursuant to the provisions of this Article shall be irrevocable for a period of 6 months from the date of the giving of the notice above provided for and shall be conclusive and binding upon all future holders of the same Bond during such period. Such consent may be revoked at any time after 6 months from the date of such giving of such notice by the holder who gave such consent or by a successor in title by filing notice of such revocation with the Clerk, but such revocation shall not be effective if the holders of not less than 66% in aggregate principal amount of the Bonds Outstanding as in this Article provided, prior to the attempted revocation, consented to and approved the amendatory ordinance referred to in such revocation.

Section 1106. Unanimous Consent. Notwithstanding anything in the foregoing provisions of this Article, the terms and provisions of this ordinance or of any ordinance amendatory thereof or supplemental thereto and the rights and the obligations of the City and of the holders of the Bonds thereunder may be modified or amended in any respect upon the adoption by the City and upon the filing with the Clerk of an ordinance to that effect and with the consent of the holders of all the then Outstanding Bonds, such consent to be given as provided in Section 903 hereof; and no notice to holders of Bonds shall be required as provided in Section 1102 hereof, nor shall the time of consent be limited except as may be provided in such consent.

Section 1107. Exclusion of City's Bonds. At the time of any consent or of other action taken under this Article, the City shall furnish to the Clerk a certificate of the Treasurer, upon which the City may rely, describing all Bonds to be excluded for the purpose of consent or of other action or of any calculation of Outstanding Bonds provided for in this Article, and the City shall not be entitled with respect to such Bonds to give any consent or to take any other action provided for in this Article, pursuant to Section 102B hereof.

Section 1108. Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as in this Article provided may bear a notation by endorsement or otherwise in form approved by the Council as to such action; and after the approval of such notation, then upon demand of the holder of any Bond Outstanding and upon presentation of his or her Bond for that purpose at the principal office of the Paying Agent, suitable notation shall be made on such Bond by the Paying Agent as to any such action. If the Council so determines, new Bonds, so modified as in the opinion of the Council conform to such action, shall be prepared, executed, authenticated and delivered; and upon demand of the holder of any Bond then Outstanding, shall be exchanged without cost to such holder for Bonds then Outstanding upon surrender of such Bonds.

Section 1109. Proof of Instruments and Bonds. The fact and date of execution of any instrument under the provisions of this Article, the amount and number of the Bonds held by any Person executing such instrument, and the date of his or her holding the same may be proved as provided by Section 903 hereof.

INTRODUCED AND FINALLY PASSED, SIGNED AND APPROVED AS AN EMERGENCY ORDINANCE, this August 8, 1995.

Mayor

(SEAL)

Attest:

City Clerk

I HEREBY CERTIFY that the foregoing ordinance entitled:

ORDINANCE NO. 95-__
AN EMERGENCY ORDINANCE

AN ORDINANCE DESIGNATED BY THE SHORT TITLE "1995A UTILITIES BOND ORDINANCE"; CONCERNING THE CITY OF COLORADO SPRINGS WATER SYSTEM, ELECTRIC LIGHT AND POWER SYSTEM, GAS SYSTEM AND WASTEWATER SYSTEM, CONSTITUTING THE UTILITIES SYSTEM OF THE CITY; PROVIDING FOR THE EXTENSION, BETTERMENT, OTHER IMPROVEMENT AND EQUIPMENT OF THE UTILITIES SYSTEM; DECLARING THE NECESSITY FOR ISSUING UTILITIES SYSTEM REVENUE BONDS, SERIES 1995A PAYABLE SOLELY OUT OF THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE UTILITIES SYSTEM; AUTHORIZING THE ISSUANCE AND SALE OF SUCH REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF $48,915,000; PROVIDING FOR THE DISPOSITION OF THE REVENUES TO BE DERIVED FROM THE OPERATION OF THE UTILITIES SYSTEM; PROVIDING OTHER DETAILS CONCERNING THE BONDS AND THE UTILITIES SYSTEM, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING SUCH IMPROVEMENT PROJECT AND THE 1995A BONDS; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

was introduced, read, finally passed, adopted and authenticated as an emergency ordinance and was ordered published by title and summary at a regular meeting of the City Council of the City of Colorado Springs, Colorado held on August 8, 1995; and that the same was so published in the Gazette Telegraph, a daily newspaper published and of general circulation in the City, on August 9, 1995.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City this ________________, 1995.

____
City Clerk

(SEAL)

Whereupon Council Member ______________ moved that the ordinance be now finally passed and adopted. Council Member ________________ seconded the motion. The question being upon the adoption of said motion and the placing of the ordinance upon its final passage, the roll was called with the following result:

Those Voting Aye:	Robert M. Isaac Leon Young Lisa Aré Cook Jack Forrest Cheryl D. Gillaspie William F. Guman John G. Hazlehurst Mary Lou Makepeace Randall W. B. Purvis
Those Voting No:	______________________
Those Absent:	______________________

The presiding officer thereupon declared that there having been an affirmative vote of at least five members of the Council, the ordinance was duly passed and adopted as a public emergency ordinance pursuant to the Charter.

____

Mayor

(SEAL)

Attest:

____

City Clerk

STATE OF COLORADO)
)
COUNTY OF EL PASO) SS.
)
CITY OF COLORADO SPRINGS)

I, Kathryn M. Young, City Clerk of the City of Colorado Springs, Colorado (the "City"), do hereby certify:

(1) The foregoing pages numbered 1 through 79, excerpts from the proceedings of a regular meeting of the City Council of the City (the "Council") held on August 8, 1995 at the City Administration Building, 30 South Nevada Avenue in the City, being the regular meeting place of the Council, constitute a true, correct, complete and compared copy of the proceedings of the Council insofar as such proceedings relate to an ordinance designated by the short title "1995A Utilities Bond Ordinance," a copy of which is set forth therein.

(2) The copy of the ordinance contained in those proceedings is a true, correct, complete and compared copy of the original of the ordinance introduced and adopted at the meeting.

(3) The original of the ordinance has been signed and authenticated by the signature of the Mayor and signed and attested with my signature as City Clerk, and sealed with the corporate seal of the City, and has been recorded in the required books of the City kept in my office, which record has been duly signed by such officers and sealed with the seal of the City.

(4) The ordinance was on the day following its passage, i.e., on August 9, 1995, published by title and summary in the Gazette Telegraph, being a daily newspaper published and of general circulation in the City.

(5) ________________ members of the Council were present at such meeting and the members of the Council voted on the passage of the ordinance as in such proceedings set forth.

(6) All members of the Council were given due and proper notice of the meeting.

(7) I was in attendance at the meeting and the foregoing proceedings were in fact held as in such proceedings stated, as officially of record in my possession.

(8) No other proceedings were adopted nor was any other action taken or considered at such meeting pertaining to the ordinance or the Bonds therein authorized.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City on this ______________, 1995.

____
City Clerk

(SEAL)

(Attach Affidavit of Publication, by Title and Summary,
of Ordinance No. 95-__)

CITY ATTY'S OFFICE
CODE CHANGE REVIEW
ATTY INIT SM
DATE 5/08/95
COOR INIT EM
DATE 5/8/95

ORDINANCE NO. 95-115

AN ORDINANCE AMENDING ARTICLE 5 (POLICE AND FIRE ALARM SYSTEMS) OF CHAPTER 20 (PUBLIC SAFETY) OF THE CODE OF THE CITY OF COLORADO SPRINGS 1980, AS AMENDED, RELATING TO THE REGULATION OF FALSE ALARMS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. That Sections 102 through 107 of Article 5 (Police and Fire Alarm Systems) of Chapter 20 (Public Safety) of the Code of the City of Colorado Springs 1980, as amended, are hereby repealed.

Section 2. That Section 108 (False Alarm Service Charge) of Article 5 (Police and Fire Alarm Systems) of Chapter 20 (Public Safety) of the Code of the City of Colorado Springs 1980, as amended, is hereby amended to read as follows:

20-5-108~~8~~2: **FALSE ALARM SERVICE CHARGE:**

A. Purpose. Response to false alarms consumes many hours of valuable police time and resources, reduces the mental preparedness of officers responding to alarms in the event that an actual emergency exists, and presents significant health, safety and welfare hazards to the citizens of the City. Those who utilize faulty alarm systems which repeatedly generate false alarms necessitating police response are thereby misusing available police resources.

B. Definitions. For the purposes of this Section, the terms and phrases used herein shall be defined as follows:

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ITEM NO. 6

ALARM means any device designed for the detection of unauthorized entry on or into any building, place or premises, or for alerting others of the commission of an unlawful act, or both, and when activated causes an audible and/or visual signal or transmits a signal or message to which police officers are expected to respond or which would imply to a reasonable person that police officers are needed at the alarm source to investigate a criminal activity or emergency.

ALARM USER means any person, firm, partnership, company, association, corporation or owner, tenant or lessee or their authorized agent or representative of premises on which an alarm is installed, maintained or utilized.

FALSE ALARM means the activation of an alarm resulting in a response by the Police Department to the building, place or premises on which the alarm is located where a response is not needed. False alarm does not include an alarm proximately caused by lightning, tornadoes, earthquakes or other violent acts of nature AND WHICH RESULT IN PHYSICAL DAMAGE TO THE BUILDING, PLACE OR PREMISES AND/OR PHYSICAL OR ELECTRONIC DAMAGE TO THE ALARM SYSTEM OR ANY COMPONENT THEREOF.

C. A service charge of twenty five dollars ($25.00) shall be assessed upon an alarm user for each police response to more than ~~four (4)~~TWO (2) false alarms by the alarm user within any consecutive one hundred eighty (180) day period.

D. No service charge shall be assessed for a false alarm(s) occurring during the first ~~thirty (30)~~ FIFTEEN (15) days after installation of a new, substantially improved or replaced alarm. No service charge shall be assessed for police response to motor vehicle alarm. (Ord. 82-217)

Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 25th day of July, 1995.

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5/8/95 Marrese

Mayor

ATTEST:

City Clerk

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5/8/95 Marrese

Ordinance No. 95-122

AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA SOMETIMES KNOWN AS FAABORG ANNEXATION NO. 1 AS HEREINAFTER SPECIFICALLY DESCRIBED IN EXHIBIT "A"

WHEREAS, the City Council of Colorado Springs has by resolution made findings of fact and conclusions of law based thereon and determinations pertaining to said annexation, and has determined that said area should be annexed forthwith as part of the City of Colorado Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Attached hereto and incorporated herein by reference as if fully set forth herein is Exhibit "A," a legal description of the area sometimes known as Faaborg Annexation No. 1.

Section 2. The area to be annexed, as set forth in Exhibit A, is owned by the City of Colorado Springs, the annexing municipality, and is not solely a public street or right-of-way.

Section 3. The area sometimes known as Faaborg Annexation No. 1 as set forth in Exhibit "A" is hereby annexed to the City of Colorado Springs.

Section 4. When this annexation is complete, said area shall become a part of the City of Colorado Springs for all intents and purposes of the effective date of this ordinance, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1 next ensuing.

Section 5. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read, passed on first reading and ordered published this 25th day of July, 1995.

____
MAYOR

ATTEST:

____
CITY CLERK

ITEM NO. 7

EXHIBIT "A"

THAT THE CITY OF COLORADO SPRINGS, WATER RESOURCES DEPARTMENT, WASTEWATER DIVISION, IS THE OWNER OF A TRACT OF LAND IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 14 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 20, AS MONUMENTED WITH A 2 1/2 INCH ALUMINUM CAP, PLS 11624, THENCE S88°42'46"W ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20, A DISTANCE OF 548.33 FEET TO THE POINT OF BEGINNING OF THE TRACT DESCRIBED HEREIN; THENCE S08°31'03"W A DISTANCE OF 423.11 FEET; THENCE N41°20'49"W A DISTANCE OF 544.73 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20; THENCE N88°42'41"E ON SAID SOUTH LINE A DISTANCE OF 157.33 FEET TO THE MOST SOUTHWESTERLY CORNER OF THE TRACT DESCRIBED IN A LEASE AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND THE FOUNTAIN MUTUAL IRRIGATION COMPANY DATED OCTOBER 14, 1958; THENCE N00°30'00"W PARALLEL WITH THE WEST LINE LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20, SAID LINE BEING THE EAST LINE OF A TRACT DESCRIBED IN A DEED RECORDED IN BOOK 1219 AT PAGE 596, A DISTANCE OF 411.00 FEET; THENCE S88°42'46"W PARALLEL WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20 A DISTANCE OF 514.30 FEET; THENCE N00°30'00"W ON SAID WEST LINE A DISTANCE OF 510.60 FEET; THENCE S77°55'04"E A DISTANCE OF 684.40 FEET; THENCE S85°18'52"E A DISTANCE OF 202.93 FEET TO THE PROPERTY LINE AS AGREED TO BY FOUNTAIN MUTUAL IRRIGATION COMPANY, THE CITY OF COLORADO SPRINGS WASTEWATER DEPARTMENT, AND ROBERT A. AND VIRGINIA E. SEIVERT; THENCE S06°27'59"W ON SAID AGREED TO LINE A DISTANCE OF 748.97 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

DESCRIBED TRACT CONTAINING 12.8077 ACRES MORE OR LESS.

DESCRIBED TRACT SUBJECT TO A 50 FOOT RIGHT-OF-WAY FOR ROAD PURPOSES AS DESCRIBED IN A DOCUMENT RECORDED IN BOOK 1216 AT PAGE 596.

(THE BASIS OF BEARINGS USED IN THIS LEGAL DESCRIPTION IS THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 66 WEST, 6TH P.M. AND BEING MONUMENTED BY A 2 1/2 INCH ALUMINUM CAP, PLS 11624, AT THE SOUTH QUARTER CORNER OF SECTION 20 AND A WHITE PLASTIC CAP, PLS 2154, AT THE SIXTEENTH CORNER COMMON TO SECTION 20 AND SECTION 29.)

FAABORG NO. 1

Ordinance No. 95-123

AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA SOMETIMES KNOWN AS FAABORG ANNEXATION NO. 2 AS HEREINAFTER SPECIFICALLY DESCRIBED IN EXHIBIT "A"

WHEREAS, the City Council of Colorado Springs has by resolution made findings of fact and conclusions of law based thereon and determinations pertaining to said annexation, and has determined that said area should be annexed forthwith as part of the City of Colorado Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Attached hereto and incorporated herein by reference as if fully set forth herein is Exhibit "A," a legal description of the area sometimes known as Faaborg Annexation No. 2.

Section 2. The area to be annexed, as set forth in Exhibit A, is owned by the City of Colorado Springs, the annexing municipality, and is not solely a public street or right-of-way.

Section 3. The area sometimes known as Faaborg Annexation No. 2 as set forth in Exhibit "A" is hereby annexed to the City of Colorado Springs.

Section 4. When this annexation is complete, said area shall become a part of the City of Colorado Springs for all intents and purposes of the effective date of this ordinance, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1 next ensuing.

Section 5. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read, passed on first reading and ordered published this 25th day of July, 1995.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT "A"

THAT THE CITY OF COLORADO SPRINGS, WATER RESOURCES DEPARTMENT, WASTEWATER DIVISION, IS THE OWNER OF A TRACT OF LAND IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 20, AS MONUMENTED WITH A 2-1/2 INCH DIAMETER ALUMINUM CAP, PLS 11624, THENCE S88°42'46"W ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20 A DISTANCE OF 548.32 FEET TO THE SOUTHEASTERLY CORNER OF THE LEASED TRACT PER PROPERTY LINE AGREEMENT WITH THE CITY OF COLORADO SPRINGS AND THE FOUNTAIN MUTUAL IRRIGATION COMPANY RECORDED IN BOOK 6214 AT PAGE 1185; THENCE N06°27'59"E ON THE EASTERLY LINE OF SAID TRACT A DISTANCE OF 703.99 FEET TO THE PROPERTY LINE AS AGREED TO BY FOUNTAIN MUTUAL IRRIGATION COMPANY, THE CITY OF COLORADO SPRINGS WASTEWATER DEPARTMENT, AND ROBERT A. AND VIRGINIA E. SEIVERT; THENCE S88°29'50"E ALONG SAID LINE A DISTANCE OF 270.69 FEET; THENCE N08°06'24"E 131.32 FEET; THENCE S87°00'00"E A DISTANCE OF 98.69 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF LAS VEGAS STREET; THENCE S47°20'35"E ON SAID RIGHT-OF-WAY LINE A DISTANCE OF 128.63 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 20; THENCE S00°29'34"E ON SAID EAST LINE A DISTANCE OF 625.67 FEET TO THE POINT OF BEGINNING. CONTAINING 7.7661 ACRES, MORE OR LESS.

(THE BASIS OF BEARINGS USED IN THIS LEGAL DESCRIPTION IS THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 66 WEST, 6TH P.M. AND BEING MONUMENTED BY A 2 1/2 INCH ALUMINUM CAP, PLS 11624, AT THE SOUTH QUARTER CORNER OF SECTION 20 AND A WHITE PLASTIC CAP, PLS 2154, AT THE SIXTEENTH CORNER COMMON TO SECTION 20 AND SECTION 29.)

Ordinance No. 95-124

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO 73.6311 ACRES LOCATED SOUTHEAST OF LAS VEGAS STREET AND EL PASO STREET

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The zoning map of the City of Colorado Springs is hereby amended by rezoning the real property described in Exhibit A, attached hereto and made a part hereof by reference, from M-2 (Heavy Industrial), County zoning and R-1-6000 (Single Family Residential) to PF (Public Facility), pursuant to the Zoning Ordinance of the City of Colorado Springs.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the Office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 25th day of July, 1995.

____
Mayor

ATTEST:

____
City Clerk

CPC P 95-120

ITEM NO. 9

DEVELOPMENT SERVICES DIVISION

LEGAL DESCRIPTION FORM

FOR OFFICAL USE ONLY
DATE REC'D 4/14/95
FILE NO. P95-120 (REVISED)
CHECKED (LOC. & CONFIG.) 4/14/95
STAFF

PROPERTY DESCRIPTION

A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 19, THE SOUTHWEST QUARTER OF SECTION 20 AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 14 SOUTH, RANGE 66 WEST OF THE 6TH P.M., ALL IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(THE BASIS FOR BEARINGS USED IN THIS DESCRIPTION IS THE COLORADO SPRINGS UTILITIES DEPARTMENT FACILITIES INFORMATION MANAGEMENT SYSTEM IN WHICH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 20, T14S, R66W BEARS S88°22'08"W. THIS LINE IS MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP, PLS 11624, AT THE SOUTH QUARTER CORNER AND BY A 3-1/4 INCH DIAMETER ALUMINUM CAP, PLS 13213, AT THE SOUTHWEST CORNER OF SECTION 20.)

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 20; THENCE S88°22'08"W ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 20 A DISTANCE OF 548.32 FEET; THENCE S08°10'30"W IN TO SAID SECTION 29 A DISTANCE OF 423.11 FEET; THENCE N69°21'42"W A DISTANCE OF 536.30 FEET; THENCE N46°15'38"W A DISTANCE OF 300.25 FEET TO THE WEST SIXTEENTH CORNER OF SAID SECTIONS 20 AND 29; THENCE N46°15'38"W A DISTANCE OF 1865.79 FEET TO THE SOUTH SIXTEENTH CORNER OF SAID SECTIONS 19 AND 20; THENCE S88°41'04"W INTO SECTION 19 A DISTANCE OF 30.00 FEET; THENCE N00°53'55"W A DISTANCE OF 318.26 FEET; THENCE N88°52'39"E A DISTANCE OF 63.60 FEET INTO SECTION 20 TO A POINT ON THE EASTERLY LINE OF EL PASO STREET AS SHOWN ON THE PLAT OF ADDITION NUMBER 3 TO THE TOWN OF SOUTH COLORADO SPRINGS (PLAT BOOK K, PAGE 7), SAID POINT BEING THE NORTHWEST CORNER OF BLOCK 2 OF SAID ADDITION NUMBER 3 TO THE TOWN OF SOUTH COLORADO SPRINGS; THENCE N01°05'39"W ON SAID EASTERLY LINE A DISTANCE OF 140.00 FEET TO THE NORTHWEST CORNER OF LOT 9, BLOCK 1, SAID ADDITION NUMBER 3; THENCE N88°52'39"E ON THE NORTH LINE OF SAID LOT 9 A DISTANCE OF 146.00 FEET TO THE CENTERLINE OF A VACATED 12 FOOT WIDE ALLEY; THENCE S01°05'39"E ON THE CENTERLINE OF SAID VACATED ALLEY A DISTANCE OF 110.00 FEET TO THE CENTERLINE OF VACATED GRISWOLD STREET; THENCE

DEVELOPMENT SERVICES DIVISION

LEGAL DESCRIPTION FORM

FOR OFFICAL USE ONLY
DATE REC'D 4/14/95
FILE NO. P95-120 (REVISED)
CHECKED (LOC. & CONFIG.) 4/14/95
STAFF

N88°52'39"E ON SAID CENTERLINE A DISTANCE OF 76.00 FEET; THENCE N01°05'39"W A DISTANCE OF 190.04 FEET TO THE CENTERLINE OF A VACATED 20 FOOT WIDE ALLEY; THENCE N88°52'39"E ON THE CENTERLINE OF SAID VACATED ALLEY A DISTANCE OF 79.84 FEET TO THE EASTERLY LINE OF AN 8 FOOT WIDE ALLEY; THENCE N00°55'56"W ON SAID EASTERLY LINE A DISTANCE OF 198.93 FEET TO THE NORTHERLY LINE OF LAS VEGAS STREET; THENCE S65°00'51"E ON SAID NORTHERLY LINE A DISTANCE OF 1766.69 FEET TO A POINT OF CURVATURE; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 2060.00 FEET, A CENTRAL ANGLE OF 10°15'32", AN ARC LENGTH OF 368.84 FEET AND A CHORD BEARING S59°53'05"E A DISTANCE OF 368.35 FEET; THENCE S06°07'26"W ON A LINE NON-RADIAL TO THE PRECEDING CURVE A DISTANCE OF 382.53 FEET; THENCE S68°50'05"E A DISTANCE OF 270.69 FEET; THENCE N07°45'51"E A DISTANCE OF 131.32 FEET; THENCE S87°20'33"E A DISTANCE OF 190.95 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF LAS VEGAS STREET; THENCE S48°18'10"E ON SAID RIGHT-OF-WAY LINE A DISTANCE OF 2.39 FEET TO THE WESTERLY LINE OF RYAN'S SUBDIVISION (PLAT BOOK K, PAGE 37); THENCE S00°50'07"E ON SAID WESTERLY LINE A DISTANCE OF 706.40 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. DESCRIBED TRACT CONTAINING 73.5563 ACRES, MORE OR LESS.

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR
STEPHEN L. McANALLY
4/07/95
25955

RESOLUTION NO. ____

A RESOLUTION SUBMITTING A QUESTION TO THE ELECTORS OF THE CITY OF COLORADO SPRINGS AT THE COORDINATED GENERAL ELECTION ON NOVEMBER 7, 1995 RELATING TO EXPENDITURE OF THE 1994 REVENUE OFFSET

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. There is hereby submitted and referred to the vote of the electors of the city at the coordinated general election to be held on Tuesday, November 7, 1995, the following question:

> **Shall the City of Colorado Springs be permitted to expend $1,252,797 for the following projects, this amount being a revenue offset change of 1994 City revenues that are above the 1994 City fiscal year spending limitation mandated by TABOR?**

PROJECTS

Murray Boulevard/Platte Avenue Intersection Improvements

Little Shooks Run Drainage

Traffic Safety and Congestion Improvements

Dated at Colorado Springs, Colorado, this ____ day of ____________, 1995.

____
Mayor

ATTEST:

____
City Clerk

Priority	Item	Cost Estimate	Refund Amount Available
1	Murray Boulevard at Platte Avenue--Install dual left turns and medians on Murray Blvd. to improve traffic flow and safety.	$700,000	
2	Little Shooks Run Drainage--Remove damaged sections of pipe, and of the storm sewer, and replace with new pipe with full carrying capacity. Properties effected are located between Cedar and Custer.	$325,000	
3	Traffic safety and congestion improvements: Woodmen Road/Vincent Drive--Widen Vincent Drive to include dual left turns; 30th Street and Glen Eyrie Circle--Widen 30th to provide left-turn vehicle storage; Guardrail upgrades in various mountain parks; Constitution and Afton Way--install pedestrian signal and walkway; Austin Bluffs and Oro Blanco/Platinum Lane pedestrian improvements; Cresta Road at Cheyenne Boulevard--School Pedestrian safety improvements.	$227,797	$1,252,797
	Other Options in Priority Order		
4	Van Buren Drainage--Remove 600 feet of channel bottom and sides of the channel located on Harrison Street between Prospect Street and El Paso Street. Reconstruct walls in failing sections.	$450,000	

5	North Douglas Creek Drainage--Reconstruct channel upstream and downstream between Garden of Gods Road and Chesnut Street.	$268,000
6	Lorraine/Kinnikinik Phase II--Complete storm sewer from Parkway Drive west to low point in Yucca Drive to pick up flows that flood private property by extending the storm sewer north from Yucca/Parkway intersection to Brookside to prevent runoff from eroding pavement.	$ 70,000
7	Ranch Lane Drainage--Install bigger inlet and longer, bigger outlet pipe, tying into the existing storm sewer main between Ranch Lane and Garden Way to correct drainage overflow from streets.	$ 40,000
8	Nichols/El Paso Drainage--Extend the storm sewer north on El Paso Street to 530 feet north of Nichols Blvd. and remove and replace an inadequate inlet northwest of this intersection. Some affected residents will participate through a local drainage improvement tax.	$ 85,000
9	Unforeseen Stormwater Damage Repairs. In 1994/1995 this figure has been nearly $750,000	$300,000

Did not pass

RESOLUTION NO. ______

A RESOLUTION IN SUPPORT OF EL PASO COUNTY PLACING AN ISSUE TO PARTIALLY FUND I-25 ON THE NOVEMBER, 1995 BALLOT

WHEREAS, the I-25 Funding Task Force has developed a recommendation to the Pikes Peak Area Council of Governments Urban Area Policy Committee to fund I-25 through a regional sales tax of one quarter of one cent, and;

WHEREAS, tax revenues would be used only for I-25 improvements, and;

WHEREAS, the tax would sunset in 10 years, and;

WHEREAS, the intent of this funding is to complete certain critical portions of I-25 and speed up funding for I-25 improvements from the state and federal government.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS SUPPORTS THE EL PASO COUNTY COMMISSIONERS IN PLACING THIS ISSUE ON THE NOVEMBER 1995 BALLOT FOR THE CITIZENS OF EL PASO COUNTY TO CONSIDER APPROVAL OF A 1/4 CENT SALES TAX FOR TEN YEARS EXCLUSIVELY FOR FUNDING IMPROVEMENTS TO I-25.

Dated at Colorado Springs, Colorado, this __________ day of ____________, 1995.

____
Mayor

ATTEST:

____
City Clerk

ITEM NO. 11

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

TO: **City Council**

FROM: **Lee Trovas, Capital Improvements Manager** LT

DATE: **August 2, 1995**

SUBJECT: **I-25 Funding Task Force Briefing, Questionnaire Results, and Resolution to the County Endorsing the Project to El Paso County**

Dr. Maurice Rahimi of the Pikes Peak Area Council of Governments will provide Council with a briefing on the Task Force effort to date, as well as on the attached questionnaire.

Following the presentation you will then be requested to endorse the Task Force recommendations to El Paso County through the attached resolution, subject to any revisions you wish to make.

Attachments

c: City Manager
Deputy City Manager

George K. Baum & Company

I-25 Study

Topline

July 1995

Hello my name is ___________. I am calling on behalf of the I-25 Funding Task Force. May I please speak with ______?

We're conducting a public opinion poll about I-25 this evening. The poll takes 15 minutes to complete and involves answering questions and obtaining your opinions of local issues. Your number was chosen at random. Most people find it interesting. Let me begin by asking:

Q1. Generally speaking, would you say things in ________ are going in the right direction, or do you feel things are off on the wrong track?

a. State of Colorado

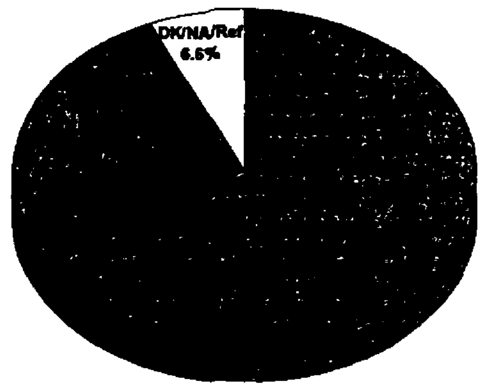
Right Direction	53.14%
Wrong Track	35.43%
Don't Know / No Answer / Refused	11.43%

b. Pikes Peak Region Governments

Right Direction	48.29%
Wrong Track	28.86%
Don't Know / No Answer / Refused	22.86%

As you may know, the I-25 Funding Task Force has developed a recommendation regarding possible methods to expand I-25 by one lane in each direction, improve interchanges and make safety improvements. The task force is considering that voters be asked to approve an increase in the county wide sales tax.

Q2. If an election was held today to make improvements to I-25 would you vote yes in favor or no to oppose it?



Q3a. Why yes?

Safety Concerns	18.34%
Progressively Getting Worse	10.48%
Relieve Traffic Congestion / High Volume Traffic Area	40.17%
Needs Improvement - General ("We Need It / It Is Needed")	34.93%
Don't Know / No Answer / Refused	1.75%

Q3b. Why no?

Oppose New / Higher Taxes	38.78%
Cost Concerns	31.63%
Need To Relocate I-25 / Move I-25 From Center Of Town	2.04%
General Indifference (Doesn't Affect Me / I Don't Use It)	2.04%
It Is Not Necessary / Not Needed	8.16%
Funds Are Available Now	4.08%
General Negative	9.18%
Don't Know / No Answer / Refused	8.16%

Q4. If don't know, ask why do you feel that way?

Funding Concerns	8.70%
Need More Information - General	4.35%
Don't Know / No Answer / Refused	86.96%

Total project costs for I-25, including inflation over 10 years, is about $330 million. In order to take care of the most immediate needs on I-25 approximately $100 million is proposed to be raised through an increase in the county-wide sales tax. This amount would be combined with state and federal funds.

Q5aa. Would you support or oppose an increase in local sales tax of ¼ cent for 10 years?

Support	61.71%
Oppose	32.57%
Don't Know / No Answer	5.71%

Q5a. Respondents were asked amt of tax support in ascending amounts

Q5ab. Would you support or oppose an increase in local sales tax of ½ cent for 5 years to pay for I-25 improvements?

Support	65.71%
Oppose	30.86%
Don't Know / No Answer	3.43%

Q5ba. Would you support or oppose an increase in local sales tax of ½ cent for 5 years to pay for I-25 improvements?

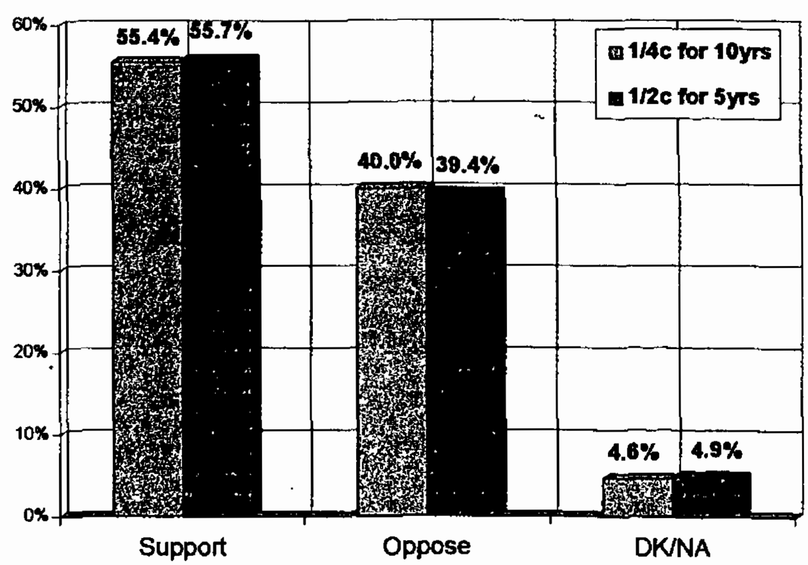
Support	45.71%
Oppose	48.00%
Don't Know / No Answer	6.29%

Q5b. Respondents were asked amt of tax support in descending amounts

Q5bb. Would you support or oppose an increase in local sales tax of ¼ cent for 10 years?

Support	49.14%
Oppose	47.43%
Don't Know / No Answer	3.43%

Q5a & Q5b average



Q6. I would now like to read you some specific statements which may be made by people who favor expanding I-25 and making safety improvements to the bridges and interchanges. If you heard each statement, and believed it to be true, please tell me if it would make you much more likely, somewhat more likely to favor the measure or if it would make no difference.

a. Gridlock and long delays would be reduced during peak times by adding an additional lane in each direction.

Much more likely to favor	68.29%
Somewhat likely to favor	13.14%
Makes no Difference	17.14%
Don't Know / No Answer / Refused	1.43%

b. A demonstrated local commitment through voter approval of the sales tax increase would significantly increase our chances of receiving additional state and federal monies.

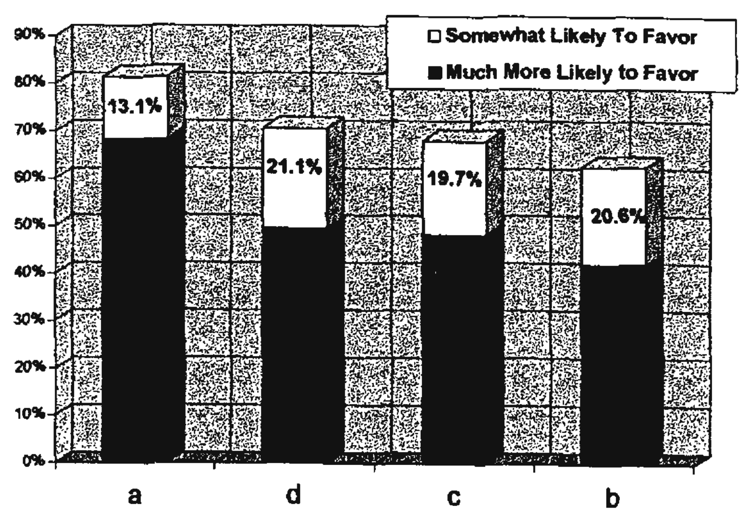
Much more likely to favor	42.00%
Somewhat likely to favor	20.57%
Makes no Difference	27.14%
Don't Know / No Answer / Refused	10.29%

c. Expanding I-25 will reduce the amount of traffic which would otherwise go through existing neighborhoods.

Much more likely to favor	48.29%
Somewhat likely to favor	19.71%
Makes no Difference	27.71%
Don't Know / No Answer / Refused	4.29%

d. Additional sales tax revenues will accelerate the construction of the most immediate needs on I-25.

Much more likely to favor	49.43%
Somewhat likely to favor	21.14%
Makes no Difference	21.71%
Don't Know / No Answer / Refused	7.71%



Q7. Next I would like to read you some statements that may be made by people who oppose expanding I-25 and making safety improvements. If you heard each statement, and believed it to be true, please tell me if you strongly agree, somewhat agree with, strongly disagree, would make no difference.

a. Any sales tax increase should be used for mass transit and car pooling instead of highways.

Strongly Agree	14.00%
Somewhat Agree	13.71%
Strongly Disagree	60.86%
Makes no Difference	9.14%
Don't Know / No Answer / Refused	2.29%

b. The interstates are a State and Federal responsibility. Why should I increase my taxes to pay for what I should already be receiving as a taxpayer.

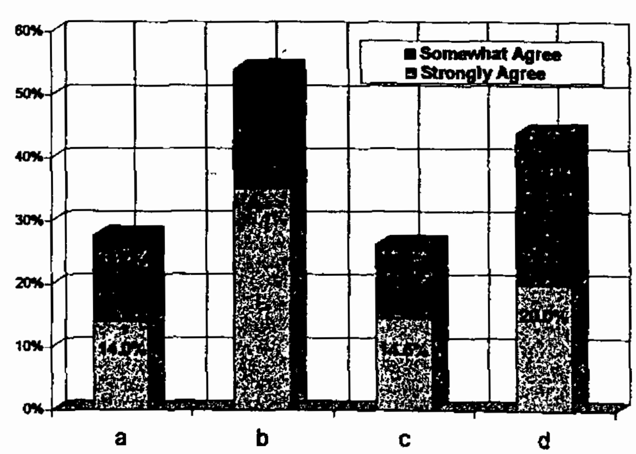
Strongly Agree	35.14%
Somewhat Agree	18.86%
Strongly Disagree	38.86%
Makes no Difference	5.14%
Don't Know / No Answer / Refused	2.00%

c. If we allow the congestion to continue, ultimately, people will chose another means of transportation.

Strongly Agree	14.57%
Somewhat Agree	11.71%
Strongly Disagree	65.43%
Makes no Difference	7.14%
Don't Know / No Answer / Refused	1.14%

d. Construction of an eastern bypass such as Powers Blvd. will divert enough traffic from I-25 to alleviate the congestion.

Strongly Agree	20.00%
Somewhat Agree	24.00%
Strongly Disagree	47.43%
Makes no Difference	4.29%
Don't Know / No Answer / Refused	4.29%



Q8. I would like to read you several statements concerning the consequences to the Pikes Peak region, should a measure to expand I-25 and make safety improvements fail. Please tell me if knowing these facts you would support or oppose the measure.

a. If the region cannot raise additional funds locally, the expansion and necessary safety improvements to I-25 may not be completed until the year 2045.

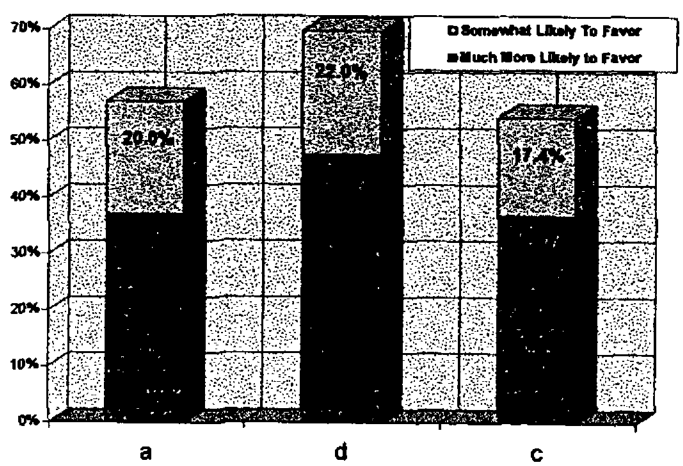
Much more likely to favor	37.14%
Somewhat likely to favor	20.00%
Makes no Difference	32.00%
Don't Know / No Answer / Refused	10.86%

b. By raising the sales tax, the most immediate needs for I-25 expansion and safety improvements will be completed within 10 years.

Much more likely to favor	47.71%
Somewhat likely to favor	22.00%
Makes no Difference	23.71%
Don't Know / No Answer / Refused	6.57%

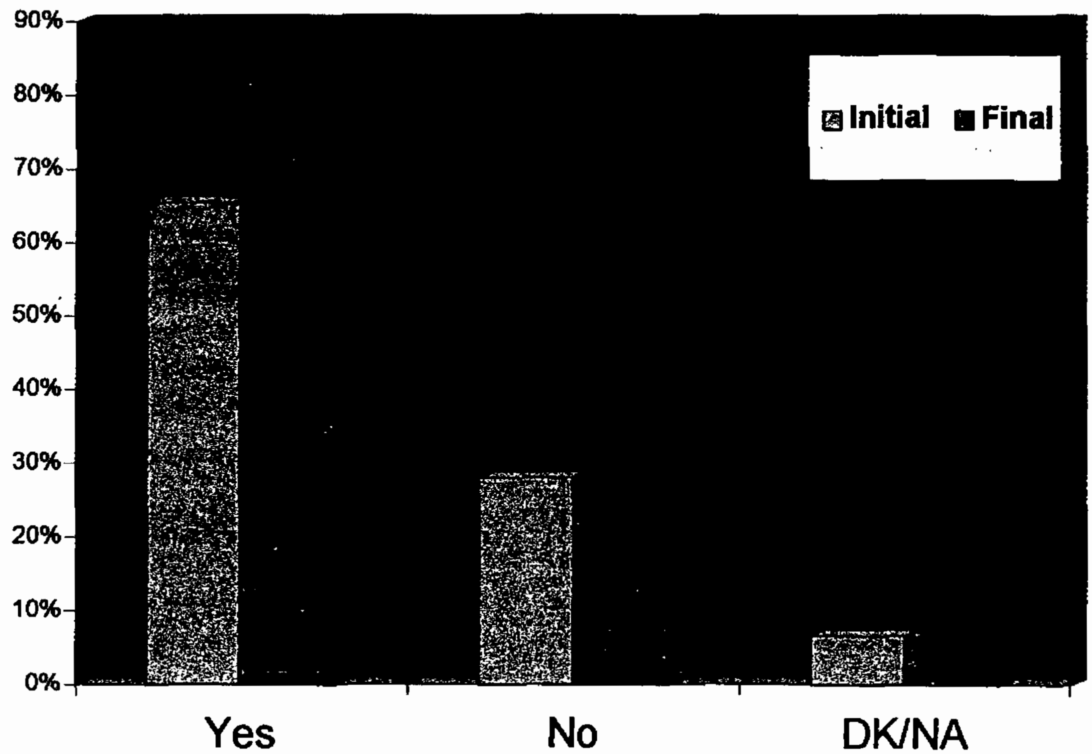
c. If I-25 is not expanded, air quality and the brown cloud will worsen.

Much more likely to favor	36.86%
Somewhat likely to favor	17.43%
Makes no Difference	36.00%
Don't Know / No Answer / Refused	9.71%



Q9. Considering what you have heard regarding a measure to expand I-25 by one lane in each direction, improve interchanges and make safety improvements, would you vote yes to support or no to oppose it? Is that definitely or somewhat?

Definitely Yes	**61.71%**
Somewhat Yes	**19.43%**
Somewhat No	**5.14%**
Definitely No	**11.43%**
Don't Know / No Answer / Refused	**2.29%**



In order to fund the most immediate I-25 needs, which total approximately 100 million dollars, an increase in sales tax has been proposed.

Q10aa. Would you support or oppose an increase in local sales tax of ¼ cent for 10 years?

Support	65.71%
Oppose	32.57%
Don't Know / No Answer	1.71%

Q10ab. Would you support or oppose an increase in local sales tax of ½ cent for 5 years to pay for I-25 improvements?

Q5a. Respondents were asked amt of tax support in ascending amounts

Support	58.29%
Oppose	36.57%
Don't Know / No Answer	5.14%

Q10ba. Would you support or oppose an increase in local sales tax of ½ cent for 5 years to pay for I-25 improvements?

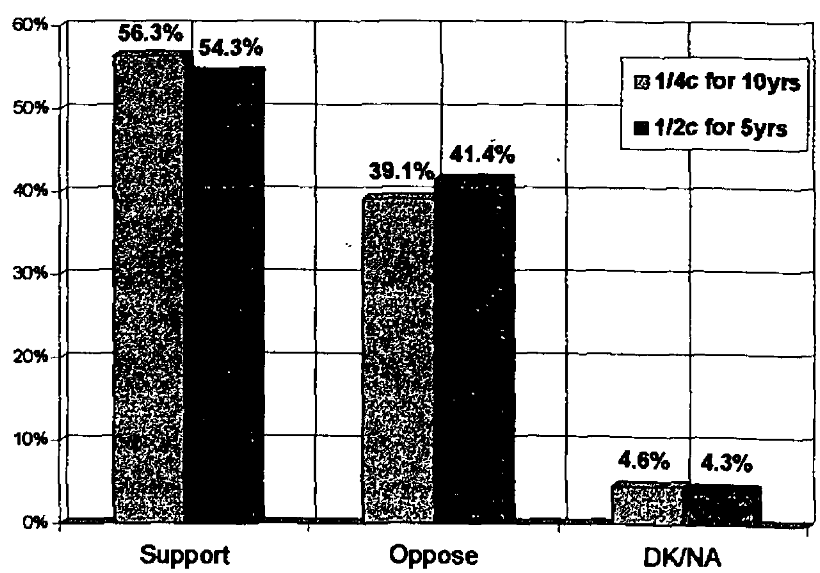
Support	50.29%
Oppose	46.29%
Don't Know / No Answer	3.43%

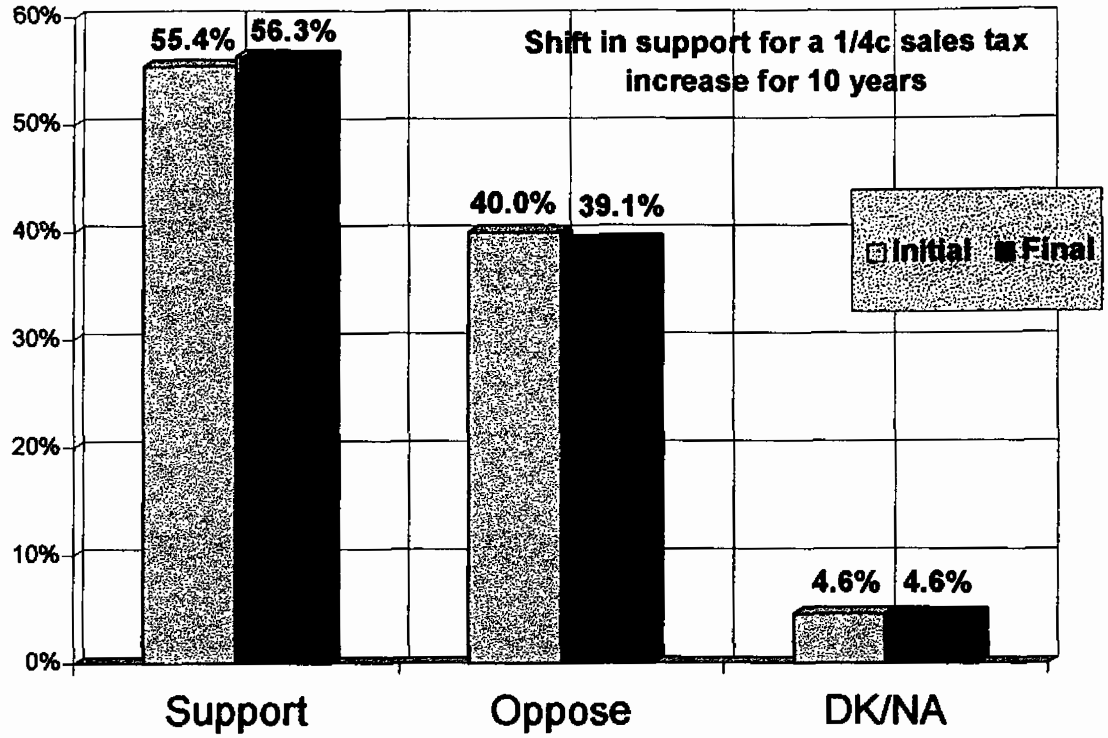
Q5b. Respondents were asked amt of tax support in descending amounts

Q10bb. Would you support or oppose an increase in local sales tax of ¼ cent for 10 years?

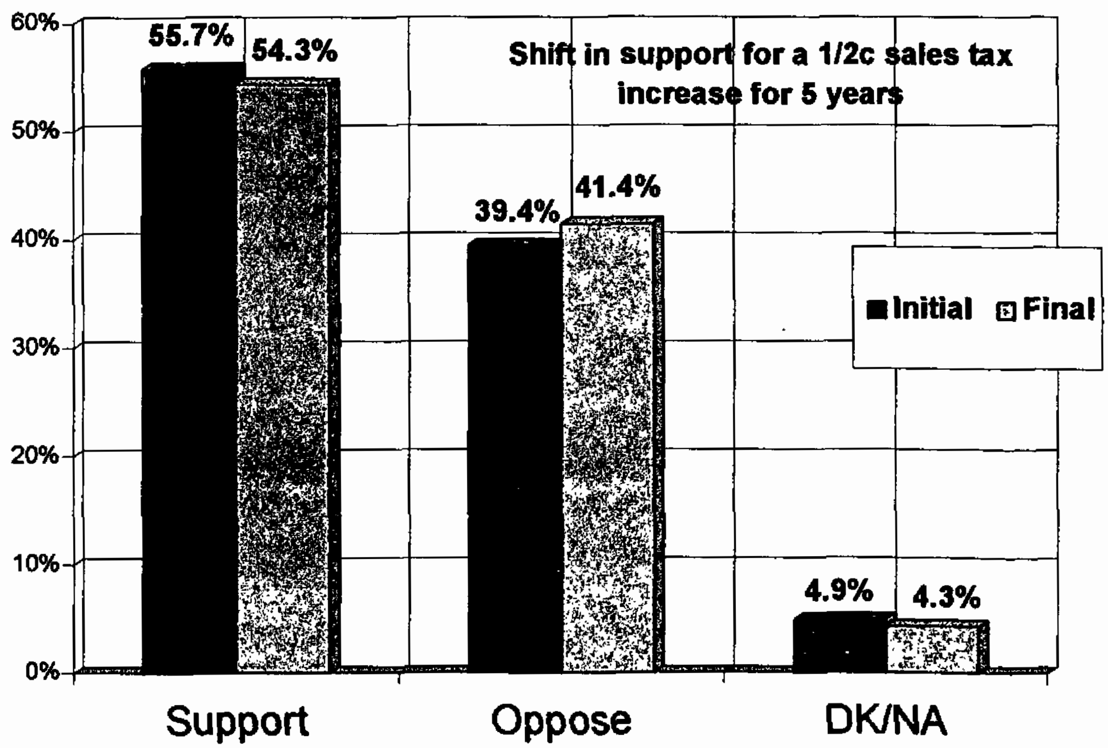
Support	46.86%
Oppose	45.71%
Don't Know / No Answer	7.43%

Q10a & Q10b average





Shift in support for a 1/4c sales tax increase for 10 years
Initial
Final
60%
50%
40%
30%
20%
10%
0%
55.4%
56.3%
40.0%
39.1%
4.6%
4.6%
Support
Oppose
DK/NA



Shift in support for a 1/2c sales tax increase for 5 years
Initial
Final
60%
50%
40%
30%
20%
10%
0%
55.7%
54.3%
39.4%
41.4%
4.9%
4.3%
Support
Oppose
DK/NA

Now a few background questions.

Q11. How long have you lived in the Colorado Springs area?

Less than 5 years	15.71%
5-10 years	14.00%
10-20 years	24.57%
More than 20 years	39.43%
Lifetime	6.00%
Don't Know / No Answer / Refused	0.29%

Q12. Do you own or rent your home?

Own	83.14%
Rent	15.71%
Refused	1.14%

Q13. Please stop me when I've read a category that best describes your present age:

18-24	4.86%
25-34	14.86%
35-44	25.71%
45-54	16.57%
55 or over	37.43%
Refused	0.57%

Q14. Sex

Male	49.71%
Female	50.29%

Q15. Party

Republican	48.57%
Democrat	15.14%
Independent / Other	36.29%

Q16. Vote History

1 or 2 of 4	46.29%
3 of 4	26.86%
4 of 4	19.14%
Blank	7.71%

Q17. Precinct

[NOT AVAILABLE FOR TOPLINE]

Procedures

A. Sampling

The cluster sample for the survey was computer-generated from among registered voters within El Paso County.

The cluster method assures a geographic distribution throughout the county in proportion to the number of voters in each precinct of the county. Only the specified individual in each household could be interviewed. Each name was called back in the event there was no answer or the designated respondent was not home. Interviewers called each name up to three times before moving to an alternate name.

B. Sample Demographics

Analysis of the sample revealed that the respondents were distributed throughout the county within expected statistical variation of the proportion of registered voters.

C. Interviewing

Interviews were conducted by telephone on consecutive evenings in July, 1995 between the hours of 5:00 p.m. and 9:00 p.m. Professional interviewers familiar with standard telephone interviewing procedures were trained specifically for this survey. All interviews were conducted from a central telephone bank and were observed by an on-duty supervisor at all times. Approximately 10% of the interviews were verified by the supervisor.

D. Limitations of the Methods

The sampling and research procedures employed are subject to the normal statistical and non-statistical errors in survey research. Non-statistical errors result from dishonest responses, inconsistency between expressed attitude and actual behaviors and misunderstood questions. In addition, public opinion data is not meant to be predictive of future attitudes or behaviors, but is designed to measure attitudes at the time that data are collected. In a scientifically selected sample of the size of the whole sample, normal statistical error would be plus or minus 5%. This means that in 95% of all samples drawn from the same population, the findings would not differ from our reported findings by more than 5%. Error range for sub-samples or demographic variables is greater.

E. Sample Size--400 participants were randomly selected.

F. The results obtained are considered to be at the 95% Confidence Level.

AGENDA ITEM NO. 14

The following appointments to boards and commissions are to be made at the Council Meeting of August 8, 1995.

	Appointment	Expiration
COMMUNITY DEVELOPMENT ADVISORY BOARD		
Art Santellen, Pikes Peak Assoc. of Realtors	8/8/95	7/27/98 Mkpc/Purv.
BEHAVIOR INCIDENT REVIEW BOARD		
Neil C. Bruce, Attorney	8/8/95	9/24/97 Mkpc/Cook
COLORADO SPRINGS PIONEERS MUSEUM ADVISORY BOARD		Purv./Young
Jan Martin	8/8/95	6/25/98
Eva B. Monnett	8/8/95	6/25/98

Ordinance No. 95-________

AN ORDINANCE SUBMITTING A CHARTER AMENDMENT TO THE ELECTORS OF THE CITY AT THE REGULAR GENERAL ELECTION ON NOVEMBER 7, 1995 RELATING TO CREATION OF AN OPEN SPACE PROGRAM THROUGH A SALES AND USE TAX.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

That there is hereby submitted and referred to the vote of the electors of the City at the regular general to be held on Tuesday, November 7, 1995, the following proposed Charter amendment.

Section 1. A Charter amendment amending Article VII (Finance) of the Charter.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF COLORADO SPRINGS:

That Section 7-90(h)(3) of the Charter of Colorado Springs is hereby amended by adding the following:

Section 7-90(h)(3) IN ADDITION TO THE 2% (TWO PERCENT) SALES AND USE TAX, THERE SHALL BE A 0.16% (SIXTEEN HUNDREDTHS OF A PERCENT) SALES AND USE TAX, THE PROCEEDS OF WHICH SHALL BE USED SOLELY FOR NEW OPEN SPACE, TRAILS AND PARKS ACQUISITION AND STEWARDSHIP. THIS 0.16% (SIXTEEN HUNDREDTHS OF A PERCENT) SALES AND USE TAX SHALL TERMINATE ON JANUARY 1, 2011.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by the Charter.

Introduced, read, passed on first reading and ordered published this _____ day of _____________, 1995.

____
Mayor

Attest:

____
City Clerk

al95/184/ec

ITEM NO. 12

TRAILS, OPEN SPACE AND PARKS INITIATIVE
121 E. PIKES PEAK AVENUE, STE. 465
COLORADO SPRINGS, COLORADO 80903
PHONE: 719-471-8824 FAX: 719-577-4107

JULY 20, 1995

TO: The Colorado Springs City Council
FM: Doug Carter, Treasurer, "Trails, Open Space and Parks Initiative"

CHARTER AMENDMENT PROPOSED BY THE TRAILS, OPEN SPACE AND PARKS INITIATIVE FOR CONSIDERATION BY THE COLORADO SPRINGS CITY COUNCIL ON JULY 25, 1995:

> "Shall city taxes be increased $6,000,000 annually and whatever amounts collected annually thereafter from 0.16% sales and use tax for acquisition and stewardship of new trails, open space and parks.

ADDITIONAL COMMENTS:

1) If the citizens of Colorado Springs endorse the above Charter Amendment this November, then City Council will need to enact enabling legislation in either late 1995 or early 1996.

2) We hope that the Council will use the proposed City Ordinance submitted to City Council on June 30, 1995 as a guideline for the enabling legislation. (A copy is attached.)

3) After meetings with the City's Parks and Recreation Advisory Board as well as City Parks officials, we would support having the Parks and Recreation Advisory Board fulfill the duties of the Citizens Advisory Committee as described on page 6 of the attached enabling legislation.

4) After meeting with City Budget officials, we would also support a provision enabling City Council to seek voter approval to use the funds generated for debt service on bonds used to acquire and maintain trails, open space and urban park lands.

ENCLOSURE

Proposed City Ordinance submitted to City Council on June 30, 1995

Did not pass

Ordinance No. 95-_______

AN ORDINANCE SUBMITTING A CHARTER AMENDMENT TO THE ELECTORS OF THE CITY AT THE REGULAR GENERAL ELECTION ON NOVEMBER 7, 1995 RELATING TO FUNDING OF THE COLORADO SPRINGS POLICE DEPARTMENT THROUGH A SALES AND USE TAX.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

That there is hereby submitted and referred to the vote of the electors of the City at the regular general to be held on Tuesday, November 7, 1995, the following proposed Charter amendment.

Section 1. A Charter amendment amending Article VII (Finance) of the Charter.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF COLORADO SPRINGS:

That Section 7-90(h)(3) of the Charter of Colorado Springs is hereby amended by adding the following:

Section 7-90(h)(3) IN ADDITION TO THE 2% (TWO PERCENT) SALES AND USE TAX, THERE SHALL BE A 0.30% (THIRTY HUNDREDTHS OF A PERCENT) SALES AND USE TAX, THE PROCEEDS OF WHICH SHALL BE USED SOLELY FOR ADDITIONAL FUNDING FOR STAFF, FACILITIES, AND EQUIPMENT FOR THE COLORADO SPRINGS POLICE DEPARTMENT.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by the Charter.

Introduced, read, passed on first reading and ordered published this ______ day of ____________, 1995.

____
Mayor

Attest:

____
City Clerk

al95/187/ec

ITEM NO. 13

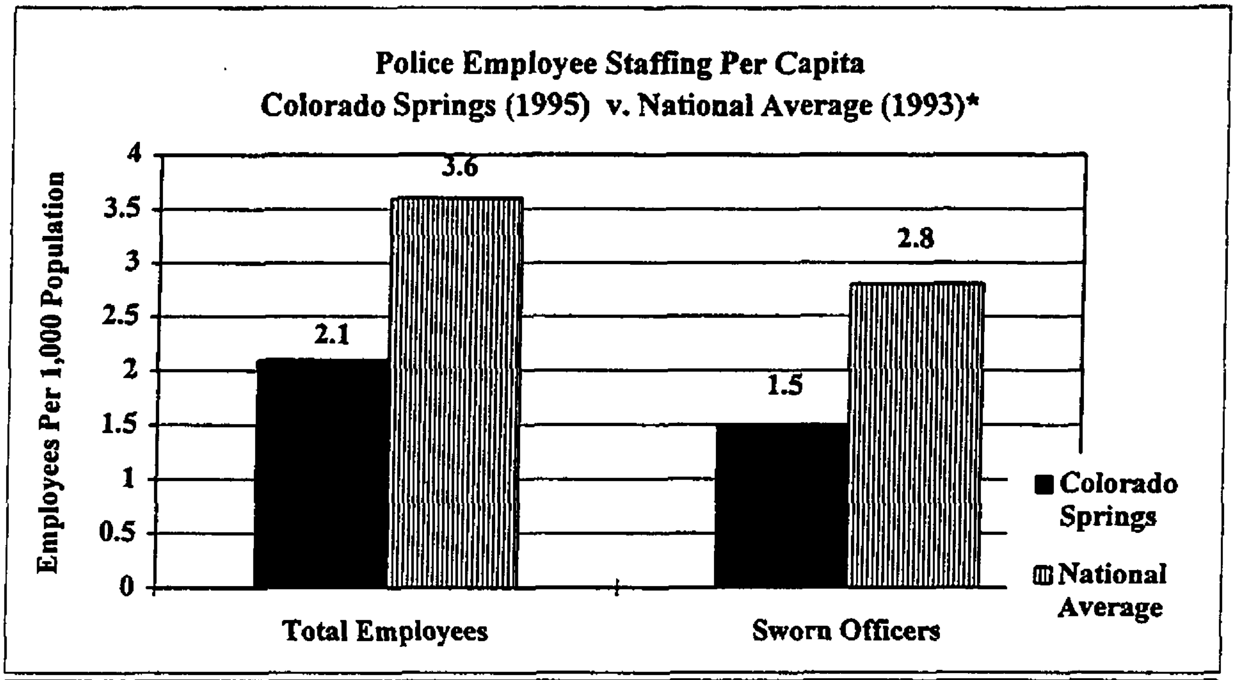
BALLOT QUESTION

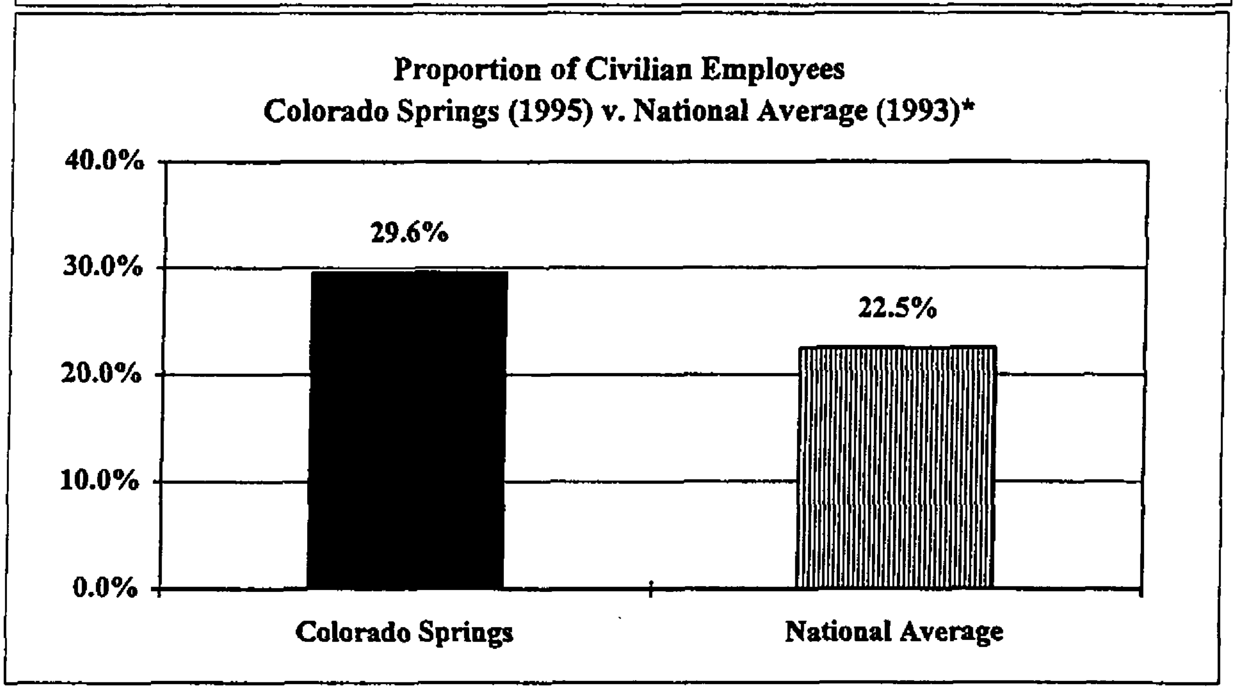
"Shall the City of Colorado Springs taxes be increased by $10.9 million annually, commencing in 1996, for more police protection, and by whatever additional amounts are raised annually thereafter, from a .30% Sales and Use Tax, to be spent as a voter approved revenue change and an exception to the limits which would apply, to permit:

1) Increased staffing of the Colorado Springs Police Department, including civilian support staff and necessary facilities and equipment to provide a minimum of two sworn police officers per 1000 persons population in 1997 and thereafter; and
2) Without limiting or reducing the current proportional funding of the Colorado Springs Police Department and 3) Without limiting or affecting the collection or spending of other revenues?"

YES____ NO____

Item # 9
7/25/95 (PPA)





When compared with the national average police agency staffing (for cities with a population of 250,000 and over), Colorado Springs has:

- *a lower ratio of total employees to population*
- *a lower ratio of sworn officers to population*
- *a higher proportion of civilian employees who perform administrative duties freeing up officers for field police work.*

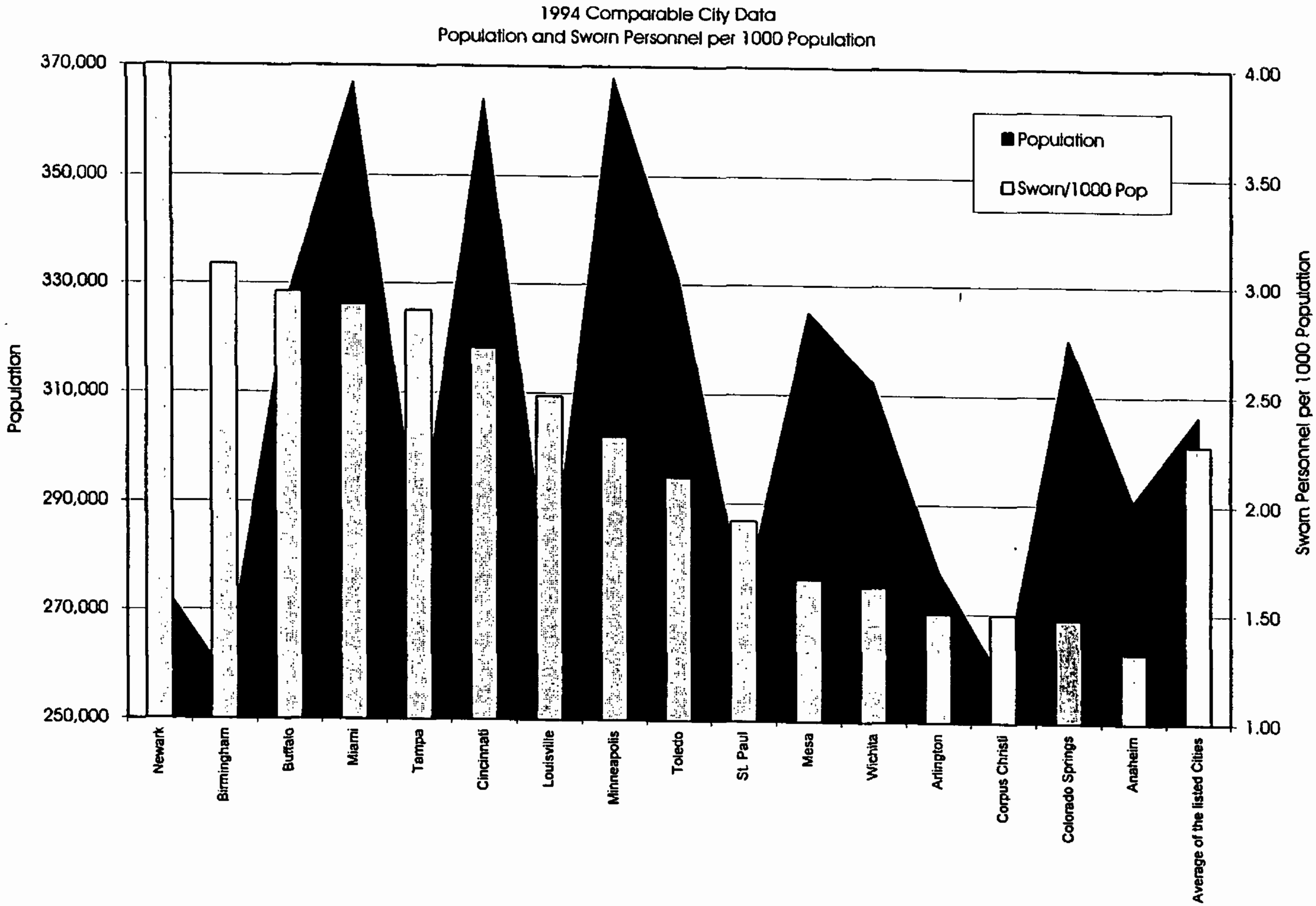
* National Average (1993) is the most current data available.

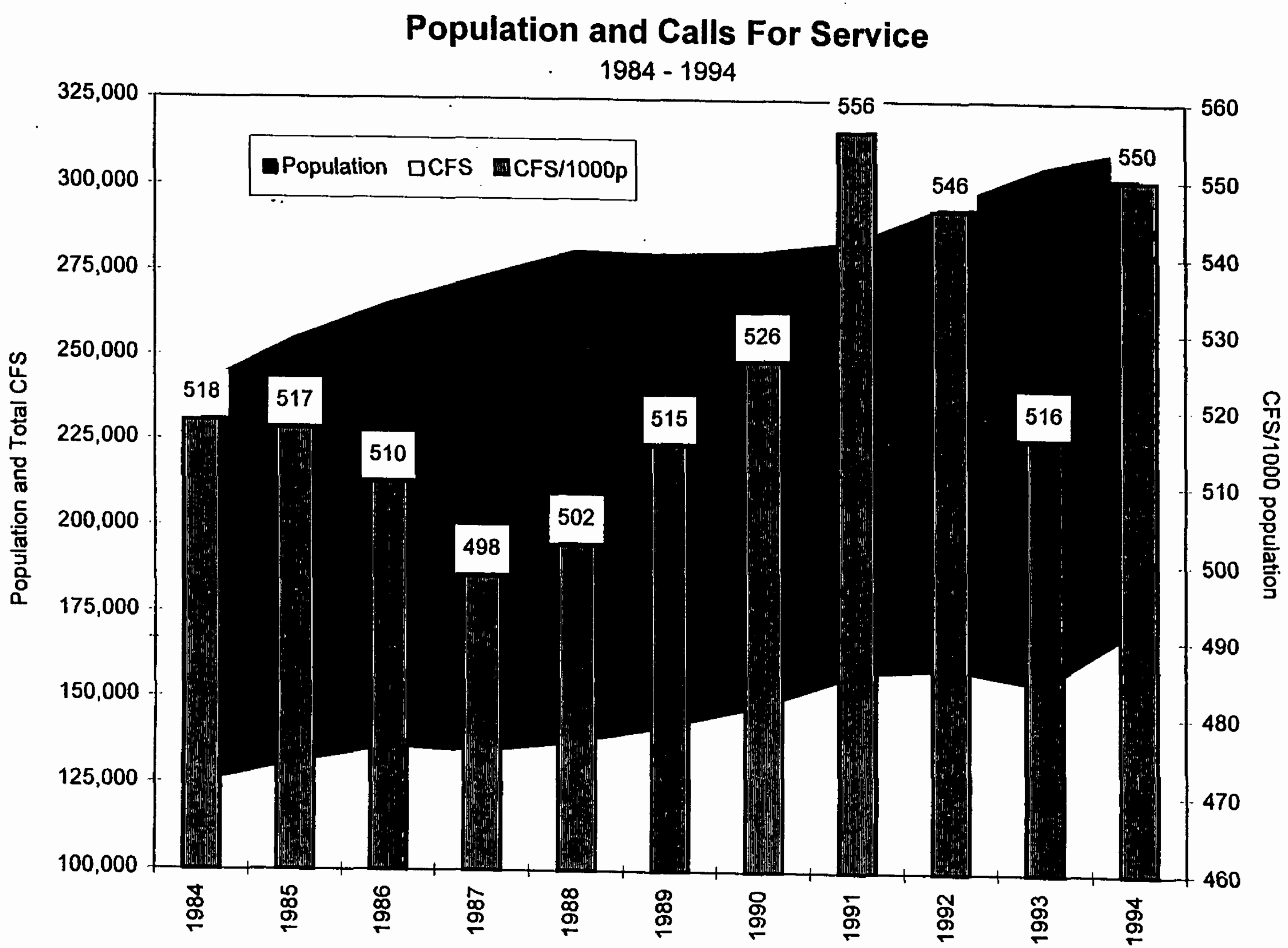
Comparison of Similar Sized Cities

Cities which have a population range of 260,000 - 370,000

	Population	Sworn per 1000 Pop	Total Personnel per 1000 Pop
Newark, NJ*	275,221	4.00	4.54
Birmingham, AL	258,000	3.09	4.07
Miami, FL	367,016	2.90	3.92
Tampa, FL	282,848	2.87	3.82
Louisville, KY	273,564	2.49	3.62
Buffalo, NY	328,123	2.96	3.49
Cincinnati, OH*	364,040	2.70	3.32
Minneapolis, MN	367,924	2.30	2.91
Mesa, AZ	325,000	1.62	2.53
St. Paul, MN	272,235	1.92	2.46
Toledo, OH	331,416	2.12	2.27
Corpus Christi, TX	257,453	1.50	2.24
Wichita, KS	312,214	1.62	2.20
Colorado Springs, CO	312,031	1.51	2.16
Arlington, TX	278,019	1.50	1.93
Anaheim, CA	290,712	1.32	1.88
Average of the listed Cities	305,989	2.28	2.96

Newark and Cincinnati data is 1993. 1994 data was not available.
Data collected telephonically March, 1995.


1994 Comparable City Data
Population and Sworn Personnel per 1000 Population
Population
Sworn/1000 Pop
370,000
350,000
330,000
310,000
290,000
270,000
250,000
4.00
3.50
3.00
2.50
2.00
1.50
1.00
Sworn Personnel per 1000 Population
Newark
Birmingham
Buffalo
Miami
Tampa
Cincinnati
Louisville
Minneapolis
Toledo
St. Paul
Mesa
Wichita
Arlington
Corpus Christi
Colorado Springs
Anaheim
Average of the listed Cities



3/22/95 - tjacobs

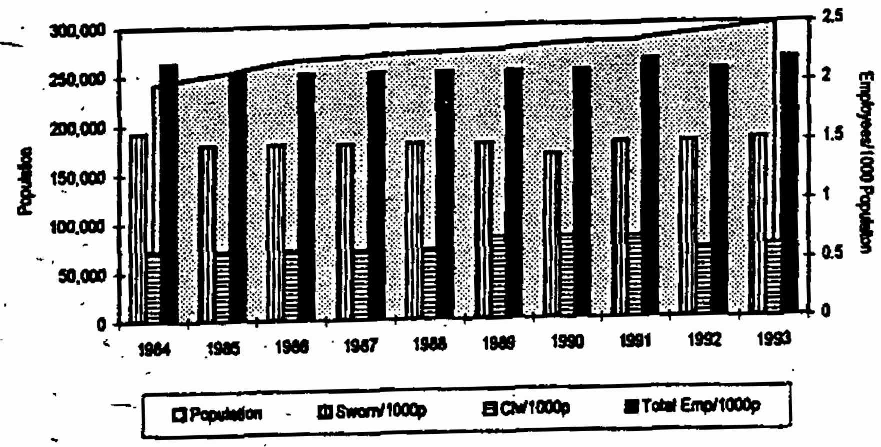
Calls For Service

Police Employees and Calls For Service (CFS) (Rate per 1,000 population)

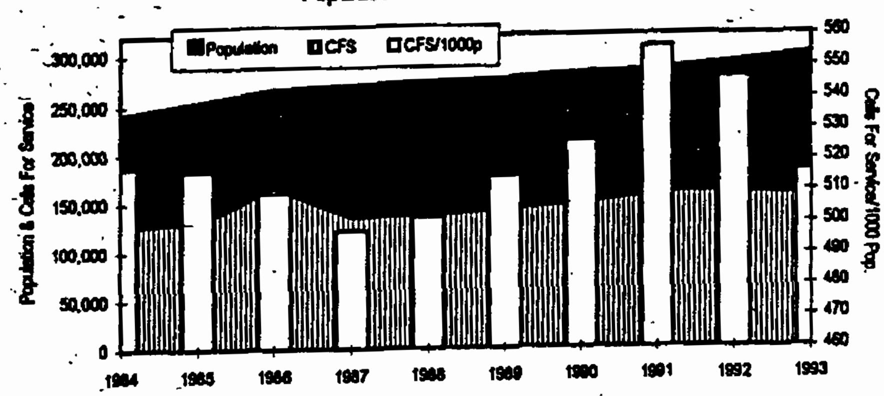
	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Population	241,270	253,300	265,700	269,500	273,000	275,500	281,140	283,162	290,977	299,343
CFS	125,046	130,866	135,446	134,114	136,919	141,789	147,902	157,375	158,934	154,345
CFS/1000p	518	517	510	498	502	515	526	556	546	516
Sworn	378	378	392	391	398	404	404	420	443	459
Sworn/1000p	1.60	1.50	1.50	1.50	1.50	1.50	1.40	1.50	1.50	1.53
Civilian	145	156	172	175	171	188	189	193	181	187
Civ/1000p	.60	.60	.60	.60	.60	.70	.70	.70	.60	.62
Total Employees	523	534	564	566	569	592	593	613	624	646
Total Emp/1,000p	2.20	2.10	2.10	2.10	2.10	2.10	2.10	2.20	2.10	2.20

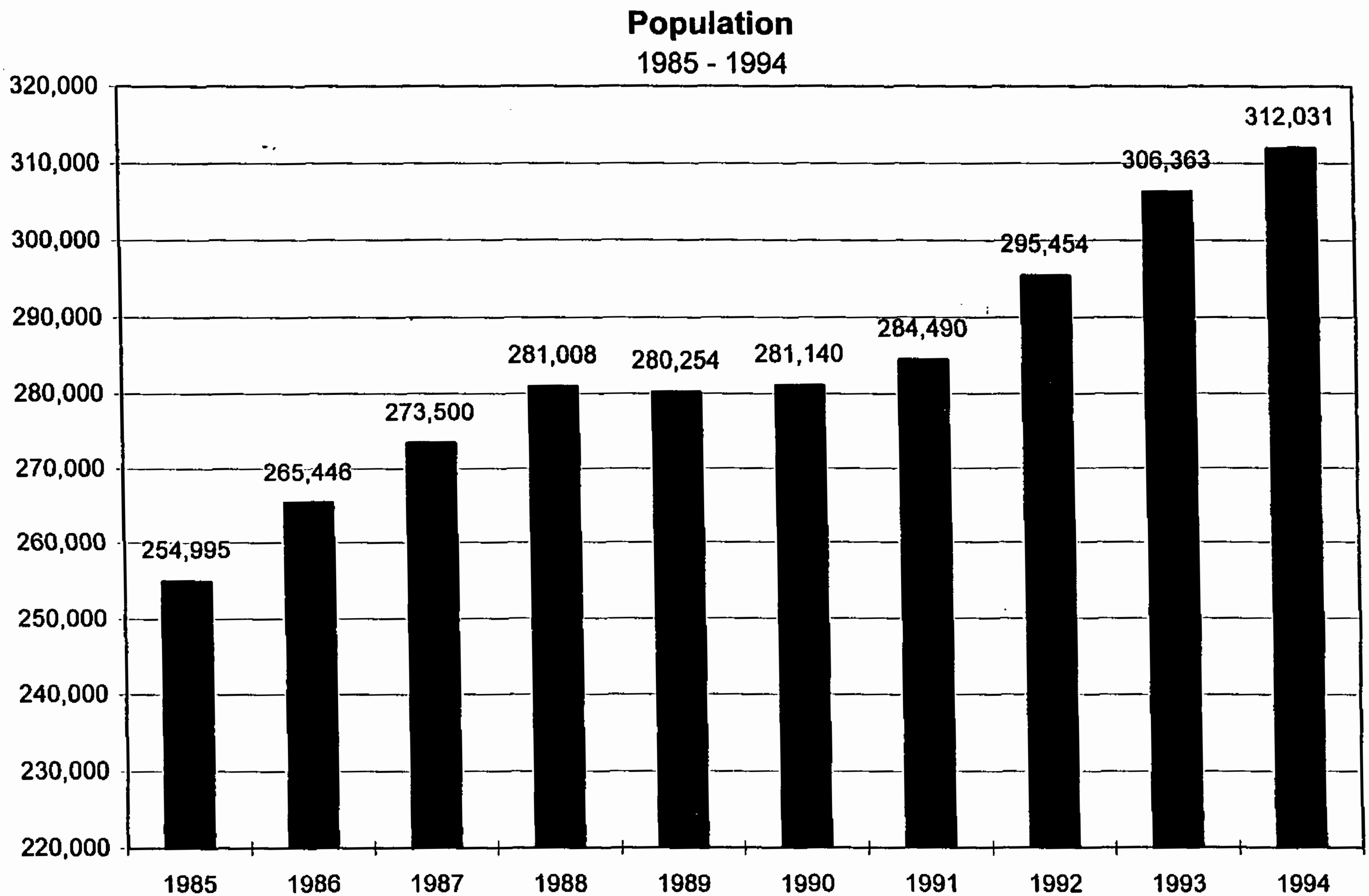
1984 - 1993 Population data from City of Colorado Springs Planning, Dev & Finance Dept.

Population and Employees/1000 Populaton



Population & Calls For Service



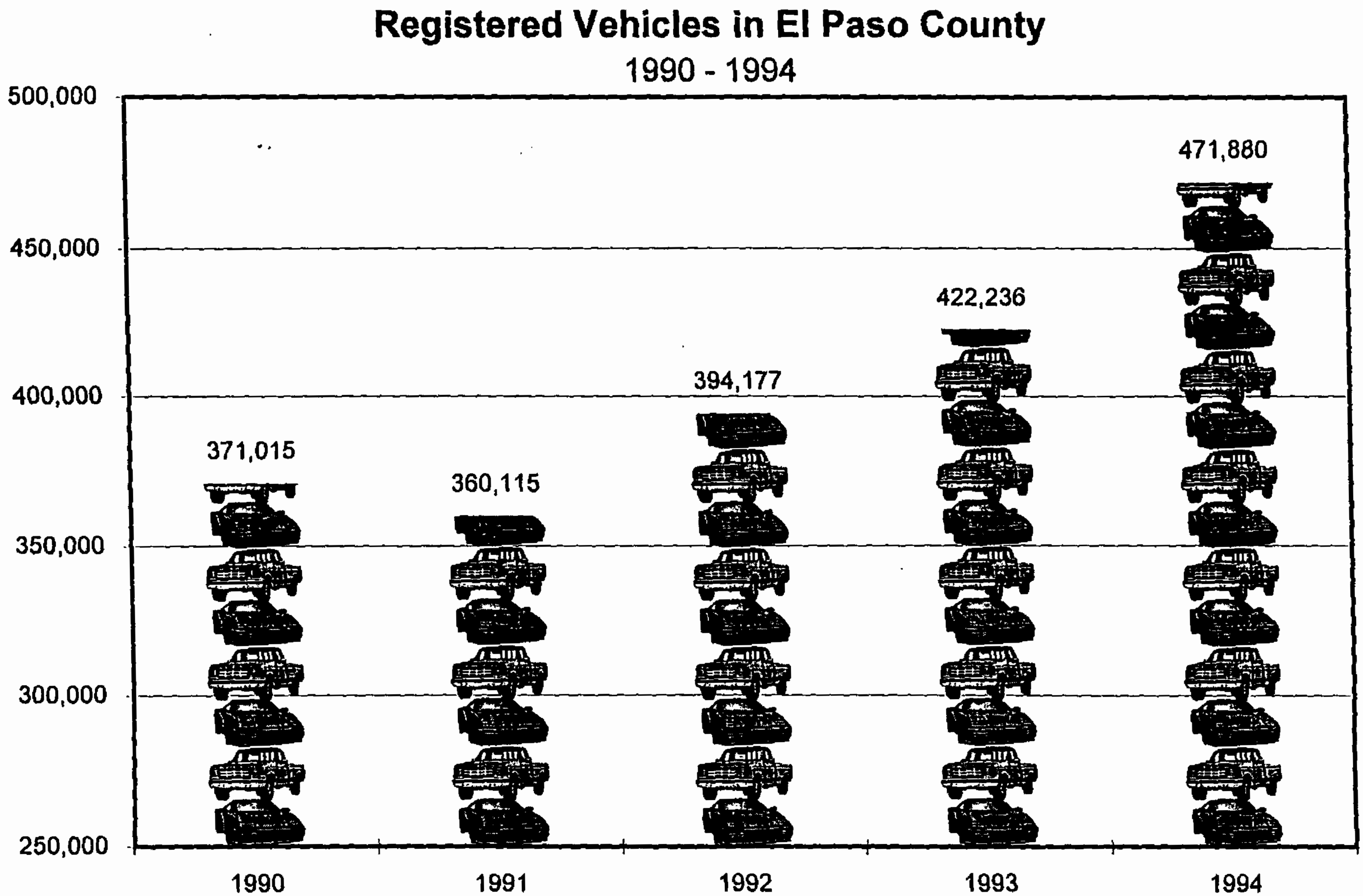


3/22/95 -- tjacobs

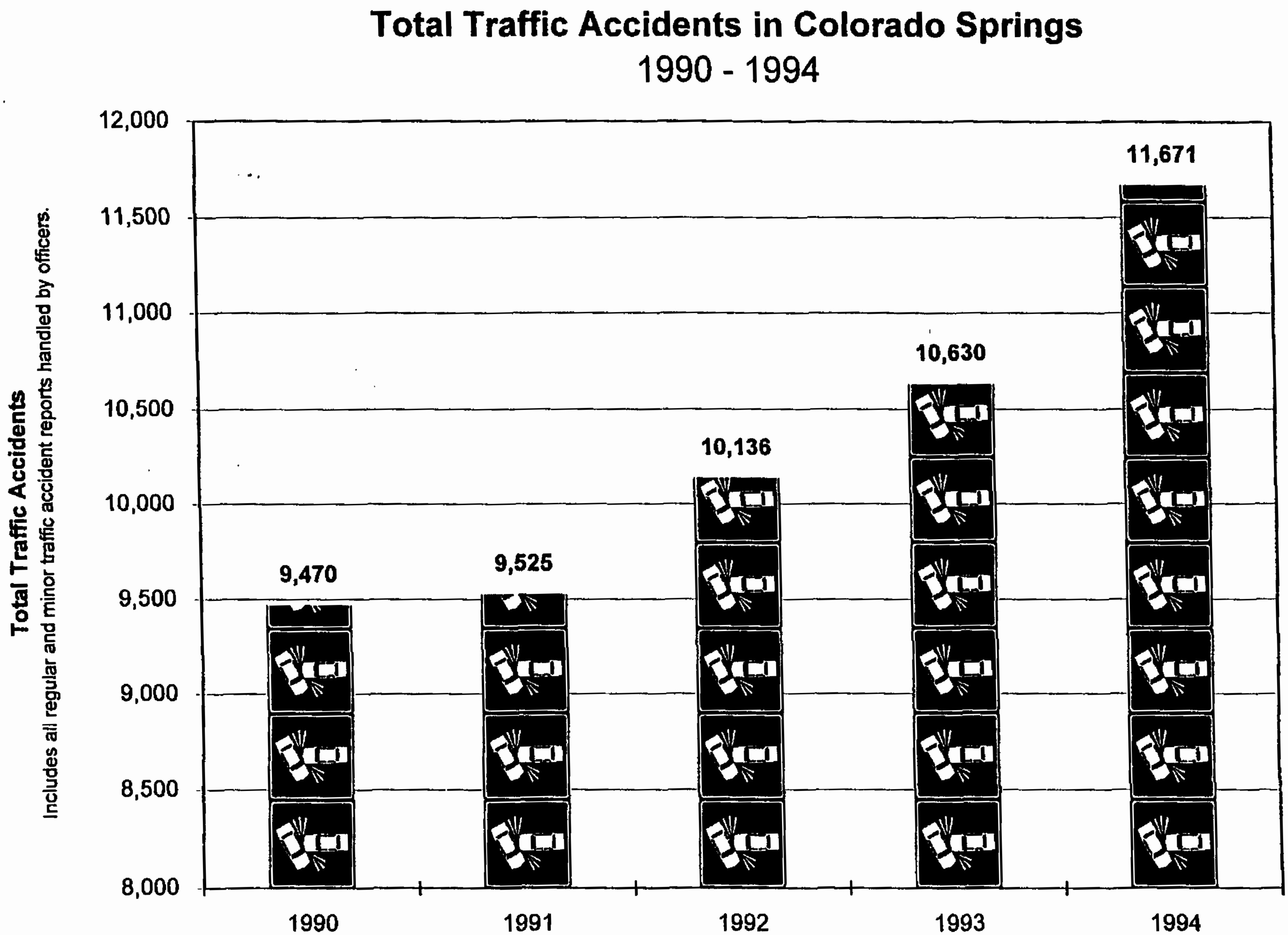
AVERAGE RECEIVED/DISPATCH TIMES/EXCEPTIONS ON CALLS FOR SERVICE

POLICE CALLS FOR SERVICE June

Date	Police CFS	Total Pty 1 Calls	Pty 1 Avg Rcv/ Disp	Pty 1 Except (+3)	Total Pty 2 Calls	Pty 2 Avg Rcv/ Disp	Pty 2 Except (+15)	Total Pty 3 Calls	Pty 3 Avg Rcv Disp
01 Thu	527	218	3:29	74	125	18:39	49	184	24:5
02 Fri	613	260	5:37	121	158	23:43	71	195	37:4
03 Sat	485	223	3:16	70	117	17:04	38	145	24:5
04 Sun	483	268	7:37	107	96	21:59	41	119	42:3
05 Mon	547	227	5:33	101	149	22:09	65	171	48:5
06 Tue	522	204	4:14	78	143	15:23	48	175	25:5
07 Wed	626	201	3:28	67	145	19:24	48	280	26:1
08 Thu	462	192	3:48	78	113	23:00	49	157	33:3
09 Fri	506	235	3:44	91	108	20:35	43	163	31:5
10 Sat	518	260	3:31	95	107	24:44	48	151	27:2
11 Sun	463	206	3:30	64	104	21:32	47	153	26:2
12 Mon	477	188	3:39	72	129	19:30	54	160	31:4
13 Tue	560	209	4:16	91	130	24:01	56	221	42:4
14 Wed	567	201	3:47	79	137	17:24	52	229	33:0
15 Thu	640	242	4:05	85	157	27:04	60	241	28:0
16 Fri	551	244	4:11	100	133	23:56	57	174	36:1
17 Sat	565	275	3:47	108	119	20:51	45	171	36:3
18 Sun	517	242	3:58	93	116	22:40	52	159	31:0
19 Mon	541	207	4:04	76	138	26:43	58	196	46:2
20 Tue	590	238	4:09	103	123	24:03	52	229	35:33
21 Wed	612	239	3:31	84	157	17:01	60	216	35:01
22 Thu	471	188	3:04	63	110	16:48	45	173	26:18
23 Fri	546	233	3:47	78	137	19:31	58	176	35:08
24 Sat	521	239	3:10	71	122	21:24	43	160	32:10
25 Sun	502	209	3:10	62	114	27:09	52	179	33:36
26 Mon	525	194	5:23	91	140	26:13	68	191	33:22
27 Tue	497	191	3:22	68	116	18:00	40	190	26:29
28 Wed	616	218	3:48	67	141	16:29	50	257	27:21
29 Thu	453	162	2:22	36	123	12:59	33	168	17:10
30 Fri	516	204	2:51	47	132	13:15	31	180	25:22
TOTAL	**16019**	**6617**	**3:56**	**2420**	**3839**	**20:57**	**1513**	**5563**	**32:07**



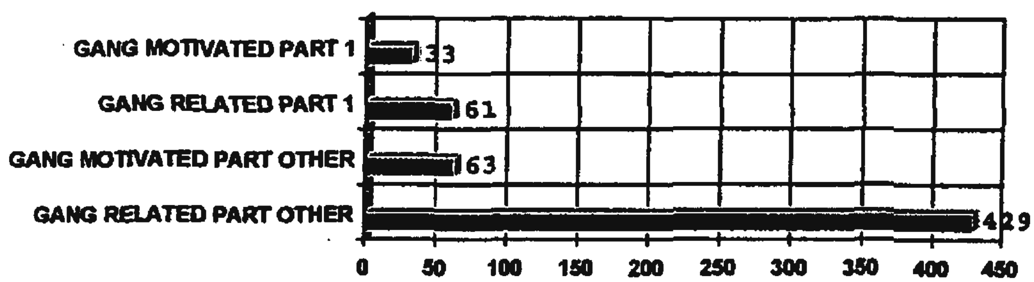
3/22/95 -- tjacobs



3/22/95 -- tjacobs

There have been a total of 586 street gang motivated crimes (criminal incidents conducted for the sake of the gang) and street gang related crimes (criminal incidents conducted for the sake of the individual) during 1994. This is an approximate increase of 38% from this time last year. The most significant increase is related to criminal mischief which includes graffiti. There has also been an increase in crimes against persons (Part 1) and a decrease in property crimes (Part Other).

1994 GANG RELATED CRIMES



COLORADO SPRINGS POLICE DEPARTMENT

MAY 1995 REPORT

ACTIVITY COMPARISON REPORT

	YEAR TO DATE 1995 ACTUAL	YEAR TO DATE 1994 ACTUAL	PERCENT CHANGE
CRIMINAL HOMICIDE			
MURDER	5	3	+ 66.67%
NEG MANSLAUGHTER	1	1	.00%
FORCIBLE RAPE	90	99	- 9.09%
ROBBERY	122	171	- 28.65%
ASSAULT, AGGRAVATED	358	370	- 3.24%
ASSAULT, SIMPLE	268	371	- 27.76%
BURGLARY	1269	1134	+ 11.90%
LARCENY-THEFT	6286	5554	+ 13.18%
MOTOR VEHICLE THEFT	500	424	+ 17.92%
TOTAL PART I	8899	8127	+ 9.50%

GRAND TOTAL ALL INDEX CRIMES
(PART I LESS SIMPLE ASSAULT AND NEG MANSLAUGHTER)

	8630	7755	+ 11.28%

MOTOR VEHICLE DEATHS

THIS YEAR	10
ON PRIVATE PROPERTY THIS YEAR	1

OFFICERS KILLED/ASSAULTED

ASSUALTED THIS YEAR	16
KILLED BY FELONIOUS ACTS THIS YEAR	0
KILLED BY ACDNTL/NEGLGNT ACTS THIS YEAR	0

COLORADO SPRINGS POLICE DEPARTMENT

MAY 1995 REPORT

CLEARANCE RATE FOR PART I CRIMES

	MAY 1995	MAY 1994
CRIMINAL HOMICIDE		
MURDER	100%	100%
NEGLIGENT MANSLAUGHTER		100%
FORCIBLE RAPE	29%	38%
ROBBERY	14%	9%
ASSAULT		
AGGRAVATED	52%	70%
SIMPLE	43%	59%
BURGLARY	7%	12%
THEFT/LARCENY	27%	29%
MOTOR VEHICLE THEFT	27%	34%
TOTAL	26%	29%

GROWTH IMPACTS ON POLICE SERVICES IN COLORADO SPRINGS

<u>City of Colorado Springs Citizen Survey</u>

1994 random survey of citizens (400 responses) identified top seven services (out of 29 listed) that citizens would like to see improved, whether it means raising taxes OR reducing other services:

1. Juvenile Crime Control
2. Traffic Signal Synchronization
3. Drug Enforcement
4. Repair and Overlay of City Streets
5. Crime Prevention Programs
6. Traffic and DUI Enforcement
7. Police Patrol Services

The same survey also identified the top areas citizens stated as the most important issue facing the community:

1. Crime Rate
2. Overpopulation/Overdevelopment
3. Quality of Schools/Education
4. Road Building/Maintenance
5. Gangs/Gang Activity
6. Juvenile Crime
7. Traffic

The following terms on Boards and Commissions expire as indicated:

COMMUNITY DEVELOPMENT ADVISORY BOARD

	Appointment	Expiration
(vacant) El Paso County Bond Program		7/27/97
(vacant) Mesa Springs Neighborhood NSA		7/27/97
(vacant) Economic Development Corp.		7/27/97
V. H. DePetrillo, At Large (resigned)	9/14/93	7/27/96
Frank Ransberger, Lending Institution	3/24/92	7/27/95
Gary H. Feffer, Pikes Peak Association of Realtors	2/8/94	7/27/95
James A. Brown, Pikes Peak United Way	8/28/90	7/27/95
Larry Vasterling, Westside Neighborhood NSA	10/27/92	7/27/95
John O. Blue, Hillside Neighborhood NSA	1/26/93	7/27/95

EXCAVATION BOARD

	Appointment	Expiration
(vacant) Plumbing Services Contractor		11/26/95
Ron O'Canna, Citizen at Large	4/14/92	11/26/94
Ronald R. Roberson, Telephone Company Rep.	2/23/93	11/26/94

STUDENT TRAFFIC SAFETY COMMITTEE

(vacant) Academy School District #20

BEHAVIOR INCIDENT REVIEW BOARD

	Appointment	Expiration
Frank A. Natchez, Attorney (resigned)	10/22/85	9/24/94
(vacant) Citizen At Large		9/24/97

COLORADO AVENUE GATEWAY SPECIAL IMPROVEMENT MAINTENANCE DISTRICT ADVISORY COMMITTEE

	Appointment	Expiration
Dennis A. Sharon	11/12/91	12/1/92
Robert T. Cleek	7/25/89	12/1/92
Marvin Koscove	1/14/92	12/1/92
(vacant)		12/1/94
J. V. "Joe" Brady	1/14/92	12/1/94

PLATTE AVENUE (IN KNOB HILL) SPECIAL IMPROVEMENT MAINTENANCE DISTRICT ADVISORY COMMITTEE

	Appointment	Expiration
Mark Toupin	12/10/91	12/1/92
Don/Muriel Zimmerman	7/25/89	12/1/92
Robby Eskanos	5/25/93	12/1/94

LODGERS AND AUTOMOBILE RENTAL TAX ADVISORY COMMITTEE

	Appointment	Expiration
Daniel Adelstein, Citizen at Large (resigned)	9/14/93	7/22/96
(vacant) Pikes Peak Highway Advisory Com. Rep.		7/22/95
Vern Thompson, Convention & Visitors Bureau Rep.	8/8/89	7/22/95

MEMORIAL HOSPITAL BOARD

	Appointment	Expiration
Scott Rand (resigned)	10/13/92	9/22/95

	Appointment	Expiration
TELECOMMUNICATIONS POLICY ADVISORY COMMITTEE		
(vacant)		10/9/96
(vacant)		10/9/97
(vacant)		10/9/97
Terry Bohn (resigned)	2/14/95	10/9/97
Jim Durkee	10/9/90	10/9/95
PIKES PEAK-TEJON INTERSECTION SPECIAL IMPROVEMENT MAINTENANCE DISTRICT ADVISORY COMMITTEE		
Harold C. Ingersoll	11/27/90	11/27/91
John Patrick Michael Murphy	11/27/90	11/27/94
COLORADO SPRINGS FILM ADVISORY COMMISSION		
Dale Mitchell, Chamber of Commerce Rep.	5/12/92	1/23/95
MECHANICAL COMMITTEE		
Kenneth Ament, Bldg. Contr. A, B or C (City)	4/23/91	3/1/95
NORWOOD SPECIAL IMPROVEMENT MAINTENANCE DISTRICT ADVISORY COMMITTEE		
vacant		12/1/96
vacant		12/1/96
HISTORIC PRESERVATION BOARD		
Susan Conley	7/14/92	5/23/95
Connie Townsend (resigned)	5/25/93	5/23/96
COLORADO SPRINGS PIONEERS MUSEUM ADVISORY BOARD		
Richard S. Harwood	7/25/89	6/25/95
Lucia T. Church	6/28/94	6/25/95
BUILDING COMMITTEE		
Michael Gaines, Structural Engineer (City) (resigned)	3/26/91	3/1/97

A RESOLUTION ACCEPTING THE IMPROVEMENTS OF THE WOODMEN VALLEY LOCAL IMPROVEMENT DISTRICT AND SETTING SEPTEMBER 12, 1995 AS THE DATE OF THE HEARING AT WHICH TIME COUNCIL WILL HEAR AND DETERMINE ANY AND ALL OF THE OBJECTIONS AND APPROVE THE ASSESSMENTS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. That the improvements of the Woodmen Valley Local Improvement District having been completed in accordance with the specifications, resolutions and ordinances relating thereto, are hereby approved.

Section 2. That September 12, 1995, is hereby set as the date of the hearing at which time, the Council will hear and determine any and all of the objections and approve the assessments relating thereto.

Dated at Colorado Springs, Colorado this 8th day of August, 1995.

____

Mayor

ATTEST:

____

City Clerk

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

Date: July 27, 1995

To: City Council

From: Lee Trovas, Manager, Capital Improvements Program LT

Re: Donation of Property to Colorado Department of Transportation
I-25 Improvement Project

The attached correspondence from Richard Reich and the Colorado Department of Transportation request the donation of three properties (one is land only) which we acquired some years ago in connection with the expansion of Centennial Boulevard to I-25. We will receive a house from another location to replace one that they had given to us before but that was lost to fire. In addition, CDOT will give us the proceeds from the sale of the two structures.

It is recommended that this donation be approved.

c: Richard Reich

ITEM NO. 16

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

DATE: July 9, 1995

TO: Lee Trovas, CIP Manager

RAR

FROM: Richard Reich, :Land Manager

SUBJECT: Donation of Property to CDOT for I-25 Corridor

Please find attached a memo from Mr. Dave Polling, Chief Engineer, Southern District for CDOT, requesting donation of three properties from the City to complete the right of way acquisition phase of the I-25 project. One is a vacant lot and two have single family residences on them.

In return for donating the property, the City will receive proceeds of auction from the two houses and another suitable house to be moved to the Hillside project of the Community Services Department.

These properties were originally acquired for the Centennial Boulevard to the Fontenaro Street Interchange extension. I recommend that City Council be requested to approve the conveyance of the subject properties subject to entering into an agreement covering the points in Mr. Poling's letter.

WLCM

DATE: July 11, 1995

TO: Richard Reich

FROM: Dave Poling

SUBJECT: N. Cooper and Fontanero Properties

CDOT is requesting that ownership of the three properties located at 1902 N. Cooper, 1629 N. Cooper, and 602 W. Fontanero be transferred to CDOT as needed ROW for the I 25 reconstruction project. This City controlled property is critical in allowing CDOT to complete the ROW acquisition phase of the I 25 project.

These three properties were originally purchased for the expansion of Centennial Blvd. to I 25. The ROW is needed for the ultimate construction of the new Fontanero Street Interchange. This Interchange will be constructed to accommodate the proposed Centennial Blvd. section. When Centennial Blvd is extended to the Interstate, the ROW will still be available to the City to allow for the construction of the roadway.

These properties are also needed as ROW for the next segment of the Southwest water line project, which is within this segment of the I 25 corridor.

We are continuing to work in partnership with the City of Colorado Springs with this project and look forward to continuing that relationship. CDOT will continue to work with the City in locating a suitable property to replace the structure that was lost to fire. As part of this transfer of property CDOT will be willing to give the City of Colorado Springs the proceeds of the sale of the two structures on the properties.

If there are any questions please feel free to give me a call or you may also talk with Steve Droge or Blaine Zenor.

cc: Torres - Droge - Pavol - Zenor,Universal

A RESOLUTION AUTHORIZING THE CONVEYANCE OF LAND TO THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE I-25 IMPROVEMENTS PROJECT.

WHEREAS, the City of Colorado Springs, a Municipal Corporation, (hereafter City) is the owner of certain tracts of land described as 1902 N. Cooper, 1629 N. Cooper and 602 W. Fontanero and the City acquired the property for the Fontanero Street Interchange; and

WHEREAS, the Colorado Department of Transportation requires the properties for the Interstate 25 Improvements Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

That the City Council hereby authorizes the proper City officials to enter into an agreement with the Colorado Department of Transportation and to convey the properties for the I-25 Project.

Dated at Colorado Springs, Colorado this ______ day of ______________________. 1995.

____
Mayor

ATTEST:

____
City Clerk

8/8/95

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

Date: August 1, 1995

To: Richard E. Zickefoose, City Manager

From: Paul D. Butcher, Director, Parks and Recreation Department

Subject: Joint City/County Open Space Funding Task Force

On July 5 your office transmitted a letter to Terry Harris, County Administrator, advising Mr. Harris of City Council's resolution proposing a joint City/County task force for open space funding options. The Board of Commissioners reviewed this item at their July 17th meeting, approving all provisions except the composition of the Task Force and the Nominating Committee. In Mr. Harris' attached letter, he notes the Commissioner's proposed changes and has drafted a revised resolution incorporating such changes.

Staff recommends Council approve these revisions, as shown in the attached rewrite.

c: James D. Munger, Deputy City Manager

ITEM NO. 17

TERRY R. HARRIS
Director

REC'D JUL 2 4 1995

ROSEMARIE SIMS
Administrative Assistant

EL PASO COUNTY
ADMINISTRATIVE SERVICES
27 East Vermijo
Colorado Springs, Colorado 80903-2225
(719) 520-6426
FAX (719) 520-6397

July 20, 1995

Richard Zickefoose, City Manager
City of Colorado Springs
30 South Nevada
Colorado Springs, CO 80903

Dear Dick:

At the regularly scheduled Board of County Commissioners' meeting on July 17, the Board considered the resolution establishing a joint City/County citizens' board to make recommendations on funding options for open space acquisitions. The Board approved the resolution to form such board, noting the following changes:

* Under Item #4, the first sentence reading "The Task Force shall be comprised of individuals and representatives from agencies/organizations with an interest in parks, trails, open space, and other forms of land preservation" was struck.

* Under Item #4, the composition of the joint committee to select the Task Force was changed from two (2) Council members and one (1) Commissioner to two (2) Council members and two (2) Commissioners.

The Commissioners also felt that the dates and timing of the preliminary and final reports as stated in Item #3 may need reviewing once the revised resolution is discussed by the City Council.

Attached please find the resolution reflecting the changes mentioned above.

Please let me know when the Council will be considering the revised resolution. After its acceptance, we can then arrange a schedule for the advertisement for and interviewing of Task Force members.

Thank you.

Sincerely,

Terry R. Harris, Director
Administrative Services

Attachment

Commissioner Brown moved adoption of the following Resolution:

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION NO. 95-240, General-63

A RESOLUTION ESTABLISHING A JOINT CITY/COUNTY CITIZENS' BOARD TO MAKE RECOMMENDATIONS ON FUNDING OPTIONS FOR OPEN SPACE ACQUISITIONS

WHEREAS, the City of Colorado Springs and El Paso County acknowledge the value of open space as being part of the fabric of a viable community; and

WHEREAS, the City and County are currently taking steps to develop open space plans which will identify and prioritize specific parcels for acquisition and preservation; and

WHEREAS, it will be necessary to establish a long-range financial plan for open space acquisition that will include consideration of such sources as private contributions, corporate gifts, grants, use of existing funds and development of new revenue streams; and

WHEREAS, the City and County believe that a task force can be charged with exploring these options and bringing back to the legislative bodies their recommendations for funding alternatives;

NOW, THEREFORE, BE IT RESOLVED by the Colorado Springs City Council and the Board of County Commissioners of El Paso County the following:

1. The City and County jointly establish an eleven (11) member board entitled the City/County Task Force for Open Space Funding.

2. The purpose of the Task Force will be to identify, research, and bring back to City Council and County Commissioners recommendations for funding the acquisition of open space.

3. The Task Force's charge will be for a period of one year, with a preliminary report due 90 days after the formation of the Task Force and a final report due not later than November 1, 1995.

4. Members shall be chosen from a candidate pool of individuals who submit applications in response to a published call for Task Force members. A joint committee comprised of two (2) Council members and two (2) Commissioners shall review, interview and recommend slate of eleven nominees for full Council and Commissioner approval.

5. Both the City and County shall provide appropriate staff members to assist in the work of the Task Force.

DONE THIS 17th day of July, 1995, at Colorado Springs, Colorado.

Mayor

ATTEST:

City Clerk

Chairperson of the Board
County Commissioners

ATTEST:

Deputy County Clerk

FILE

RICHARD E. ZICKEFOOSE
CITY MANAGER

CITY OF COLORADO SPRINGS

July 5, 1995

Mr. Terry Harris
County Administrator
El Paso County
27 E. Vermijo
Colorado Springs, CO 80903

Dear Terry,

Enclosed please find a resolution passed on June 27, 1995 that would create, upon County Commissioner ratification, a joint City/County task force on open space funding options. City Council requests that this item be placed on the earliest available agenda for the Board of Commissioners for their review and approval. I would ask that your office let us know when the item is scheduled so that appropriate staff might be in attendance.

Thank you for your assistance. Please do not hesitate to call me if I can provide further assistance.

Sincerely,

Richard E. Zickefoose
City Manager

INTEROFFICE MEMORANDUM

CITY OF COLORADO SPRINGS

Date: July 3, 1995

To: Richard E. Zickefoose, City Manager

From: Paul D. Butcher, Director, Parks and Recreation Department PDB

Subject: Joint City/County Open Space Funding Task Force

At the Morning Informal Meeting on June 5, five members of City Council gave direction to Administration to take a leadership role in creating a joint City/County Open Space Funding Task Force. This concept was discussed at the Council/Commissioner work session on June 2, and tentative agreement was reached to move ahead.

At the June 12 Informal meeting a draft resolution was presented to Council that would create an interagency task force on open space funding. Council asked that the resolution be amended to expand the task force to eleven (11) members and that the task force be required to provide a six month and final report. At Council's final review of this document on June 27, Council asked that the report timelines be shortened to approximately three and five months. These changes are incorporated into this version.

This resolution should now be forwarded to El Paso County for County Commissioner ratification.

c: James D. Munger, Deputy City Manager

A RESOLUTION ESTABLISHING A JOINT CITY/COUNTY CITIZENS' BOARD TO MAKE RECOMMENDATIONS ON FUNDING OPTIONS FOR OPEN SPACE ACQUISITIONS

WHEREAS, the City of Colorado Springs and El Paso County acknowledge the value of open space as being part of the fabric of a viable community, and

WHEREAS, the City and County are currently taking steps to develop open space plans which will identify and prioritize specific parcels for acquisition and preservation, and

WHEREAS, it will be necessary to establish a long-range financial plan for open space acquisition that will include consideration of such sources as private contributions, corporate gifts, grants, use of existing funds, and development of new revenue streams, and

WHEREAS, the City and County believe that a task force can be charged with exploring these options and bringing back to the legislative bodies their recommendations for funding alternatives.

NOW THEREFORE, be it resolved by the Colorado Springs City Council and the Board of County Commissioners for El Paso County the following:

1. The City and County jointly establish an eleven (11) member board entitled the City/County Task Force for Open Space Funding.

2. The purpose of the Task Force will be to identify, research, and bring back to City Council and County Commissioners recommendations for funding the acquisition of open space.

3. The Task Force's charge will be for a period of one year, with a preliminary report due ninety (90) days after the formation of the Task Force and a final report due not later than November 1, 1995.

4. The Task Force shall be comprised of individuals and representatives from agencies/organizations with an interest in parks, trails, open space, and other forms of land preservation. Members shall be chosen from a candidate pool of individuals who submit applications in response to a published call for Task Force members. A joint committee comprised of two (2) Council members and one (1) Commissioner shall review, interview, and recommend slate of eleven nominees for full Council and Commissioner approval.

5. Both the City and County shall provide appropriate staff members to assist in the work of the Task Force.

Dated this ___________day of __________________, 1995 at Colorado Springs, Colorado.

____
Mayor

ATTEST:

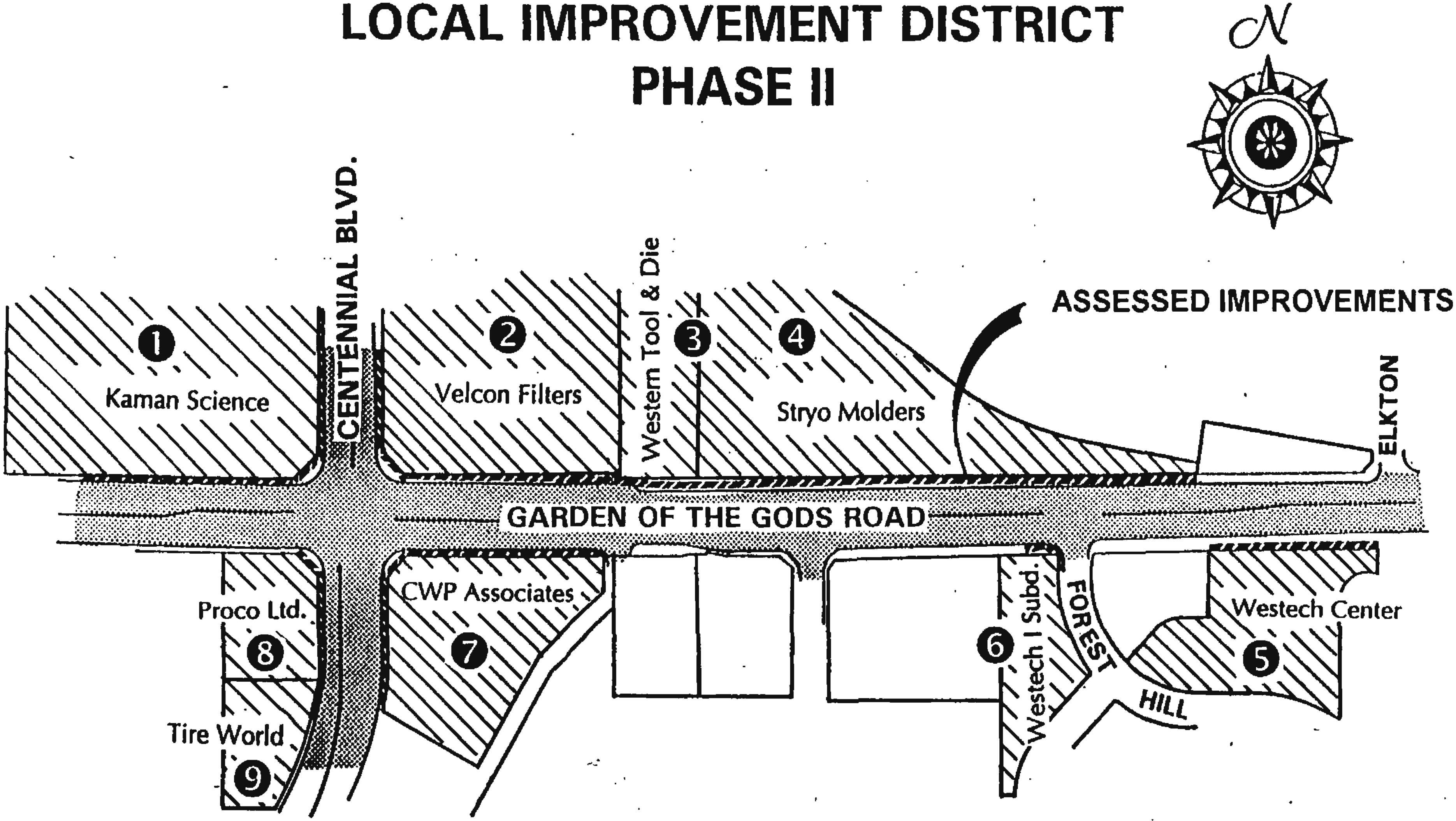
____
City Clerk

____
Chairperson of the Board
of County Commissioners

ATTEST:

____

GARDEN OF THE GODS ROAD LOCAL IMPROVEMENT DISTRICT PHASE II



SUMMARY OF COSTS

OWNER ESTIMATE AND FINAL COST ANALYSIS

NO.	OWNER	FINAL $	ESTIMATE	$ CHANGE	% CHANGE
001	KAMAN SCIENCES	$ 27,446.57	$44,547.47	($17,100.90)	-38.39%
002	VELCON SUBD.	$ 45,268.58	$53,980.19	($8,711.61)	-16.14%
003	WESTERN TOOL	$ 17,945.51	$20,422.25	($2,476.74)	-12.13%
004	STYRO MOLDERS	$ 70,768.78	$67,022.43	$3,746.35	+5.59%
005	WESTECH CENTER	$ 4,357.10	$6,281.00	($1,923.90)	-30.63%
006	WESTECH I SUBD.	$ 1,760.44	$1,853.50	($93.06)	-5.02%
007	CWP ASSOC.	$ 14,984.92	$11,181.50	$3,803.42	+34.02
008	PROCO LTD.	$ 25,351.14	$27,341.60	($1,990.46)	-7.28%
009	TIRE WORLD	$ 23,027.07	$24,048.57	($1,021.50)	-4.25%
	TOTALS	**$230,910.11**	**$256,678.51**	**($25,768.40)**	**~~+~~10.04%** -

This project was constructed in conjunction with City and State funded Storm Drainage and median improvements. The amounts assessed are those which are the normal cost responsibility of the land owner. The assessed amounts are for improvements made adjacent to the properties specially benefited. The total contract amount is $1,299,047.27 of which $230,910.11 [17.78%] constitutes the "Garden of the Gods Road Local Improvement District Phase II".

CONTRACT EXPENDITURES:

TOTAL CONTRACT AMOUNT	**$ 1,299,047.27**
DISTRICT SHARE	**$ 230,910.11**
NON-ASSESSABLE COSTS	**$ 1,068,137.16**

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT
08/07/95

PARCEL NO.: 001
SCHEDULE NO.: 73234-01-032
OWNER: KAMAN SCIENCES CORP.
ADDRESS: 0000 Garden of the Gods Road

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter	380 LF	$11.00/LF	$4,180.00	375 LF	$7.30/LF	$2,737.50
Pavement	740 SY	$24.48/SY	$18,115.20	677 SY	$22.65/SY	$15,334.05
Sidewalk	640 SY	$20.00/ SY	$12,800.00	645 SY	$14.00/SY	$9,030.00
Decorative Rock	48 TN	$35.00/TN	$1,680.00	48 TN	$22.50/TN	$1,080.00
Pedestrian Ramp	14 SY	$25.00/SY	$350.00	22 SY	$22.00/SY	$484.00
Sod	4,625 SF	$0.50/SF	$2,312.50			$0.00
Sprinkler System	1 EA	$500.00/EA	$500.00			$0.00
Tree Removal	4 EA	$140.00/EA	$560.00	4 EA	$250.00/EA	$1,000.00
6" Conc. Curb			$0.00	142 LF	$3.25/LF	$461.50
Seeding			$0.00	0.47 AC	$1,826.00/AC	$858.22
Mulching			$0.00	0.47 AC	$1,428.00/AC	$671.16
Hydro Mulch/Seed			$0.00	400 SY	$0.45/SY	$180.00
Vegetation Blanket			$0.00	203 SY	$10.00/SY	$2,030.00
CONTRUCTION			$40,497.70			$33,866.43
less Land Aqu. Credit			0.00			-$8,915.00
SUB-TOTAL			$40,497.70			$24,951.43
10% District Charge			$4,049.77			$2,495.14
ASSESSMENT			$44,547.47			$27,446.57

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT

08/07/95

PARCEL NO.: 002
SCHEDULE NO.: 73234-01-030
OWNER: VELCON FILTERS INC.
ADDRESS: 1210 Garden of the Gods Road

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter	365 LF	$11.00/LF	$4,015.00	421 LF	$7.30/LF	$3,073.30
Pavement	833 SY	$24.48/SY	$20,391.84	720 SY	$22.65/SY	$16,308.00
2 inch Pavement				593 SY	$3.95/SY	$2,342.35
Sidewalk	861 SY	$20.00/ SY	$17,220.00	944 SY	$14.00/SY	$13,216.00
Decorative Rock	49 TN	$35.00/TN	$1,715.00	49 TN	$22.50/TN	$1,102.50
Parking Lot	143 SY	$9.42/SY	$1,347.06	31.5 TN	$35.00/TN	$1,102.50
Pedestrian Ramp	14 SY	$25.00/SY	$350.00	31 SY	$22.00/SY	$682.00
Sod	1,310 SF	$0.50/SF	$655.00	3,168 SF	$0.50/SF	$1,584.00
Sprinkler System	1 EA	$500.00/EA	$500.00			$0.00
Cross-pan	22 SY	$25.00/SY	$550.00	22 SY	$36.50/SY	$803.00
Asphalt Removal	331 SY	$4.00/SY	$1,324.00	331 SY	$2.00/SY	$662.00
Curb Removal	62 LF	$2.50/LF	$155.00	62 LF	$2.80/LF	$173.60
6" Conc. Curb	35 LF	$10.00/LF	$350.00	32 LF	$3.25/LF	$104.00
Shrub Removal	20 EA	$25.00/EA	$500.00			$0.00
CONSTRUCTION			$49,072.90			$41,153.25
10% District Charge			$4,907.29			$4,115.33
TOTAL COST			$53,980.19			$45,268.58

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT

08/07/95

PARCEL NO.: 003
SCHEDULE NO.: 73243-02-003
OWNER: LEE & WEGENER (WESTERN TOOL & DIE)
ADDRESS: 1140 Garden of the Gods Road

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter	117 LF	$11.00/LF	$1,287.00	117 LF	$7.30/LF	$854.10
Pavement	267 SY	$24.48/SY	$6,536.16	265 SY	$22.65/SY	$6,002.25
Sidewalk	104 SY	$20.00/ SY	$2,080.00	104 SY	$14.00/SY	$1,456.00
Decorative Rock	10 TN	$35.00/TN	$350.00	10 TN	$22.50/TN	$225.00
Parking Lot	256 SY	$9.42/SY	$2,411.52	114 TN	$35.00/TN	$3,990.00
Pedestrian Ramp	9 SY	$25.00/SY	$225.00	9 SY	$22.00/SY	$198.00
Sod	700 SF	$0.50/SF	$350.00	1,265 SF	$0.50/SF	$632.50
Sprinkler System	1 EA	$500.00/EA	$500.00	T&M	3,000.00/FA	$1,165.00
Cross-pan	22 SY	$25.00/SY	$550.00	22 SY	$36.50/SY	$803.00
Tree Removal	1 EA	$140.00/EA	$140.00	1 EA	$250.00/EA	$250.00
Asphalt Removal	409 SY	$4.00/SY	$1,636.00	394 SY	$2.00/SY	$788.00
Curb Removal	258 LF	$2.50/LF	$645.00	310 LF	$2.80/LF	$868.00
6" Conc. Curb	143 LF	$10.00/LF	$1,430.00	227 LF	$3.25/LF	$737.75
Wheel Stops	6 EA	$25.00/EA	$150.00			$0.00
Shrub Removal	11 EA	$25.00/EA	$275.00			$0.00
Hydro Mulch/Seed				450 SY	$0.45/SY	$202.50
CONSTRUCTION			**$18,565.68**			**$18,172.10**
less Land Aqu. Credit			$0.00			-$1,858.00
SUB-TOTAL			**$20,422.25**			**$16,314.10**
10% District Charge			$1,856.57			$1,631.41
TOTAL COST			**$20,422.25**			**$17,945.51**

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT

08/07/95

PARCEL NO.: 004
SCHEDULE NO.: 73243-02-004
OWNER: HIER-WAT (STYRO MOLDERS)
ADDRESS: 1110 Garden of the Gods Road

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter	816 LF	$11.00/LF	$8,976.00	806 LF	$7.30/LF	$5,883.80
Pavement	1,176 SY	$24.48/SY	$28,788.48	1,176 SY	$22.65/SY	$26,636.40
Sidewalk	784 SY	$20.00/SY	$15,680.00	786 SY	$14.00/SY	$11,004.00
Driveway Apron	225 SY	$2.44/SF	$4,950.00	270 SY	$36.50/SY	$9,855.00
Decorative Rock	36 TN	$35.00/TN	$1,260.00	48 TN	$22.50/TN	$1,080.00
Parking Lot			$0.00	14 TN	$35.00/TN	$490.00
Pedestrian Ramp	17 SY	$25.00/SY	$425.00	17 SY	$22.00/SY	$374.00
Sod	450 SF	$0.50/SF	$225.00	932 SF	$0.50/SF	$466.00
Grouted Rip-Rap	28 CY	$50.00/CY	$1,400.00	28 CY	$67.00/CY	$1,876.00
Trans Tree (1.5"-3")	10 EA	$50.00/EA	$500.00	10 EA	$82.00/EA	$820.00
Trans Tree(3"-6")	3 EA	$75.00/EA	$225.00	3 EA	$135.00/EA	$405.00
Sprinkler System	1 EA	$500.00/EA	$500.00	T&M	$3,000.00/FA	$3,545.00
Tree Removal			$0.00	2 EA	$250.00/EA	$500.00
Hydro Mulch/Seed			$0.00	689 SY	$0.45/SY	$310.05
Vegetation Blanket			$0.00	309 SY	$10.00/SY	$3,090.00
CONSTRUCTION			**$62,929.48**			**$66,335.25**
less Land Aqu. Credit			-2,000.00			-$2,000.00
SUB-TOTAL			**$60,929.48**			**$64,335.25**
10% District Charge			$6,092.95			$6,433.53
TOTAL COST			**$67,022.43**			**$70,768.78**

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT

08/07/95

PARCEL NO.: 005
SCHEDULE NO.: 73252-07-035
OWNER: HADJIS (WESTECH CENTER)
ADDRESS: 4455 Forest Hills Road

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter			$0.00	45 LF	$7.30/LF	$328.50
Sidewalk	137 SY	$20.00/ SY	$2,740.00	146 SY	$14.00/SY	$2,044.00
Decorative Rock	77 TN	$35.00/TN	$2,695.00	53 TN	$22.50/TN	$1,192.50
Pedestrian Ramp	11 SY	$25.00/SY	$275.00	18 SY	$22.00/SY	$396.00
SUB-TOTAL			**$5,710.00**			**$3,961.00**
10% District Charge			$571.00			$396.10
TOTAL COST			**$6,281.00**			**$4,357.10**

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT

08/07/95

PARCEL NO.: 006
SCHEDULE NO.: 73252-22-001
OWNER: DMC FAMILY (WESTECH I SUBD.)
ADDRESS: 4470 Forest Hills Road

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter			$0.00	44 LF	$7.30/LF	$321.20
Sidewalk	48 SY	$20.00/ SY	$960.00	48 SY	$14.00/SY	$672.00
Decorative Rock	5 TN	$35.00/TN	$175.00			$0.00
Pedestrian Ramp	22 SY	$25.00/SY	$550.00	22 SY	$22.00/SY	$484.00
Curb Removal			$0.00	44 LF	$2.80/LF	$123.20
SUB-TOTAL			**$1,685.00**			**$1,600.40**
10% District Charge			$168.50			$160.04
TOTAL COST			**$1,853.50**			**$1,760.44**

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT
08/07/95

PARCEL NO.: 007
SCHEDULE NO.: 73261-00-016
OWNER: CWP ASSOCIATES
ADDRESS: 0000 Garden of the Gods Road

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter			$0.00	372 LF	$7.30/LF	$2,715.60
Pavement			$0.00	133 SY	$22.65/SY	$3,012.45
Sidewalk	415 SY	$20.00/ SY	$8,300.00	425 SY	$14.00/SY	$5,950.00
Decorative Rock	39 TN	$35.00/TN	$1,365.00			$0.00
Pedestrian Ramp	20 SY	$25.00/SY	$500.00	27 SY	$22.00/SY	$594.00
Cross-pan			$0.00	30 SY	$36.50/SY	$1095.00
Asphalt Removal			$0.00	69 SY	$2.00/SY	$138.00
Curb Removal			$0.00	42 LF	$2.80/LF	$117.60
SUB-TOTAL			$10,165.00			$13,622.65
10% District Charge			$1,016.50			$1,362.27
TOTAL COST			$11,181.50			$14,984.92

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT

08/07/95

PARCEL NO.: 008
SCHEDULE NO.: 73261-00-023
OWNER: PROCO LTD.
ADDRESS: 0000 Centennial Blvd.

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Final U.P.	Final COST
Curb and Gutter			$0.00	351 LF	$7.30/LF	$2,562.30
Pavement	500 SY	$24.48/SY	$12,240.00	500 SY	$22.65/SY	$11,325.00
Sidewalk	251 SY	$20.00/ SY	$5,020.00	148 SY	$14.00/SY	$2,072.00
Decorative Rock	32 TN	$35.00/TN	$1,120.00	12 TN	$22.50/TN	$270.00
Parking Lot	50 SY	$9.42/SY	$471.00	9 TN	$35.00/TN	$315.00
Pedestrian Ramp	28 SY	$25.00/SY	$700.00	33 SY	$22.00/SY	$726.00
Cross-pan	10 SY	$25.00/SY	$250.00	18 SY	$36.50/SY	$657.00
Asphalt Removal	30 SY	$4.00/SY	$120.00			$0.00
Curb Removal	274 LF	$2.50/LF	$685.00	375 LF	$2.80/LF	$1,050.00
Engineering Cost	0.5 LS	$8,500.00/LS	$4,250.00	0.5 LS	$7,422.50	$3,711.25
Seeding			$0.00	0.11AC	$1,826.00/AC	$200.86
Mulching			$0.00	0.11AC	$1,428.00/AC	$157.08
SUB-TOTAL			$24,856.00			$23,046.49
10% District Charge			$2,485.00			$2,304.65
TOTAL COST			$27,341.60			$25,351.14

PROPERTY OWNER ASSESSMENT ANAYLSIS
GARDEN OF THE GODS ROAD
LOCAL IMPROVEMENT DISTRICT
08/07/95

PARCEL NO.: 009
SCHEDULE NO.: 73261-01-015
OWNER: TIRE WORLD
ADDRESS: 0000 Centennial Blvd.

ESTIMATED AND FINAL COST ANALYSIS:

ITEM	EST. QUA.	EST. U.P.	EST COST	Final QUA	Fianl U.P.	Final COST
Curb and Gutter	330 LF	$11.00/LF	$3,630.00	319 LF	$7.30/LF	$2,328.70
Pavement	45.5 SY	$24.48/SY	$1,113.84	45 SY	$22.65/SY	$1,019.25
Sidewalk	27 SY	$20.00/ SY	$540.00	70 SY	$14.00/SY	$980.00
Decorative Rock			$0.00	11 TN	$22.50/TN	$247.50
Parking Lot	50 SY	$9.42/SY	$471.00	13 TN	$35.00/TN	$455.00
Pedestrian Ramp	14 SY	$25.00/SY	$350.00	11 SY	$22.00/SY	$242.00
Sod	6,000 SF	$0.50/SF	$3,000.00	2,105 SF	$0.50/SF	$1,052.50
Sprinkler System	1 EA	$500.00/EA	$500.00	T&M	3,000.00/FA	$2,936.00
Cross-pan	10 SY	$25.00/SY	$250.00	18 SY	$36.50/SY	$657.00
Asphalt Removal	320 SY	$4.00/SY	$1,280.00	160 SY	$2.00/SY	$320.00
Curb Removal	325 LF	$2.50/LF	$812.50	325 LF	$2.80/LF	$910.00
6" Conc. Curb			$0.00	30 LF	$3.25/LF	$97.50
Relocate Inlet	LS	$5,500.00/LS	$5,500.00	LS	$2,600.00	$2,600.00
Engineering Cost	0.5 LS	$8,500.00/LS	$4,250.00	0.5 LS	$7,422.50	$3,711.25
Concrete Removal	33 SY	$5.00/SY	$165.00	33 SY	$10.00/SY	$330.00
Curb Chase			$0.00	LS	$3,047.00	$3,047.00
SUB-TOTAL			$21,862.34			$20,933.70
10% District Charge			$2,186.23			$2,093.37
TOTAL COST			$24,048.57			$23,027.07

RESOLUTION NO. ______

A RESOLUTION SUSTAINING IN PART AND OVERRULING IN PART PROTESTS MADE AND CONFIRMING THE COSTS AND ASSESSMENTS IN THE GARDEN OF THE GODS ROAD-LOCAL IMPROVEMENT DISTRICT PHASE II.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

It appearing that good reasons exist therefore, the protests concerning the improvements in the Garden of the Gods Local Improvement District Phase II are sustained in part and overruled in part and the costs and assessments in said Garden of the Gods Local Improvement District Phase II affirmed and approved.

Dated at Colorado Springs, Colorado, this 8th day of August, 1995.

____
Mayor

ATTEST:

____
City Clerk

/resol2.doc

Ordinance No. ______

AN ORDINANCE ASSESSING THE COSTS OF IMPROVEMENTS OF THE GARDEN OF THE GODS LOCAL IMPROVEMENT DISTRICT PHASE II IN THE CITY OF COLORADO SPRINGS, COLORADO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. That for the purpose of paying the costs of improvements of the Garden of the Gods Local Improvement District Phase II and an additional ten percent (10%) thereof for engineering, interest incurred during construction of the improvements and other costs of overhead, not including the additional amount of three and one half percent (3 1/2%) payable for the cost of collection and interest at not to exceed eleven percent (11%) per annum on the unpaid principal computed monthly from the date due of each assessment installment for said improvements to the next succeeding date upon which the following installment payment is due, not including the City's cost for its share of improvements, there is hereby assessed against real estate, not including streets, alleys and avenues within said District, the sum of $230,910.11 which represents the total of such cost, and such sum hereby assessed against the several lots or parcels of said real estate according to the Assessment Roll as excepted by the Council on July 13, 1995 follows:

Schedule Number	Legal Discription	Assessment
73234-01-030	LOT 1 VELCON SUB FIL NO 1	$ 45,268.58
73234-01-032	TRACT IN SE4SE4 SEC 23-13-67 AS FOLS; BEG AT SE COR OF KAMAN SCIENCES SUB NO 2, RUN NLY AND NWLY ON ELY AND NELY BDRY LNS OF SD SUB TO POI WITH W LN OF SD SE4SE4, RUN NLY ON SD LN TO NW COR OF AFSD SE4SE4, ELY ON N LN THEREOF TO POI WITH SWLY R/W LN OF CENTENNIAL BLVD, RUN SELY AND SLY ALG SD R/W LN TO A PT ON N R/W LN OF GARDEN OF THE GODS RD, TH WLY ON SD LN TO POB, EX PT TO CITY BY BK 6592-998	$ 27,446.57

73243-02-003	LOT 1 BLK 1 WESTERN TOOL + DIE SUB NO 1 COLO SPGS	$ 17,945.51
73243-02-004	LOT 1 BLK 1 STYRO-MOLDERS SUB	$ 70,768.78
73252-07-035	LOT 2 BLK 1 WESTECH CENTER COLO SPGS	$ 4,357.10
73252-22-001	LOT 1 BLK 3 WESTECH I SUB FIL NO 1 COLO SPGS	$ 1,760.44
73261-00-023	THAT PART OF E2NE4 SEC 26-13-67 AS FOLS, COM AT NE COR OF SD SEC, TH S 00<05'39" E ALG E LN OF SD SEC 69.79 FT, S 89<53'03" W 692.58 FT, TH S 00<08'20" E 15.0 FT FOR POB, TH ALG BDRY LN OF CENTENNIAL BLVD N 89<53'03" E 153.99 FT, S 41<18'06" E 31.89 FT, S 00<06'57" E 161.0 FT, TH ALG ARC OF CUR CONCAVE TO NW BDRY LN OF CENTENNIAL BLVD WITH A RAD OF 550.0 FT A C/A OF 10<32'44" AN ARC DIST OF 31.89 FT, S 89<53'03" W 173.79 FT, TH N 00<08'20" W 235.0 FT TO POB	$ 25,351.14
73261-01-015	LOT 1 TIRE WORLD SUB NO 1	$ 23,027.07
73261-00-036	TR IN NE4 SEC 26-13-67 DES AS FOLS: BEG AT NW COR OF CENTENNIAL WEST FIL NO 2, TH ALG ARC OF CUR TO L HAVING A RAD OF 444.31 FT A C/A OF 09<39'04" AN ARC DIST OF 74.84 FT, TH ALG ARC OF CUR TO L HAVING A RAD OF 657.50 FT A C/A OF 02<29'57" AN ARC DIST OF 28.68 FT, N 00<06'57" W 146.84 FT, N 44<53'03" E 58.21 FT, N 89<53'03" E 266.26 FT, S 00<06'57" E 30.00 FT, S 07<27'54" E 171.40 FT, S 00<05'39" E 220.86 FT, S 89<54'21" W 75.00 FT, S 00<05'39" E 8.00 FT, S 89<54'21" W 162.70 FT, N 60<05'39" W 169.68 FT, N 72<25'12" W 22.97 FT TO POB.	$ 14,984.92

Section 2. That said assessments shall be due and payable within thirty (30) days after final publication of this Ordinance, without demand; that to such of said assessments as are paid within thirty (30) days, there shall not be added the three and one half percentum (3 1/2%) thereof added for the cost of collection and the interest to the next succeeding day upon which the following assessment installment in excess of Fifty Dollars ($50.00) may, at the option of the property so assessed, be paid in equal annual installments, as follows:

$50.01 - 125.00	2 installments
125.01 - 200.00	3 installments
200.01 - 275.00	4 installments
275.01 - 350.00	5 installments

350.01 - 425.00	6 installments
425.01 - 500.00	7 installments
500.01 - 600.00	8 installments
600.01 - 750.00	9 installments
Over.-.750.00	10 installments

All such deferred payments shall bear interest at the rate of (not to exceed) eleven percent (11%) per annum from the first installment until paid, said interest shall be computed monthly; that the first installment shall be due and payable on or before the thirty first day of October, 1995, and the remainder of such installments shall be due and payable successively on or before the thirtieth day of April of each year after 1995 until paid in full; and in case of default in payment of any assessment or any installment (if payable in installments) of principal and/or interest due, the Treasurer of the El Paso County, Colorado, shall advertise and sell any and all property concerning which default exists for the payment of the whole of the unpaid assessments thereon, and said advertisement and sales shall be made at the same time and in the same manner under the same conditions and penalties with the same effect as are provided by the laws of the State of Colorado for the sale of real estate in default of payment of general taxes.

Section 3. That in accordance with Section 19-7-702 of the Code of the City of Colorado Springs 1980, as amended, provision is hereby made that any person who has filed a written objection or objections or written remonstrance's, pursuant to said Code section, to the assessments hereby made, shall have the right to commence action or suite in any court of competent jurisdiction to correct or set aside such determination, within fifteen (15) days immediately succeeding the publication of this ordinance after its final passage. Thereafter all actions or suits attacking the regularity, validity and correctness of the proceeding, of said Assessment Roll, of each assessment contained therein, and of the amount thereof levied on each tract and parcel of land shall be perpetually barred, subject, however, to the provisions of

Section 19-7-211 of the Code of the City of Colorado Springs 1980, as amended, permitting proceedings for declaratory judgment to be brought on behalf of the City.

Section 4. That all laws of the State of Colorado inconsistent herewith are superseded, and all ordinances in conflict herewith are hereby repealed.

Section 5. This Ordinance shall be in full force and effect from and after its passage and publication as provided by the Charter.

Section 6. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the Office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 8th day of August, 1995.

Mayor

ATTEST:

City Clerk

imprdist/gogr2/ordassin.doc

CITY PLANNING COMMISSION

ITEM NO(S): G., H. & I.
STAFF: O'Connor
FILE NO(S): CPC A 95-93 - Legislative
CPC P 95-144 - Quasi-Judicial
CPC DP 95-144-A1 - Quasi-Judicial

PROJECT: Annexation, Zoning and Development Plan for Hamilton Addition No. 1

APPLICANT: Michael MacDonald

OWNER: Robert S. Hamilton

PROJECT DESCRIPTION:
The proposal is to annex, zone, and approve a development plan for a .69 acre developed site. The site is occupied by an existing 2,900 square foot building containing an Emergicare medical facility, with a 3,597 addition which is currently being completed. The building addition was permitted in the County. The proposed zone is C-6 (General Commercial) with a condition of record that a development plan is required. Due to the small size of the already developed site, the development plan is substituting for the annexation master plan.

STAFF'S RECOMMENDATION:
Item G - CPC A 95-93 - Annexation:
Approve the annexation subject to the following:

1. Finalizing an annexation agreement prior to the first scheduled public hearing before City Council. The annexation agreement must include provisions that address the current drainage from the site as well as future drainage concerns per the comments of City Engineering. All other departmental comments must also be addressed in full before finalizing the agreement.
2. Before scheduling the annexation for a City Council agenda, a subdivision plat for the site must be submitted for review and approval. The subdivision plat will be recorded immediately following the recording of the annexation plat, and this requirement will be included as a condition of approval in the annexation agreement..
3. Before scheduling the annexation for a City Council agenda, the calculation of the contiguity of the parcel with the City boundary must be verified to ensure that the State requirement that no less than one-sixth of the perimeter of the area to be annexed is contiguous with the City is met.

Item H - CPC P 95-144 - Zone Change
Approve subject to approval of the annexation.

Item I - CPC DP 95-144-A1 - Development Plan
Approve with the technical revisions listed and subject to approval of the annexation and zoning.

1. Revise the development plan to address all departmental comments in full. Written or telephone verification that all requirements have been met must be provided from the departments to the Development Services Division prior to submitting final revised plans for approval.
2. Include the following on the plan: north arrow, Book and Page of required recorded avigation easement, land uses and zoning on all adjacent properties, including those across public rights-of-way.

3. Redo the parking calculations showing the square footages of each use. When the computation of the required off-street parking spaces results in a fraction, the requirement shall be rounded up to the next whole number.
4. Note that all improvements shown on this development and landscape plan will be installed or appropriate financial assurances will be posted prior to recording of the annexation plat.
5. Resubmit the landscape plan for review to include all applicable items on the final Landscape Plan Review Checklist and the calculations for plantings in each landscape setback and for the internal landscaping. Also, clarify on the development plan that the landscaping shown on that sheet is *existing and to remain only*.

The technical revisions to the development plan must be completed before scheduling the item for a City Council agenda.

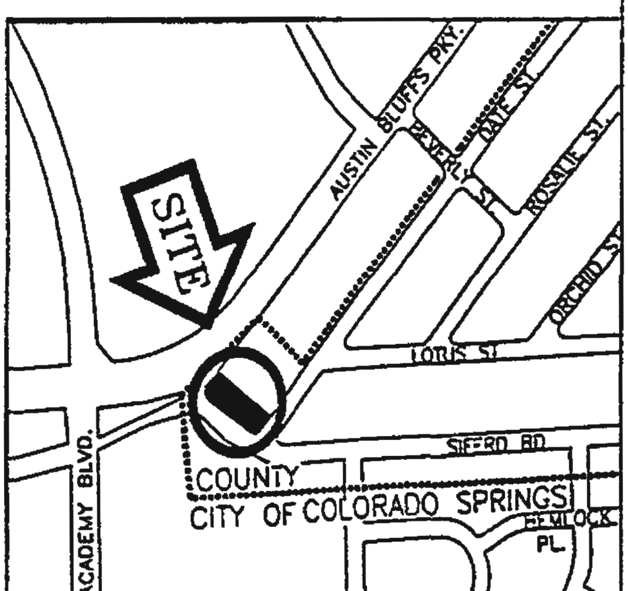
Ten copies of the revised development plan shall be submitted to the Development Services Division at least four days prior to City Council agenda due date for the first scheduled public hearing of the annexation and zoning requests.

SUMMARY:

1. With the finalizing of an annexation agreement, verification of one-sixth contiguity, and approval of the accompanying development plan, the annexation will meet the conditions set forth in Comprehensive Plan Policy 2.1.1 and Section 15-2-103 of the Subdivision Ordinance.
2. Request conforms to Comprehensive Plan Policy 5.1.3.
3. With revisions, request will conform to Development Plan Submittal and Review Criteria.

COMPREHENSIVE PLAN:

Policies 2.1.1 and 5.1.3



BACKGROUND:

The following background information is relevant to this request:

1. Water to the site is currently provided by a domestic water well under a well permit from the State for residential use. This water source has been serving successive commercial uses on the site for the past several years.
2. The interior lot lines of the four lots that originally comprised the site were vacated in 1976, and the site has not been replatted.
3. A variance was granted by the County Board of Adjustment to allow 5.24' setback on the northerly property line with the Farmcrest store where a 15' setback is normally required.

Existing Zoning/Land Use - County/Medical Clinic and Offices

Surrounding Zoning/Land Use -	North -	County /Convenience Store
FIGURE 1	South -	County /Vacant
	West -	PBC (Planned Business Center)/Retail Shopping Center
	East -	County /Vacant and PBC-1,C-5/CR /Vacant and Animal Hospital

Annexation - Currently proposed.

Zoning - Currently in El Paso County.

Subdivision - Interior lot lines of Lots 18, 19, 20, and 21, Block 2, Park Vista Addition were vacated in 1976. Not a wholly platted lot.

Zoning Enforcement Action - N/A.

Proposal - To annex, zone, and approve a development plan for a .69 acre developed site. The proposed zone is C-6 (General Commercial) with a condition of record that a development plan is required. Due to the small size of the already developed site, the development plan is substituting for the annexation master plan. **FIGURES 2A and 2B.**

Physical Characteristics - The site is occupied by an existing 2,900 square foot building containing an Emergicare medical facility, with a 3,597 addition which is currently being completed. The building addition was permitted in the County. The existing landscaping, parking, and drainage improvements on the site will be modified in accordance with the proposed development plan.

Master Plan - N/A.

DEPARTMENTAL REPORTS:

Item G - CPC A 95-93 - Annexation:

City Engineering - Attached is a copy of the March 1, 1995 memo sent to James Mayerl with our modifications to the standard annexation agreement. **(FIGURE 4)** The two main issues deal with 1) payment of drainage fees which will be collected at the time of recording the annexation plat; and 2) future participation in Park Vista drainage facilities. A drainage report is required at the time of replatting if replatting is required. If replatting is not required, the drainage report is required before the current building construction obtains a Certificate of Occupancy. If a drainage report was prepared for the County, it may be acceptable and should be submitted to us for review. Show the floodplain limits on the plat. Financial assistance (or time delay agreement, if applicable) are required for improvements to all adjacent streets at the time of recording the annexation plat.

Traffic Engineering - No objections to annexation request.

Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense.

Gas - No development or grade changes will be allowed in the 66' gas line easement. Any landscaping in the easement must be approved by the Gas Department (a 10" steel high pressure gas main exists in easement.) Request approved.

Water - This area must adhere to any annexation agreements. If or when City water service is requested, any required relocation of existing or installation of new water facilities will be at the expense of the owner/developer.

Wastewater - The request for approval of the annexation is acceptable.

Police - Standard comment 1.

Fire - Standard comments 1, 3, 10 and 11.

Parks - No comment.

Regional Building - Portions of this site are located in a designated 100 year flood plain. Development of these areas are subject to the floodplain development regulations.

US West - Any existing telephone facilities will be relocated at owner/developer's expense.
Airport - The parcels in this request lies beneath the 7:1 transition surface of runway 17R. As a condition of annexation, the following requirements should be met. Administration recommendation, approval, subject to the following:

1. Petitioner's granting of an avigation easement and that same is recorded with the El Paso County Clerk so as to be a burden on the title to the property included in this request.
2. No man-made or non-man-made obstructions be allowed to penetrate the transition surface.
3. All exterior lighting plans be approved by the Director of Aviation to prevent a hazard to aircraft.
4. No electromagnetic, light or any physical emissions which might interfere with aircraft, avigation, communications or navigational aids be allowed.

All Other Reporting Departments - Standard or no comment or no objection.

Item H - CPC P 95-144 - Zone Change, and
Item I - CPC DP 95-144-A1 - Development Plan
City Engineering - The site was developed while in the County. The County's requirements for drainage grading, and erosion control plans are similar to ours. We request that the applicant provide us with copies of the drainage report and any other Civil design plans which were approved by the County.
Traffic Engineering - Standard comments.
Electric - Any relocation of the existing electric will be at the owner/developer's expense.
Water - Show proposed water facilities on the development plan. Prior to approving a connection to a "City" water main, this area must be annexed and adhere to any annexation agreements. Also the owner/developer should contact the Applications and Permits office (101 W. Costilla, Suite 126m, 636-5391) and inquire into any fees or charges that would be applicable to this site. The City of Colorado Springs does not guarantee water to the subject area. Allocation of water to service this area will depend upon the supply available at the time of application. The City's policy is first come, first serve. A water plan showing the location of all existing and proposed water mains, valves, hydrants, storm sewers, sidewalks, street curbs and any other structures must be submitted to and approved by the C.S.F.D. and the Water Division. All 12" and smaller water mains must be installed at the expense of the owner/developer of the property and in accordance with Water Division and C.S.F.D. requirements. Water mains larger than 12" are installed in accordance with major main policy; a copy of which can obtained from the Water Division System Engineer's office.
Gas - Request approved. The department requires a minimum of 1' vertical separation between culvert pipe (or any other structure or utility) and gas mains. Please call 636-5736 a minimum of 24 hours prior to construction of culvert for an inspection.
Wastewater - Request for approval of the establishment of the zone classification and development plan is acceptable.
Police - Standard comment 1.
Fire - Standard comments 1, 3, 10 and 11. Zone change is approved. There is a strong possibility that additional fire hydrants will be required. Although no hydrants are shown on the submitted plans, two hydrants will be required once any addition is placed onto the facility.
Parks - No comment.
County Health - No comment. Project too small for Air Quality permit on earthwork.
Regional Building - Portions of this site are located in a designed 100 year floodplain. Development of these areas are subject to the floodplain development regulations.
USAFA: The USAF Academy has no objection.
CDOT - The Colorado Department of Transportation has reviewed the information concerning the above and we have no comments.
All Other Reporting Departments - Standard or no comment or no objection.

PETITIONER'S JUSTIFICATION: FIGURE 3

ANALYSIS OF MAJOR ISSUES:
CONFORMANCE WITH COMPREHENSIVE PLAN POLICY 2.1.1 AND SUBDIVISION ORDINANCE SECTION 15-2-103
The proposed annexation will, upon finalization of an annexation agreement and development plan, meet

all the conditions set forth in the policies and ordinance section cited above. The annexation agreement must include provisions that address the current drainage from the site prior to development as well as future drainage concerns per the comments of City Engineering. In addition, the applicant must address all departmental comments in full before finalizing the annexation agreement, and verify the one-sixth contiguity with the City.

CONFORMANCE WITH COMPREHENSIVE PLAN POLICY 5.1.3

Policy 5.1.3 states, "Grant zoning changes only when it can be demonstrated that rezoning will result in a community or neighborhood benefit which will outweigh any potential adverse impact upon surrounding properties. Conformance with the policies of the Comprehensive Plan and other adopted City plans may be used as a basis for demonstrating community or neighborhood benefit." The proposed zoning is in conformance with the current use and setbacks on the site. The condition of record requiring a development plan provides the vehicle for addressing any potential adverse impacts. Community benefit will be demonstrated by conformance with Comprehensive Plan Policy 2.1.1.

CONFORMANCE WITH DEVELOPMENT PLAN SUBMITTAL AND REVIEW CRITERIA OF ZONING ORDINANCE ARTICLE 5

The development plan will meet the submittal requirements and review criteria of Article 5 subject to the following technical revisions:

1. Revise the development plan to address all departmental comments in full. Written or telephone verification that all requirements have been met must be provided from the departments to the Development Services Division prior to submitting final revised plans for approval.
2. Include the following on the plan: north arrow, Book and Page of required recorded avigation easement, land uses and zoning on all adjacent properties, including those across public rights-of-way.
3. Redo the parking calculations showing the square footages of each use. When the computation of the required off-street parking spaces results in a fraction, the requirement shall be rounded up to the next whole number.
4. Note that all improvements shown on this development and landscape plan will be installed or appropriate financial assurances will be posted prior to recording of the annexation plat.
5. Resubmit the landscape plan for review to include all applicable items on the final Landscape Plan Review Checklist and the calculations for plantings in each landscape setback and for the internal landscaping. Also, clarify on the development plan that the landscaping shown on that sheet is existing and to remain only.

ITEM G. **<u>CPC A 95-93</u> - O'Connor - Legislative**

Request by Robert S. Hamilton for approval of the annexation of Hamilton Addition No. 1 consisting of .6904 acres located northeast of Austin Bluffs Parkway and Siferd Boulevard.

ITEM H. **<u>CPC P 95-144</u> - O'Connor - Quasi-Judicial**

Request by Michael MacDonald on behalf of Robert Hamilton for approval of the establishment of a C-6/CR (Commercial with conditions of record) zone classification consisting of .69 acres located southeast of Siferd Boulevard and Austin Bluffs Parkway at 4083 Austin Bluffs Parkway.

ITEM I. **<u>CPC DP 95-144-A1</u> - O'Connor - Quasi-Judicial**

Request by Michael MacDonald on behalf of Robert Hamilton for approval of a development plan for the Hamilton Addition No. 1 in a proposed C-6/CR (Commercial with conditions of record) zone consisting of .69 acres located southeast of Siferd Boulevard and Austin Bluffs Parkway at 4083 Austin Bluffs Parkway.

<u>Item G - CPC A 95-93 - Annexation</u>:
Approve the annexation subject to the following:

1. Finalizing an annexation agreement prior to the first scheduled public hearing before City Council. The annexation agreement must include provisions that address the current drainage from the site as well as future drainage concerns per the comments of City Engineering. All other departmental comments must also be addressed in full before finalizing the agreement.
2. Before scheduling the annexation for a City Council agenda, a subdivision plat for the site must be submitted for review and approval. The subdivision plat will be recorded immediately following the recording of the annexation plat, and this requirement will be included as a condition of approval in the annexation agreement..
3. Before scheduling the annexation for a City Council agenda, the calculation of the contiguity of the parcel with the City boundary must be verified to ensure that the State requirement that no less than one-sixth of the perimeter of the area to be annexed is contiguous with the City is met.

<u>Item H - CPC P 95-144 - Zone Change</u>
Approve subject to approval of the annexation.

<u>Item I - CPC DP 95-144-A1 - Development Plan</u>
Approve with the technical revisions listed and subject to approval of the annexation and zoning.

1. Revise the development plan to address all departmental comments in full. Written or telephone verification that all requirements have been met must be provided from the departments to the Development Services Division prior to submitting final revised plans for approval.
2. Include the following on the plan: north arrow, Book and Page of required recorded avigation easement, land uses and zoning on all adjacent properties, including those across public rights-of-way.
3. Redo the parking calculations showing the square footages of each use. When the computation of the required off-street parking spaces results in a fraction, the requirement shall be rounded up to the next whole number.
4. Note that all improvements shown on this development and landscape plan will be installed or appropriate financial assurances will be posted prior to recording of the annexation plat.
5. Resubmit the landscape plan for review to include all applicable items on the final Landscape Plan Review Checklist and the calculations for plantings in each landscape setback and for the internal landscaping. Also, clarify on the development plan that the landscaping shown on that sheet is existing and to remain only.

The technical revisions to the development plan must be completed before scheduling the item for a City Council agenda.

Ten copies of the revised development plan shall be submitted to the Development Services Division at least four days prior to City Council agenda due date for the first scheduled public hearing of the annexation and zoning requests.

ITEM J. CPC CU 95-146 - Rapp - Quasi-Judicial

Request by Joyce E. "Togi" Kinnaman for approval of a conditional use to allow an Occupational Trade School for Massage Therapy in a C-6 (Commercial) zone consisting of .75 acres located southeast of Pitkin Street and St. Vrain Street at 2605-2609 E. St. Vrain Street.

Approve the conditional use for an Occupational Trade School for Massage Therapy in a C-6 zone.

The following technical revisions to the development plan must be completed before final approval is granted:
1. Show dimensions of buildings.
2. Show dimensions of sign.
3. Show parking formula and number of spaces required and provided.
4. Title plan as 'Conditional Use Development Plan.'
5. Note file number, CPC CU 95-146, in lower right-hand corner and fold 8 1/2" x 14".

Ten copies of the revised development plan shall be submitted to the Development Services Division by June 16, 1995.

ITEM K. CPC P 95-147 - Rapp - Quasi-Judicial

Request by Elite Properties of America, Inc. for approval of a change of zone classification from R-1-6000/NP (Single Family Residential with Navigation Preservation Overlay) to PUD/NP (Planned Unit Development with Navigation Preservation Overlay) consisting of .0056 acres located southeast of Airport Road and Murray Boulevard at 4375 Early View Court.

Approve the zone change from R-1,6000/NP to PUD/NP.

ITEM M. CPC CU 95-149 - Rapp - Quasi-Judicial

Request by Vernon W. Perry for approval of a conditional use to allow a duplex in a C-6 (Commercial) zone consisting of .218 acres located northeast of El Paso Street and Cimarron Street at 728 E. Cimarron Street.

Approve the conditional use for a duplex in a C-6 zone.

The following technical revisions to the development plan must be completed before final approval is granted:
1. Add vicinity map to plan.
2. Show parking ratio of 1.7 per dwelling unit, and a total of four parking spaces.
3. Note: Shooks Run Redevelopment Plan.
4. Title plan as 'Conditional Use Development Plan.'
5. Note file number, CPC CU 95-149, in lower right-hand corner and fold 8 1/2" x 14".

Ten copies of the revised development plan shall be submitted to the Development Services Division by June 16, 1995.

ITEM O. **CPC P 95-142 - Peitz - Quasi-Judicial**

Request by the City of Colorado Springs on behalf of Andersen Mahon Enterprises for approval of the establishment of a PBC (Planned Business Center) zone classification consisting of .573 acres located southeast of Academy Boulevard and Woodmen Road at 6975 N. Academy Boulevard.

Approval.

****

It was moved by Commissioner Esmiol, seconded by Commissioner Bevington to approve Items A. through K., M. and O. on the Consent Calendar.

The motion passed 6-0. (Commissioners Bradley, Friesen & Hjelkrem were absent.)

ITEM L. **CPC CU 95-148 - Rapp - Quasi-Judicial**

Request by Keith D. McCandless on behalf of Richard Bingman and Ralph Young for approval of a conditional use to allow retail sales within an existing warehouse building in an M-1 (Light Industrial) zone consisting of 3.46 acres located southeast of Garden of the Gods Road and Mark Dabling Boulevard at 4401 Mark Dabling Boulevard.

Gary Rapp, Development Services Division, stated this is a proposal for retail sales of wine and liquor in a warehouse which will allow 19,300 square feet for additional retail sales. Staff finds that all criteria for a conditional use are met in this case and the 3 technical revisions will bring the development plan into conformance with submittal and review criteria.

Speaking for:

Keith McCandless, applicant, said the square footage has been dropped from the original 19,300 to approximately 12,000 to 13,000 square feet of retail sales.

Commissioner Esmiol asked if it will be the same as Cheers? Mr. McCandless said it started out that way but they plan to expand and have more open aisles and will be a warehouse format such as Sam's.

Commissioner Gruen asked what accounted for the decrease in the square footage? Mr. McCandless replied he doesn't know where the 19,300 square feet came from. The area were leasing is approximately 30,000 square feet but some of that will be subleased for office space.

Commissioner Bevington asked if the carpet store will remain? Mr. McCandless said yes, Stone Mountain will remain.

Opposed:

James Kin, attorney representing Jack Mason who owns a 39,000 square foot office building at 4385 Northpark Drive, said his client's building is one block west of the subject site. We disagree with the Planning Department's recommendation because we see two (2) major problems with this conditional use: 1) Traffic, and 2) Character of the neighborhood. The neighborhood is basically light industrial and to the south, Park and Recreation has recently added ball diamonds which will be a fairly intense use. We understand this is going to be a high volume liquor store and won't be serving just the people in the immediate area thus, traffic becomes a major concern. Traffic at Garden of the Gods Road and Mark Dabling Boulevard was not designed for high-volume retail but rather for light industrial. The buildings for the light industrial are nice and the liquor store will change the character of the neighborhood. Even though there's other retail stores in the area, they're low volume uses, unlike the proposed conditional use. The next guy who comes in with a high volume use can't be

DEVELOPMENT SERVICES DIVISION

LEGAL DESCRIPTION FORM

FOR OFFICIAL USE ONLY

DATE REC'D 7/18/95

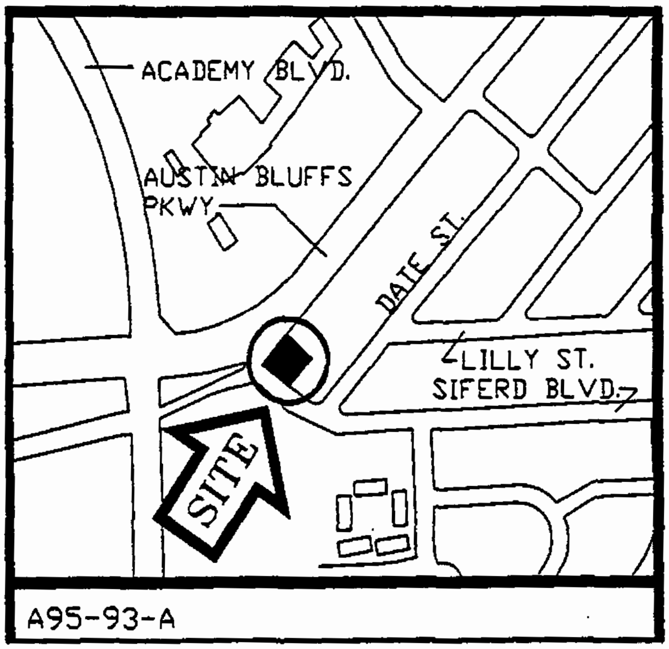
FILE NO. A95-93-A

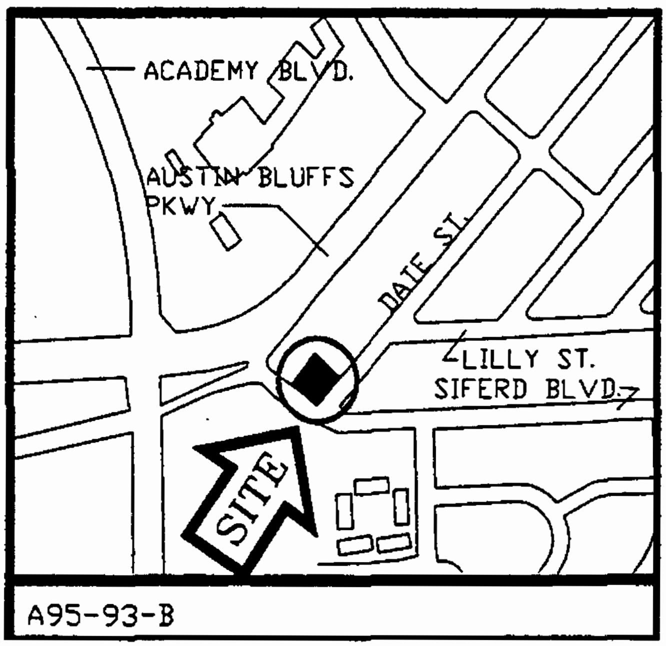
CHECKED (FOR LOC. & CONFIG.) 7/18/95

STAFF [illegible]

FORMER LOTS 20 AND 21, BLOCK TWO, "PARK VISTA ESTATES" AS RECORDED IN PLAT BOOK W AT PAGE 69 OF THE RECORDS OF EL PASO COUNTY, COLORADO NOW VACATED BY VACATION PLAT RECORDED FEBRUARY 25, 1976 IN PLAT BOOK D-3 AT PAGE 41 OF SAID RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 22, BLOCK TWO IN SAID "PARK VISTA ESTATES", SAID POINT BEING ALSO THE MOST NORTHERLY CORNER OF FORMER LOT 21 IN SAID BLOCK TWO; THENCE S 46°56'30"E, ALONG THE SOUTHWESTERLY LINE OF SAID LOT 22, A DISTANCE OF 20.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT 22; THENCE S 43°03'30"W, ALONG THE SOUTHEASTERLY LINE OF FORMER LOTS 21 AND 20, A DISTANCE OF 130.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT 20, SAID POINT BEING ALSO ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF EXISTING SIFERD BOULEVARD; THENCE N 46°56'30"W, ALONG SAID RIGHT-OF-WAY LINE, 100.00 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY, ALONG SAID RIGHT-OF-WAY LINE AND ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 31.42 FEET TO A POINT OF TANGENT; THENCE N 43°03'30"E, ALONG SAID TANGENT AND ALONG THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF EXISTING TEMPLETON GAP ROAD, 110.00 FEET TO THE POINT OF BEGINNING. CONTAINING 15,514 SQUARE FEET (0.3562 ACRES), MORE OR LESS.


ACADEMY BLVD.
AUSTIN BLUFFS PKWY
DATE ST.
LILLY ST.
SIFERD BLVD.
SITE
A95-93-A


ACADEMY BLVD.
AUSTIN BLUFFS PKWY.
DALE ST.
LILLY ST.
SIFERD BLVD.
SITE
A95-93-B

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO .69 ACRES LOCATED SOUTHEAST OF SIFERD BOULEVARD AND AUSTIN BLUFFS PARKWAY AT 4083 AUSTIN BLUFFS PARKWAY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The zoning map of the City of Colorado Springs is hereby amended by rezoning the real property described in Exhibit A, attached hereto and made a part hereof by reference, for the establishment of a C-6/CR (Commercial with conditions of record) zone, pursuant to the Zoning Ordinance of the City of Colorado Springs with the following condition of record:

1. A development plan is required.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the Office of the City Clerk.

Introduced, read, passed on first reading and ordered published this______day of___________, 1995.

____

Mayor

ATTEST:

____

City Clerk

CPC P 95-144

ITEM NO. 23

DEVELOPMENT SERVICES DIVISION

LEGAL DESCRIPTION FORM

FOR OFFICIAL USE ONLY
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STAFF mm

BE IT KNOWN BY THESE PRESENTS:

THAT ROBERT S. HAMILTON, BEING THE OWNER AND PETITIONER FOR THE ANNEXATION OF THE HEREINAFTER DESCRIBED REAL PROPERTY, DOES HEREBY DECLARE THAT THE ATTACHED PLAT CORRECTLY SHOWS THE BOUNDARY OF SAID REAL PROPERTY TO BE ANNEXED TO THE CITY OF COLORADO SPRINGS, COLORADO, AND THAT SAID ANNEXATION PLAT ACCURATELY SHOWS THE RELATIONSHIP OF SAID REAL PROPERTY TO THE ESTABLISHED CITY LIMITS OF COLORADO SPRINGS, COLORADO, SAID REAL PROPERTY BEING DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTH HALF, OF THE NORTHWEST QUARTER, OF SECTION 26, TOWNSHIP 13 SOUTH, RANGE 66 WEST, OF THE 6TH P.M., EL PASO COUNTY, COLORADO, FORMERLY PLATTED AS LOTS 18, 19, 20 AND 21, BLOCK TWO, "PARK VISTA ADDITION", AS RECORDED IN PLAT BOOK W AT PAGE 69 OF THE RECORDS OF EL PASO COUNTY, COLORADO, NOW VACATED BY VACATION PLAT AS RECORDED FEBRUARY 25, 1976, IN PLAT BOOK D-3, AT PAGE 41, OF SAID COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 26; THENCE N 89° 49' 10" E, 442.00 FEET TO THE SOUTHWEST CORNER OF SAID

"PARK VISA ADDITION" THENCE N 00° 10' 50" W, 287.20 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF EXISTING TEMPLETON GAP ROAD; THENCE N 43° 03' 30' E, ALONG SAID RIGHT-OF-WAY LINE, 100.00 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ALSO A POINT ON THE NORTH-WESTERLY LINE OF LOT 20, BLOCK TWO, IN AFORESAID "PARK VISTA ADDITION"; THENCE N 43° 03' 30" E, ALONG SAID RIGHT-OF-WAY LINE, 110.00 FEET TO THE MOST NORTHERLY CORNER OF AFORESAID VACATION PLAT; THENCE S 46° 56' 30" E, ALONG THE NORTHEASTERLY LINE THEREOF, 240.00 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF EXISTING 60 FOOT DAHLIA STREET (NOW KNOWN AS DATE STREET); THENCE S 43° 03' 30" W, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, 90.54 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY, ALONG SAID RIGHT-OF-WAY LINE AND ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 73°01'10", AN ARC DISTANCE OF 25.49 FEET TO THE NORTHEASTERLY RIGHT-OF-WAY LINE OF EXISTING 60 FOOT SIFERD BOULEVARD; THENCE N 63° 55' 20" W, ALONG SAID RIGHT-OF-WAY LINE 59.16 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY, ALONG SAID RIGHT-OF-WAY LINE AND ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 70.00 FEET AND A CENTRAL ANGLE OF 16°58'50", AN ARC DISTANCE OF 20.75 FEET TO A POINT OF TANGENT; THENCE N 46° 56' 30" W, ALONG SAID RIGHT-OF-WAY LINE AND ALONG SAID TANGENT, 128.82 FEET TO A POINT OF CURVE; THENCE ALONG SAID RIGHT-OF-WAY LINE AND ON A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 31.42 FEET TO THE POINT OF BEGINNING. CONTAINGING 30,072 S.F (0.6904 ACRES), MORE OR LESS.

CPC A95-97

BECKER - JOHNSON, INC.
TEL. (719) 473-5552 • 833 SOUTH UNION, SUITE 212 • COLORADO SPRINGS, COLORADO 80910-3584
FAX. (719) 473-5555

April 12, 1995

City of Colorado Springs
City Clerk
30 S. Nevada Ave.
Colorado Springs, Colorado 80903

RE: Appeal Ringler Subdivision No. 2
CPC DS 94-289 P

Dear City Clerk,

BECKER-JOHNSON, INC. on behalf of Mr. Keith Ringler, owner of the above referenced property, request that the City Council review the decision of the City Planning Commission made on April 6, 1995. The Planning Commission erred in their decision not to approve the proposed subdivision by not considering the recommendations of the City Administration and not following the subdivision regulations. The City Planning Commission used vague reasoning to deny the request indicating that there were other alternatives to the proposed subdivision which were not considered by the proposed plan.

It is requested that the City Council overrule the decision of the City Planning Commission and approve the proposed subdivision. Please advise us as to the date of the hearing so that we may be present to discuss the proposed subdivision in more detail and answer any questions that the Council may have.

Sincerely,
BECKER-JOHNSON, INC.

J. B. Johnson, AIA
President

cc: Keith Ringler
Greg Timm

APR 12 1995
CITY CLERK-TREAS.

ARCHITECTS
ENGINEERS
PLANNERS
SURVEYORS

ITEM NO. 24

meetings with the applicant. This process takes time so thirty (30) days is unreasonable. Whether there's agreement or not, they still have the option of coming back before the ninety (90) days are up.

Carol Tennerman, resident, wanted in writing the definition of a 'facilitator'. Her concern is that the facilitator will be biased since he/she will be funded by the applicant.

Commissioner Gruen asked her what she envisions a facilitator being? Ms. Tennerman said her definition between a facilitator, mediator and arbitrator is thus: If you were to forego your rights and be willing for both parties to have an arbitrator present, that would mean his/her decision is binding and final. You have no further comment after a decision is rendered; a mediator is more of a peace maker for a compromise; and a facilitator, to facilitate by definition is to 'make easy'. That's why we favor a facilitator.

Commission Jones said the final decision will most likely be made by City Council after the Planning Commission's recommendation.

Commissioner Ruggiero asked if this is postponed can a specific day be set aside just for this item? Mr. Peitz said if the agenda is small, and since this is an 'Old Business' item, it will be first on the agenda. If in three (3) months the agenda is large, we may set aside Friday to hear the item.

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It was moved by Commissioner Esmiol, seconded by Commissioner Bevington to postpone Item 4 for up to 90 days to the July 6, 1995 City Planning Commission Meeting.

Commissioner Friesen said he'll be voting against the motion. There's enough information and doesn't feel that ninety (90) days will result in any movement by either party. The Planning Commission might help facilitate, control tempers and require people to be a little more reasonable in their presentation.

Commissioner Gruen commented he's impressed by both sides in the way they're handling this. He encourages communication over the next ninety (90) days to resolve at least a few of the issues and truly feels there will be some progress made.

Commissioner Jones asked Mr. Mulliken to restate where and when the applicant's meeting will be held. Mr. Mulliken replied they've reserved a room at the La Baron Hotel.

The motion passed 6-1. (Commissioner Friesen opposed. Commissioners Bauer & Bradley were absent.)

ITEM 5. <u>CPC DS S 94-289P</u> - Litzelman - Quasi-Judicial

Request by Keith A. Ringler for preliminary plat approval of Ringler Subdivision No. 2 consisting of 4 lots on 4.2 acres zoned R-Estate (Single Family Residential) located southwest of Mesa Road between Mesa Road and Oswego Street.

Dave Litzelman, Development Services Division, said when this item was submitted last summer, there were a number of technical concerns. It's a request for four (4) lots on a little over 4 acres with a private street to serve those lots. The first major concern was access across the Palmer Foundation property west of this site. Their concerns relate to restrictions in their deeds concerning vehicular access. Mr. Johnny Johnson, who represents the applicant, has agreed not to have access off of Oswego Street through the Palmer Foundation's property. This is one of the conditions for approval. A second concern was Fire access and they've worked out an arrangement of the private road with the Fire Department. A third was a technical issue with the Water Department where they initially asked for a 50' easement and there's only a 40' easement on a portion of the site. Because of the slope on the property wastewater and electric services will go down to Oswego Street and the 40' easement for water will be sufficient. The last major issue was the road because there's a considerable amount of fill that has to take place in order to achieve acceptable street grades. The applicant has submitted a grading & erosion control plan that has been accepted by the City. Most of the neighbors' concerns deal with runoff and flows from this site down to their property on Oswego Street. The technical issues have been solved with the exception of the following:

1. Name the private street.
2. Note on the plat; 'No access to Oswego Street'.

Staff is recommending approval of this request.

Commissioner Esmiol asked in which direction the drainage and sewer would be flowing? Mr. Litzelman deferred the question to the applicant.

Commissioner Gruen asked if there's a similar bowl-like shape elsewhere in the City that's been developed? Mr. Litzelman replied he couldn't think of anything that's similar with the same amount of fill for the access road.

Speaking for:

> Johnny Johnson, Becker-Johnson representing the applicant, said they concur with staff's recommendations. We've worked long and hard to resolve all issues. There's an approved drainage plan, grading & erosion control plan and a letter of credit to guarantee those improvements. We're following through with the requirements to satisfy the platting process. In response to Commissioner Esmiol's question about drainage and sewer, one approach would be to go down to Oswego Street which would require crossing the Palmer Foundation property. There's an existing sewer & water line on Oswego Street. Another alternative is that there's an existing utility and drainage easement in Indian Heights No. 7 that's 27 1/2' wide and runs along the back of the existing lots in Indian Heights No. 2. The drainage plan calls for the service flows from this property to go in a southeasterly direction along the existing drainage channel, also along the back of the existing lots in Indian Heights No. 2. That flow will ultimately go to the intersection of Oswego Street and 19th Street. This property contributes a very small portion of the total drainage flows from that basin.

Commissioner Gruen asked if there are any examples elsewhere in the City that reflect the kind of project he envisions? Mr. Johnson said the Pulpit Rock area is a bowl-like shape that drains down but they typically are accessed from the lower end. In this case the main access is from above.

Commissioner Friesen asked for a description of what's happening on the site particularly at the juncture of existing topography and proposed fill? Mr. Johnson pointed out the access easement which is 40' wide. The road was originally envisioned at 24' wide which would allow short retaining walls with slope to the road, but because of the Fire Department and the limited access, we had to widen the road. The existing slope is approximately 2 to 1 and in order to stay within the easement there will be a welded-wire retaining wall set back 1' from the property line. The road will slope entirely to the east, which is to the inbound on the site, so that no surface flows coming off of Mesa Road will come down and get over the top of the wall. The second section will have a retaining wall on both sides in order to stay within the easement. The slope to the road will be stabilized with native grass mix. In the last section, a mound will be cut down somewhat and will be filled to the boundary line where the wall will be about 6' feet high. The wall will be 13' at it's tallest point. Commissioner Friesen asked if there are any provisions for wheel stops on either side of the road? Mr. Johnson said there will be a guard rail placed at the top of the 2 to 1 slope.

Opposed:

> David Givan, 20-year resident on Oswego Street, said there's a topography map showing at least 900' from Oswego Street to Mesa Street. In that distance the land rises 100'. We've had serious runoff problems on at least three (3) occasions in the last twenty (20) years. With reference to the swale behind our homes, that was put in by the homeowners because the topography runs from the property line up the slope. The swale helps some but most of the runoff comes into our yards.

Emmett Butler, 35- year resident on Oswego Street, said when the swale was put in by the developer no mention was made as to who would maintain it. We were told the City would do it but after 2 to 3 rainfalls it became plugged with debris and trash coming down from the slope. The City graded it the first time but thereafter they said it wasn't their problem to maintain it. It's been reported that the swale is 4' wide by 3' deep but in fact in some areas it's only 1' deep. If this request is approved, why can't they put in the swale as the first project of this development. This development will create additional runoff from the roofs, the paved road and will just add to the current burden on Oswego Street. We'd also like to know who's going to maintain the swale; Mr. Ringler, the City or who? He said Mr. Johnson mentioned the flow would eventually run to the drain on Oswego Street and 19th Street but that drain becomes plugged quite often after a heavy rainfall.

Athena Young, resident on Oswego Street, said she's directly beneath Mr. Ringler's property. In 1984 he had dirt put into the valley and in 1985 we had mud and debris covering our yards, driveways and entering our basements as a result. Erosion has continued ever since he dumped the dirt. We started getting more water on our property when he cut the road last year and the hay bales just aren't' stopping the water.

Commissioner Ruggiero asked where the fill dirt was brought from? Ms. Young replied it was brought in from the corner of Uintah Street and Mesa Street and illegally dumped on this property. The swale behind our homes has been completely filled in with his dirt.

Lenora Butler, 35-year resident on Oswego Street, cited a portion of a letter from a neighbor as follows: "...We ask you to deny the preliminary plat I request for DS S 94-289P by Keith Ringler for the hillside between Mesa Road and Oswego Street for the following reasons:

1. Adequate control of runoff into adjacent properties.
2. Straw bales won't handle the runoff on the properties below the development.
3. A time limit for the stabilization, restoration of vegetation and control of erosion for disturbed areas both during construction and on completion.
4. Temporary cover should be in place within six (6) months; permanent cover within one (1) year.
5. There should be a monetary forfeiture if this plan is not strictly adhered to.
6. The ditch behind the Oswego homes should be upgraded and concrete lined.
7. All drainage structures should be completed and approved before any construction begins.
8. A letter of credit or bond should be required in order to assure proper erosion control and provide payment for potential damage to downstream property owners.
9. Other problems with development include safety access on this steep hill road proposed and restricted Fire Department access to the hillside increasing fire danger to neighboring homes.

Please consider these facts when making your decision about this plan. The neighbors in this long established neighborhood deserve some strong protection from the Planning Commission in this case. Sincerely, Ted & Mary Allison."

Sandra Hilt, resident on Mesa Road representing Mesa Neighborhood Association, said they've followed the activity on the subject property for years and have been very concerned with Mr. Ringler's disregard for neighboring properties. We urge the Planning Commission to proceed with great caution in addressing the neighbors' concerns before permitting any development on that property.

Commissioner Ruggiero asked what her or the neighborhood's experience has been with this property over the last ten (10) years? Ms. Hilt said she doesn't have a detailed chronology of specific incidents and can't add to what's already been stated by the neighbors. The member of our board, Mr. Kent Nelson, who's followed activity on this property the closest is not present today.

Al Ziegler, City Attorney, stated there was litigation between Mr. Ringler and the City in 1984 & 1985 which resulted in an issuance of an injunction in reference to grading violations. There were further proceedings in District Court last year and Mr. Ringler was directed to go through this process in reference to this particular development.

Stewart Dodge, Executive Director of the Palmer Foundation, stated they've had a contentious relationship with Mr. Ringler for over ten (10) years. We are a land trust company and that land was conveyed to us for safekeeping by twenty-two (22) landowners. The deed prohibits us from altering it, changing it or allowing it to be used for any purpose other than open-space, period. When I hear that Mr. Ringler wants to negotiate a sewage line or something else on our property, it's out of the question. We appreciate the stipulation in staff's recommendation that there will be no ingress/egress from Oswego Street into the site.

Commissioner Hjelkrem asked how much property is controlled by the Palmer Foundation and have they allowed any easements on that ground? Mr. Dodge responded a little over twenty-two (22) acres and easements are specifically prohibited by the deed of trust.

Jacqueline Pope, resident on Oswego Street, said her basement has been flooded in the past and is concerned there will be additional flow as a result of this development.

Richard Superak, resident on Mesa Road, said the site looks somewhat like a cereal bowl with Mesa Road on one rim and myself on another. There's severe erosion damage along Mr. Ringler's road and stacks of broken up concrete on the site. My home faces that road directly and I would like to know if the City is going to maintain it or the property owner? My understanding is that it'll have a fifty (50) year life, which isn't long for a road. I need 4-wheel drive to get out of my garage in bad weather so how are emergency vehicles going to get to the lower portion of the site in inclement weather? We've heard there are going to be steel baskets filled with stone as high as 20'. I'm concerned it's going to be unsightly because I'm staring at 470' of road from my home. While I don't like the baskets of stone, I sure wouldn't like looking at a concrete wall or galvanized guard railing that extends 470'. Our major concern is what's going to be done to beautify the area.

Bill Petersilie, resident on Mesa Road, said his property is adjacent to Mr. Ringler's property on the east. The grade of the slope ranges from 4% to 12%. There's a portion of the road that curves below the cul-de-sac area that's approximately 15%. The retaining wall is being placed on existing fill that's been put in over a period of 12 to 15 years. At one time the site was used as a dump with cars, trees, concrete, trash etc. and they're going to be building on top of this. If this is approved I would recommend that the existing dump area be removed so the road will stay in place. I'm not thrilled about having a 20' retaining wall extending 470' on the eastern boundary of my property. In the cost estimate for this project, there's no estimate for asphalting of road, fill materials or guard railing.

Commissioner Hjelkrem said he got the impression he's not against the development here but rather in how it's developed. Mr. Petersilie said he doesn't want to look at the debris and believes the development would be more compatible if it progresses from the bottom of the slope up.

Raylan Evans, non-resident property owner on Mesa Road, distributed photographs of the subject site. It's not my intention to create a character assassination of a man, however, I will give you a brief history of activity on this site. For several years prior to, and after Mr. Ringler purchased the property, it was used as a dumping ground. It was a breeding place for a myriad of vermin and unpleasant odors. When the area was sufficiently filled with trash, the applicant brought in dirt to cover the dumping space and soon after started construction of his residence. In 1978 we enjoyed a congenial neighborly relationship with the Ringlers, however, in the early 1980s a caravan of loaded tandem dump trucks began coming from south Mesa Road and driving down a hastily bulldozed road to the lower level of the site. It was not until after lunch the next day that we were finally able to get the City to order a stop to the hauling and dumping which resulted in 4' to 5' of fill in a large area adjacent to our property. A contractor was sent to try and convince me to allow them to fill the entire area to the upper slopes of my property. After consulting an engineer and my attorney I learned that the large drainage of water that sometimes comes down the valley between our properties could soften the fill, wash out the dam and cause damage to lower properties creating a very heavy liability on me. Finding great disfavor with the project as a whole, I refused the request to allow a total fill between the properties. From that day forward and for many months thereafter the applicant, in spite of warnings and direct orders from Code Enforcement and City Police to stop all dumping from occurring, continued to do so. Every week would produce a new deposit of rubble, broken concrete, tree limbs, outright garbage, drywall scraps and all types of junk dumped conveniently on the side of the valley facing my residence. I appealed numerous times to the City to stop the debacle but was told each time nothing could be done unless the junk were deposited on my property. Only then could I make a case in court to stop the dumping. Finally I appealed to the City Council on September 18, 1986 for a permanent injunction to cease the activity. Even though the applicant was ordered to clean up the property and remove all the junk and debris which had rolled down the slope, he wantonly and willfully refused to obey the order. The City filed an order for work and services rendered in the amount of $10,656.65. On June 10, 1994 I received a letter from Mr. Kent Nelson stating the applicant had begun the illegal grading of a road down to the lower portion of his property. On June 20, 1994 Mr. Tim Mitros, City Engineering Department, sent me a copy of the notice and order to correct grading violations. The applicant has shown utter disregard and contempt for ordinances, laws and regulations meant to assure all law-abiding citizens that someone of his history cannot come into a neighborhood and, by his actions and performance, threaten the property values and the peace and tranquillity of those around him. Even now there's a bench warrant outstanding on the criminal charge of violation of the permanent injunction of 1986 issued by City Council. If he's allowed to gain access to the property from Mesa Road, the northwest backslope of the roadway will be so steep that there will be a constant threat and source of erosion. The turnaround on the lower portion of the property and up to Mesa Road will be a public road but the plat calls for no hard surfacing of any kind. There's a torrent of water on Mesa Road and in the early 1980s I constructed a berm to keep it off my property. In this latest episode, Mr. Ringler has cut that berm allowing all that water to come onto my property. If he's allowed to construct a retaining wall to lower the ratio of the backslope, our property values will be lowered significantly by the unsightly appearance of a very high wall. He was aware of the lack of access to his property from Oswego Street when he bought it. Knowing the applicant's history with the City, I ask you if you would trust him to conform with the requirements as stated on the plat and various other specification proposals? Would you require him to remove all the fill he's illegally dumped there in the last 10 to 15 years? Apply the 6" lifts and compact it to the degree that's called for. How can the applicant construct a high retaining wall 1' from the property line without trespassing on my property? Time after time he's done it with his grading equipment and although I've not filed suit in the past, I intend to do so in the future. Approving the proposed plat will obligate the taxpayers of Colorado Springs to assume the responsibility for the maintenance and upkeep of a ramp-type access such as the one proposed. If this is approved, a City Engineer should at least be on the property 24 hours a day to stop construction immediately if there are violations of any specifications. It's not my nature to present such a report as I have to you this morning; I despise it, but feel it's necessary and beg the Planning Commission not to approve this preliminary plat.

Commissioner Hjelkrem asked if the road will be private or public? Mr. Litzelman replied it will be private. Commissioner Hjelkrem stated he got the impression Mr. Evans is not against the proposal only in how it's done. Mr. Evans replied he's very much against the proposal unless a better access can be found other than through this steep ramp going to the lower portion of the property. It will never be anything but a problem even if it is a private road. With heavy rains, residents down there won't be able to get out.

Rebuttal:

Johnny Johnson said that most of the residents who spoke were concerned with interim conditions that exist. The hay bales aren't intended to hold water but rather to hold the erosion back from getting off the property and to slow down the flow of water. We've attained City Engineering's approval for the grading & erosion control plan and fully intend to comply with it. The access issue indicates problems we've tried to deal with since the onset of this project and will be off of Mesa Road only. The private road will be maintained by a Homeowner's Association and is in conformance with Fire Department and Street Division requirements for widths and type of construction. There are two welded-wire retaining walls being constructed along Gold Camp Road, the same as what will be put on this property. This type of wall has been used for forty (40) years by mining operations and State Highways to retain soil so it's not new and untried concept. The architectural character of the wall won't be as obtrusive as people envision. We ask that you follow staff's recommendation and approve the request.

Commissioner Esmiol asked what the grades are along the entire length of the road? Mr. Johnson replied the grades range from 4% to 12%.

Commissioner Gruen asked how the road can be constructed without trespassing on Mr. Evans' property? Mr. Johnson said the wall has been set back 1' from the property line and in order to start the welded-wire wall it has to be graded flat underneath the roadway. It will be graded out, first mat laid and fill placed up to the height of the first basket. Then the wall will be extended up in layers from there so it all has to work from the back side. Commissioner Gruen asked if all construction will take place to the east of the road? Mr. Johnson replied yes, there won't be any need to get onto Mr. Evans' property. Commissioner Gruen asked about the removal and recompaction of fill that's been illegally placed? Mr. Johnson said the existing home at 2120 Mesa Road was constructed on that material and is stable. Most of the materials are asphalt and concrete rather than junk cars as stated.

Commissioner Ruggiero asked what soils testing the applicant has done? Mr. Johnson said there has not been any soils testing done on this site, however, in talking to the welded-wire manufacturers they're satisfied that this is stable enough. Commissioner Ruggiero asked if he's familiar with the dumping that occurred in 1984 and again in 1994? Mr. Johnson said it occurred, as he'd been told, with the major portion being done in 1984. In 1994 Mr. Ringler was going to construct an access road to the lower portion of his property and this is when the neighbors went up in arms. There has also been some illegal dumping of construction debris without Mr. Ringler's authorization.

> Keith Ringler, applicant, said when he bought the property in the early 1970s, the City wanted to dump excess asphalt, concrete and dirt from construction they were doing on roads at the time. The City issued a dumping permit and used it for that purpose. Once there was enough fill dirt, I built my house in 1980. The 4 1/2 acres was purchased separately from the lot I built the house on. Keith Hooks & Associates did the subdivision for Indian Heights but on the old plat the original Oswego Street actually stopped two (2) lots short of where the houses are presently built. There's an existing sewer and water line right up into the property that the Palmer Foundation manages. I've asked the City if there's an easement for the sewer and water lines but no one seems to know. The fill dirt was tested as it was being brought up and is all road base dirt that's compacted to about 97%. There are no car bodies or carcasses in that dirt. We've posted 'No Trespassing' and 'No Dumping' signs on Mesa Road but people still do it.

Commissioner Friesen said he mentioned receiving a permit for some dumping so which area was permitted? Mr. Ringler replied he's had two (2) different permits but the dumping that everyone's concerned about is on the Mesa Road property. There was also a permit to allow putting 120,000 yards of fill dirt in the valley.

Commissioner Gruen wanted to know about the grades of the road, the wire mesh rock base and the practicality of constructing the road without trespassing on Mr. Evans' property. Larry Lane, City Traffic, said he doesn't think it's very viable to build a public street in this swale nor does he feel that the City's citizens should ever be required to maintain anything they build in this swale. My opinion is that someone is building a driveway of some sort to access property on a downhill cul-de-sac which is to be privately constructed and maintained, however, Mr. Mitros, City Engineering, is far more qualified to comment on the structure of it. Dave Lethbridge, City Engineering, said the Planning Commission has heard reference that the City Engineer has approved this grading plan. We do not approve grading plans but rather file them which in a sense may appear to constitute an approval. The statement that the engineer places on the plan and certifies to us reads as follows, "The work shown hereon, if performed in accordance with the plans and specifications, will not become a hazard to life and limb, endanger property or adversely affect the safety, use or stability of a public way, drainage channel or other property." This statement is signed and sealed by the registered professional engineer. The owner also signs a statement agreeing to comply with the requirements of the grading plan. Our office then signs a statement that we filed the plan in accordance with City Code for grading. City Engineering does, however, review and comment on grading plan submittals and we've been diligent in raising specific issues such as wall design, street slope, guard rail, soil suitability, drainage etc. There have been a number of exchanges between our office and Becker-Johnson in an attempt to address all of those comments. At this point the comments have been returned with an engineering solution and the plan bears the seal and statement of the registered engineer, Mr. Leonard Becker. We are not familiar with this particular type of wall construction and it's our opinion, if constructed properly, it will provide stability to retain the earth. A building permit will be required prior to the construction of the wall.

Commissioner Esmiol asked where specifically the drainage and sewer will come out? Mr. Lethbridge said he doesn't know about the sewer but the drainage will be in the same place, as it has been historically, coming down behind the existing homes on Oswego Street and diverted into the swale. It heads in a southerly direction through what was platted as Indian Heights Filing No. 7 which was never built. When we reviewed the plans for Filing No. 7, we required the developer to concrete-line that swale to upgrade and permanently protect the adjacent properties. It would have been constructed to City standards and would have become a public drainage facility maintained by the City, but the developer ceased activity before it was built. As it stands today, the City will not respond to requests to maintain that private drainage channel.

Commissioner Hjelkrem asked if this development will exacerbate the drainage problems for the homeowners on Oswego Street? Mr. Lethbridge replied that what exists now is a bunch of uncontrolled fill that's eroding onto their property. But what we're really doing is trying to restore an area that's been disturbed through the uncontrolled fill operation. In one sense, the best thing to do is get it finalized by building something there and stabilizing it. Based on this morning's testimony I think we need to revisit the adequacy of the outfall; discuss with the developer his responsibility to at least make sure there is in fact an adequate outfall. If the outfall is sized properly and if the erosion is controlled, I believe there will be an adequate level of safety, moreso than what exists now. There are really two (2) issues: there's a proposed development and there's an existing condition that needs a remedy.

Commissioner Esmiol asked if there will be more or less runoff when the houses and the road are built? Mr. Lethbridge replied there will be more upon completion of the development.

Commissioner Hjelkrem asked about the 12% grades on this road? Brett Lacey, City Fire, replied the Hillside Ordinance allows short runs of 12% grades and this property has approximately 150' of 12%. The Fire Department has purchased new equipment in order to facilitate those grades a little better. We're comfortable with the proposed layout as far as our abilities to access those lots.

Commissioner Jones asked if the Fire Department has responsibility for responses in terms of medical emergencies? Mr. Lacey said yes, however, the same engine companies that respond to fires are staffed with paramedics.

Commissioner Friesen asked if they've given any thought to a severe ice condition causing one of their larger, heavier vehicles cascading off a 13' vertical wire container? Mr. Lacey replied it comes back to the issue that the operators of these vehicles have to be very aware of all conditions. Prior to emergency calls, they preview and keep up on various sites as to where there may be potential problems.

Commissioner Ruggiero stated he's deeply concerned about issue regarding the zoning violations. When the lower portion of the site was regraded or leveled, was any kind of abatement done to reduce the erosion and outfall onto the lower property owners? Mr. Litzelman said the City Attorney's Office advised him there was no problem in going ahead with the plat. As brought up by Mr. Johnson, they have to go through the platting process to meet all of their obligations. Commissioner Ruggiero commented that no one seems to know if additional restoration or stabilization of the illegally dumped fill was accomplished. Dave Lethbridge said with respect to the filed grading & erosion control plan, the erosion control measures have been set. The interim measures are in place and there may be a need for some ongoing maintenance but the revegetation etc. have not been accomplished yet.

Commissioner Hjelkrem commented there's a few areas in Village Seven where there was drainage coming in behind homes into a natural ditch, then at one point it was paved with concrete. Maybe this is an example where the homeowners will have to have a permanent drainage put in. Does the City force the homeowners to put in the drainage improvement? Mr. Lethbridge replied they generally define things as 'public' and 'private' as to whether or not there's any public runoff going into an area. If water comes off a public R.O.W., the City has the responsibility to manage it, however, in this case there's no area which produces a public source of runoff. Staff could look at some type of improvement district for a facility but that would have to be initiated by the homeowners with a petition for an improvement. The petition is then taken to City Council to see if they will sign it back to staff for a design effort. If the homeowners are willing to be assessed for the improvement, maybe the City would agree to do the maintenance.

Al Ziegler, City Attorney, commented in reference to the criteria found under the Subdivisions Regulations 15.3.203 under 'Preliminary Plat' it states, "At a regularly scheduled public hearing, the Planning Commission shall review the preliminary plat or a preliminary and final plat for conformance with this chapter of the Subdivision Code, the Zoning Code (Chapter 14.1), the Public Works Design Manual and other applicable City Ordinances and Resolutions. The decision rendered by the Planning Commission shall be final unless appealed to City Council. The Planning Commission may approve, approve with conditions, deny or postpone for further study the request of a major subdivision."

Commissioner Friesen asked if the Comprehensive Plan qualifies as 'other applicable City Ordinances and Resolutions'? Mr. Ziegler replied yes.

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It was moved by Commissioner Friesen, seconded by Commissioner Esmiol to deny the preliminary plat for Ringler Subdivision No. 2 consisting of 4 lots on 4.2 acres zoned R-Estate (Single Family Residential) located southwest of Mesa Road between Mesa Road and Oswego Street.

Commissioner Friesen stated Comprehensive Plan Goal 16.1 states, "Promote the application of urban design considerations which define and enhance the City's unique character." Paragraph 16.1.D1 defines this as, "Urban design deals with the quality of the built environment: how it looks, feels and functions, and how it embodies local culture and context. It is the effort to define and improve the City's desired physical characteristics and form, visual quality and order, and overall image and identity. It's concern is with both the built environment and the effects of urban development on the natural environment and quality of life." This is definitely a built environment and in fact a building permit is required to construct the road which is really a structure. The neighbors don't care to look at a 13' to 20' rock structure near their yard; this road just doesn't quite feel right; and how it functions - we've heard plenty of problems with drainage and other things. Urban design deals with visual quality & overall image and I feel this solution is lacking on both of these areas. He commented this is a good case study for the Hillside Task Force to look at residual pockets like this, with it's bowl-like form, that are affected by adjacent hillsides. He considers this a high-risk development. Another concern is that Mr. Lethbridge stated they don't have experience with road construction similar to this and wondered if they should allow a property owner with Mr. Ringler's track record to experiment with it which is a new construction technique. These are the reasons for the motion to deny the request.

Commissioner Hjelkrem said he's opposing the motion. He feels that City departments have looked at it and isn't sure what else can be done out there. He sees it as step one (1) to a solution of the problems. There's enough structural integrity there to make the entrance look okay and safe. He doesn't see it as any worse than what exists right now.

Commissioner Gruen said he's a very strong supporter of private property rights but in this case he'll be supporting the motion for the compelling reasons that Commissioner Friesen has outlined.

Commissioner Jones said he'll be supporting the motion. He cited page 6 of the Comprehensive Plan where it states, "The Comprehensive Plan is intended to provide an overall benefit to the entire community." The application of the principle, 'overall community benefit', does not infringe upon an individual's rights under the law. In this case, if the Planning Commission approves this request, the detriment would far outweigh the greater good for the greater numbers.

Commissioner Ruggiero stated he'll be supporting the motion. This is clearly a difficult site to develop and the question could be 'whether it's a good plan poorly executed or just a poor plan'. Regarding the access issue: certainly there's only one possible access from this site but nothing precludes the owner from acquiring access to come in from a different direction if he's willing to pay the price. He feels this is one of the most egregious examples he's seen in two (2) years on the Planning Commission and feels it's inappropriate.

The motion passed 6-1. (Commissioner Hjelkrem opposed. Commissioners Bauer & Bradley were absent.)

ITEM 6 WAS HEARD LAST ON TODAY'S AGENDA.

ITEM 7. CPC CU 95-84 - Rapp - Quasi-Judicial

Request by Wayne Browneller on behalf of The Harbor Group, LLC for approval of a conditional use to allow mini-storage warehouses in an OC (Office) zone consisting of 3.0 acres located northwest of Meadowland Boulevard and Austin Bluffs Parkway at 3160 Austin Bluffs Parkway.

Gary Rapp, Development Services Division, said a similar proposal was made last Spring on this property for a mini-warehouse development. This development proposed six (6) mini-warehouse buildings, 45,200 square feet. In the mid-1980s it was rezoned from R-5 (Multi-family residential) to OC (Office) with a concept statement saying that this would be a high-quality office development. Obviously, this request does not follow that concept statement so staff has reviewed it with regard to Comprehensive Plan Policy 5.1.3 looking at demonstrating a neighborhood or community benefit which would outweigh any adverse impact. Staff recommends approval subject to the following conditions:

1. Comply with Gas Department access, easement and setback requirements for high pressure gas main.
2. Project perimeter building walls shall be of decorative masonry (or acceptable equivalent) with no storage doors.
3. Wrought iron (or facsimile) fencing shall be required along the arterial frontage and along the east and west non-residential boundaries.
4. Austin Bluffs Parkway landscape setback trees shall be 50% Austrian Pines or similar acceptable evergreen trees.
5. Landscape buffers shall be required along the east and west non-residential boundaries with 50% Austrian Pines or similar acceptable evergreen trees.
6. Signage shall be limited to one 40 square foot low profile or wall sign.
7. There shall be no banners or pennants.
8. There shall be no outdoor storage, including recreational vehicles.
9. Storage of hazardous materials shall be prohibited.
10. Access to Austin Bluffs Parkway shall be restricted to right-in/right-out only.

And the following technical revisions:

1. Reconcile the varying building dimensions shown on the two plan sheets.
2. Show the general use of each building on the plan.
3. Delineate all utility easements clear of buildings and provide for service access to the easements.
4. Revise right turn lane into site per Traffic Engineering requirements.
5. Show pedestrian curb ramps where sidewalks cross driveways with curbs.
6. Show width and extent of off-site Secondary Fire Access easement and note book and page of record.
7. Show two parking spaces for office and note parking ratio of 1/400 sq. ft.
8. Show OC zoning on parcel; and show zoning on adjacent properties.
9. Meet Fire Department requirements.
10. Add six setback trees for a total of 32 along Austin Bluffs Parkway.
11. Increase rear landscape buffer to 45 trees (1/3 evergreen).
12. Specify minimum 3 inch depth of wood mulch.
13. Delineate corner visibility triangle on east side of driveway.

CITY PLANNING COMMISSION

ITEM NO(S): 5.
STAFF: Dave Litzelman
FILE NO(S): CPC DS S 94-289P - Quasi-Judicial

PROJECT: Ringler Subdivision Number 2

APPLICANT: Keith Ringler

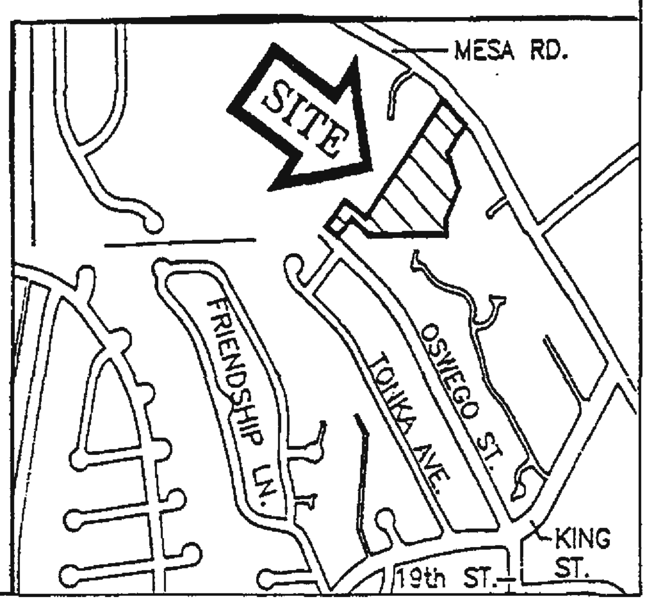
OWNER: Keith Ringler

PROJECT DESCRIPTION:
Create four single family residential building lots.

STAFF'S RECOMMENDATION:
Approve with the following technical revisions:
1. Name the private street
2. Note on the plat; 'No access to Oswego Street'.

SUMMARY:
The preliminary plat meets all the requirement of the R Estate Residential zone.

PLANNING COMMISSION'S DECISION:
Denied 6-1.



BACKGROUND:

Existing Zoning/Land Use - R - Estate Residential/vacant

Surrounding Zoning/Land Use -
North - R Hillside/vacant
South - R-2/Single family residential
East - R/ Single family residential
West - R/ Single family residential

Subdivision - Unplatted.

Proposal - Create four single family residential building lots.

Physical Characteristics - Site drops 94 feet from Mesa Road to Oswego Street. The site is mostly grassland.

Master Plan - None.

DEPARTMENTAL REPORTS:

City Engineering - There is a history of grading problems and violations on this site. The City has pursued legal action against the current property owner to force compliance with the Grading Ordinance and a previous injunction. The preliminary plat drawing does not show proposed grading contours! At this time owner has submitted and had accepted a grading plan for the site. The grading plan shows a substantial retaining wall. We request that the grading plan be included with the preliminary plat drawing for plat review purposes and become a document of record for this land action. Our office must still review a final plat for the site.

Traffic Engineering - Standard comment.

Electric - Standard comments. The property will be served from the existing overhead power supply along the rear of the lots on Oswego Street.

Water - Minimum 50' multiple utility easement required. Contact Water Resources for a copy of our standard easement form. This will be public water. Water Resources therefore prefers the street be built in accordance with City street standards and be a City street maintained by the City. Any required relocation of existing or installation of new water facilities will be at the expense of the owner/developer. The City of Colorado Springs does not guarantee water to the subject area. Allocation of water to serve this area will depend upon the supply available at the time of application. The City's policy is first come, first served. A water plan showing the location of all existing and proposed water mains, valves, fire hydrants, storm sewers, sidewalks, street curbs, and any other structure must be submitted to and approved by the C.S.F.D. and the Water Division. All 12" and smaller water mains must be installed at the expense of the owner/developer of the property and in accordance with Water Division and C.S.F.D. requirements. Water mains larger than 12" are installed in accordance with major main policy; a copy of which can be obtained from the Water Division System Engineer's office. Update - The Water Division will accept a 40' easement where the access easement is only 40' wide. Details will be worked out with the final plat.

Wastewater - The request for preliminary plat approval is acceptable. Wastewater mainline exists in Oswego Street. Wastewater mainline extension will be required by the developer.

Police - Paved drive shall carry a street name. Standard comments.

Fire - See attached memo.

Parks - Fees in lieu of land for any increase in density.

County Health - Earthmoving activities which exceed one acre must have a construction activity permit prior t commencement of the project. Please contact Air Quality at 578-3137.

Regional Building and 911 - If road is over 500' it must be named. It would be desirable to address these lots off the new road.

PETITIONER'S JUSTIFICATION: FIGURE 1 and 2

Meets the requirements of the Zoning and Subdivision codes.

ANALYSIS OF MAJOR ISSUES:

The preliminary plat meets all the requirement of the R Estate Residential zone and with some additions the requirements of the Subdivision Code. Those additions are as follows:

- Identify the proposed lot corners.
- Name the private street.

The applicant has agreed there will be no access to Oswego Street. There must be a plat note indicating that agreement.

Councilmember Guman stated he supports the motion; that he feels this use will be beneficial to the neighborhood.

A vote being taken on the motion to overturn the decision of the Planning Commission and grant the request for a conditional use: The motion unanimously carried. Absent, Mayor Isaac.

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15. **<u>CPC DS S 94-289P: Public Hearing on an appeal by Becker-Johnson,Inc., on behalf of Keith A. Ringler of a request for approval of a preliminary plat for Ringler Subdivision No. 2, consisting of 4 lots on 4.2 acres zoned R-Estate (Single-Family Residential) located southwest of Mesa Road between Mesa Road and Oswego Street.</u>**

David Litzelman, Development Services Division, gave a summary of the property and reviewed technical concerns which have been resolved.

In response to questions from Councilmember Gillaspie, Mr. Colvin stated the City has been in litigation with Mr. Ringler since 1986 regarding this site; that he is now coming forward and dealing with the site as required by the City Code; that Council should consider whether the criteria of development are being met, not the developer's past record of non-compliance with the City Code or the litigation factors currently at hand.

In response to a question from Councilmember Makepeace, Mr. Litzelman stated the proposed subdivision is not in the hillside overlay zone.

In response to questions from Councilmember Gillaspie regarding the Gabion basket, Jerry Banks, City Engineer, stated the Gabion Basket is a type of retaining wall which can be used if properly engineered with appropriate battering and thickness of the walls; that Gabion baskets have been used in some City installations, as retaining walls and in residential areas of the Westside.

In response to a question from Councilmember Purvis, Mr. Litzelman stated the Fire Department approved the plan and their initial concerns with street grades and widths have been resolved.

In response to a question from Councilmember Cook, Dave Linebaugh, Fire Department, stated this area is not in the hillside overlay zone and, therefore, is not subject to the wildfire regulations.

Councilmember Gillaspie questioned drainage issues, what kind of oversight the City has over the drainage issues and the control of run-off into adjacent properties. She also questioned how the developer has to prove that everything has been done correctly.

Mr. Banks stated the drainage ordinance does not specifically address the lot-to-lot drainage issue and they are relying on the grading and drainage plan prepared by the private engineer and the statement on those plans indicating there will not be a problem. He stated a grading permit requires the developer to oversee the work and ensure there will be no problems; that the Department has followed up when a violation occurs in the plan; that the City has to obtain an injunction or go through the Court process. He stated they try to be proactive in the review process and if they see something that is going to be a problem, they will flag it.

Mr. Nickerson stated even if the grading is done properly, the homeowner can alter the drainage such that it creates a problem for the neighbor; that State law prohibits the City's involvement in lot-to-lot drainage issues; that it is an issue between neighbors.

Johnny Johnson, representing Mr. Ringler, stated a drainage report has been approved, there is a letter of credit to guarantee the improvements, the plan has been developed to meet all of the City requirements and satisfy the adjacent property owners; that they have worked with the City Engineering Department to satisfy all of the technical issues with respect to grading, drainage, and erosion control. He stated Mr. Ringler has posted a bond in the amount of $50,000.

In response to a question from Councilmember Makepeace, Mr. Colvin stated Council can initiate direction to the Planning Department and Planning Commission to consider placing a zone on a piece of property and in this case, that would be the hillside overlay zone.

Councilmember Makepeace stated she would move to postpone this issue to the Council meeting of June 27, 1995, initiate consideration of placing this area under the Hillside Overlay zone and include adjacent similar properties along the south side of Mesa Road. The motion was seconded by Councilmember Gillaspie. The motion unanimously carried. Absent, Mayor Isaac.

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At 3:50 P.M., motion by Purvis, second by Guman, that Council adjourn. The motion unanimously carried, and

COUNCIL ADJOURNED

Kathryn M. Young

Kathryn M. Young
City Clerk

Gary Rapp, Development Services, gave a brief overview of the request and stated the Planning Commission unanimously approved this request and the Department is recommending approval as well.

Keith McCandless, applicant, stated his application and request is based on the prior use of this corner and he believes it meets the criteria.

Jack Mason stated he is opposed to the proposal for retail liquor sales at 4401 Mark Dabling Boulevard; that requests like this continue to change the character of the neighborhoods and adversely impact traffic. He stated this request is not necessary because there are other areas throughout the City zoned for this type of use.

Motion by Purvis, second by Guman, to overturn the decision of the Planning Commission and deny the applicant's request for a conditional use.

Ayes: Gillaspie, Guman, Forrest, Hazlehurst, Purvis
Noes: Isaac, Young
Absent: Are' Cook, Makepeace

Mayor Isaac declared the motion carried.

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17. <u>CPC P 95-162: Public Hearing on an appeal by Gregory D. Timm on behalf of Keith Ringler of a request by the City of Colorado Springs for the expansion of the Hillside Overlay consisting of 168.31 acres zoned R-Estate (Single-Family Residential), R-2/P (Two-Family Residential with Planned Provisional Overlay), R-2 (Two-Family Residential), R-1 6000/P (Single-Family Residential with Planned Provisional Overlay), r-1 6000 (Single-Family Residential) and PK (Park) located west of Mesa Road and north and south of Uintah Street.</u>

Motion by Young, second by Guman, that this matter be postponed to the Council meeting of July 11, 1995. The motion unanimously carried. Absent, Councilmembers Are' Cook and Makepeace.

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18. <u>CPC DS S 94-289P: Public Hearing on an appeal by Becker-Johnson, Inc., on behalf of Keith A. Ringler of a request for preliminary plat approval of Ringler Subdivision No. 2 consisting of 4 lots on 4.2 acres zoned R-Estate (Single-Family Residential) located southwest of Mesa Road between Mesa Road and Oswego Street.</u>

Motion by Young, second by Guman, that this matter be postponed to the Council meeting of July 11, 1995. The motion unanimously carried. Absent, Councilmembers Are' Cook and Makepeace.

Ayes: Are' Cook, Gillaspie, Guman, Hazlehurst, Makepeace, Purvis
Noes: Isaac, Young
Absent: Young

Mayor Isaac declared the motion carried.

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11. **CPC DS S 94-289P: Public Hearing on an appeal by Becker-Johnson, Inc., on behalf of Keith A. Ringler of a request for preliminary plat approval of Ringler Subdivision No. 2 consisting of 4 lots on 4.2 acres zoned R-Estate (Single-Family Residential) located southwest of Mesa Road between Mesa Road and Oswego Street.**

Mr. Timm stated he does not think there will be any problem dealing with the overlay issues; however, the starting over process is very expensive and he is requesting that this item either be continued so that Mr. Ringler can demonstrate compliance with the overlay requirements or approved with that condition prior to final plat.

Motion by Makepeace, second by Young, that this matter be postponed for 30 days to allow Mr. Ringler an opportunity to comply with the Hillside Overlay Zone.

Ayes: Are' Cook, Gillaspie, Guman, Isaac, Makepeace, Purvis, Young
Noes: Hazlehurst
Absent: Forrest

Mayor Isaac declared the motion carried.

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At 1:40 P.M., motion by Purvis, second by Young, that Council adjourn until 2:00 P.M. Wednesday, July 19, 1995 for the Utilities Board Meeting. The motion unanimously carried and,

COUNCIL ADJOURNED

Kathryn M. Young

Kathryn M. Young
City Clerk

Withdrawn 8-8-95

Scott Toniolli
1374 Venhorst
Colo. Spgs. CO. 80920
Phone: W(719) 570-8841

12 July 1995

JUL 12 1995
CITY CLERK-TREAS.

Colorado Springs City Council
P.O. Box 1575, Mail Code 410
Colo. Spgs. CO. 80901-1575

Appeal of:
CPC P 95-70-A1
CPC P 95-70-A2
Venhorst Cul-de-sac master plan change

I support development in Colorado Springs adjacent to a residential area as long as it is accomplished in such a manner that it provides a balance between residential quality of life and development objectives. Implicit in this planning is consideration of how harmoniously the business can exist on the fringe of a residential area without decreasing property values, negative visual intrusion, increasing in noise etc. I realize that a master plan must be flexible and changes must be made, but those changes should be restricted to minor adjustments to accommodate the type of business originally intended by the master plan (approved seven months ago) and not change fundamental principles upon which the plan was built. On the one hand, alteration of the plan with regard to minor adjustments will not appreciably disturb the fundamental purpose of the master plan which is to preserve the balance between quality of life and development objectives. On the other hand, major changes to the plan with regard to density of population, type and size of business may be classified as major changes and disrupt the basic tenets that the master plan was intended to preserve. These types of changes are those that should not merely focus on the pad prescribed in the master plan, but should embrace the peripheral area adjacent to the area of major change. If this type of review is not conducted, unfortunately it is the homeowner who pays the penalty in terms of quality of life in the residential area. The Home Depot development plan located at Woodmen Rd. and Academy Blvd. does not adhere to the master plan, standards, and other residential qualities of life for the following reasons:

1) High density for the four lots between Berglind and Venhorst is not in keeping with the master plan and commitment to the three adjacent homeowners. I quote Mr. Peitz page 77, CPC agenda 5/4/95, Analysis of Major Issues. "...the building location of Home Depot into a portion of the original FCY Master Plan is not in keeping with the original intent of what the FCY Master Plan proposed for the "two lot deep" changes along Academy Boulevard. Initially, the changes along Academy Boulevard were to be pad sites to accommodate smaller commercial/office uses. With the addition of a portion of the Home Depot, this is a faciliy much larger than anticipated". A store of this size and magnitude requires a larger lot to provide adequate buffer if it is placed adjacent to residential. Please consider the following like developments:

Store	Lot (in acres)	Store size	Surroundings from property line Square feet
• Home Base (north)	10	109,000	Near Wal-mart
• Home Base (south)	15.9	132,000	75 yards from minor road/ apart.
• Home Depot (south)	18.7	129,000	Near Wal-mart
this site has another building with		72,000	Near Gas station/Auto parts store
• Proposed Home Depot	13.0 *	131,000	A wall 15-20ft. from residential

*the lot size is less the 2.5 acres for right of way dedication on the master plan.

In addition, a large portion (well above one acre) of the proposed Home Depot lot size is taken up by a required frontage. This has not been extrapolated from the above table.

2) The developer is merging the F.C.Y. master plan and the Woodmen Plaza West master plan because the building and its parking could not fit on the Woodmen Plaza West master plan. The buffer required by the Woodmen Plaza West is not being adhered to on the F.C.Y. portion.

3) The frontage road caused many problems for the May 1995 Colorado Springs Planning Commission. Mr. Peitz and the Commission wanted the frontage road to go in front of the building to reduce a tunneling effect caused by the building and the buffer wall. Please note: Home Depot traffic study projects that 10,000 cars will travel on this road on the average weekday with the completion of phase one and phase two. This issue was not properly addressed in the July Planning Commission. The frontage road for any development should be required to be placed in front of the building to reduce noise and pollution for adjacent homeowners.

4) The development plan currently does not meet the landscape requirement along Academy Blvd. (in front of the store). An additional five feet is required. The City planning department is aware that the store is too large and in an attempt create some buffer has relaxed this standard.

5) Mr. Peitz has approved a 'minor' amendment to the master plan with movement of the Venhorst cul-de-sac. Mr. Peitz approval letter has not yet been provided.

This is a case where the alteration of the master plan as described above inserts a large discordant business in a place originally planned for a moderate benign one. In-place substitution of this type of business impacts the master plan intent to produce harmonious balance between quality of life and development objectives. If this discordant business had been part of the original plan adequate pad would have been allowed to preserve development objectives.

When changes were made to the master plan to accommodate the Home Depot, it appears that the primary focus was to adapt this business to an established pad without considering the impact to the adjacent and peripheral area. Evidence of this is that concessions are being made in the form of high walls on top of burms, trees, etc.

to mitigate the impact, however these stop-gap measures cannot substitute for domain separation. In fact the domain separation between residential and business areas should be directly proportional to type of intended business development for the area. In this case, adequate domain separation can be attained through expanding the pad area for the Home Depot by the procurement of additional lots adjacent to the area. The domain separation achieved by this action would protect the integrity and intent of the master plan to provide the fine balance between the quality of life and business objectives.

OLD BUSINESS

CITY PLANNING COMMISSION

ITEM NO(S): 4. & 5.
STAFF: Quinn Peitz
FILE NO(S): CPC DP 95-70-A1 - Quasi-Judicial
CPC SP 95-70-A2 - Quasi-Judicial

PROJECT: Home Depot Plaza

APPLICANT: LDC, Inc.

OWNER: Pacific Retail Partners

PROJECT DESCRIPTION:
For approval of a development plan and a variance for a Home Depot Store.

STAFF'S RECOMMENDATION:
Item 4 - CPC DP 95-70-A1 - Development Plan
Approve the development plan.

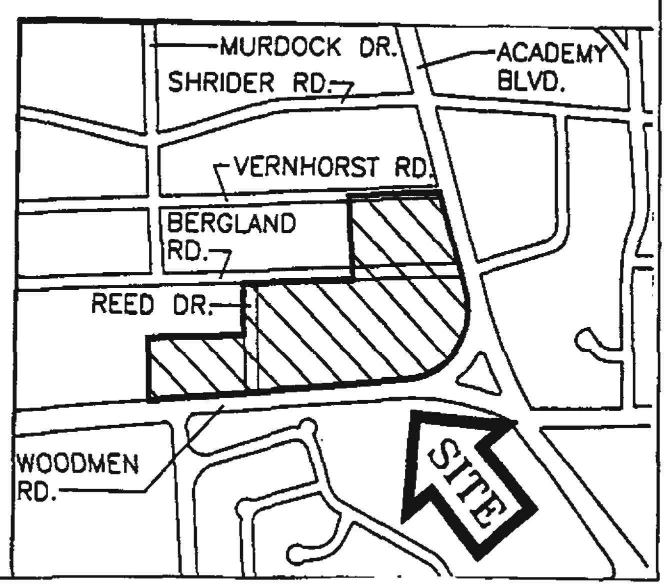
The following technical corrections should be made to the **landscape plan** as part of the approval process:

1. Place on the landscape plan all retaining walls and pedestrian walkways.
2. State the number of trees in the parking area (one tree/15 stalls is required).
3. State the number of trees in the frontyard setback (one tree/20 feet of frontage is required).
4. State on the plan the number of trees in the buffered area adjacent to the wall (one tree/ 15 feet of buffer length is required).
5. State on the plan the total net area of the plan that is landscaped (5% percent is the minimum).
6. State on the plan the number of trees for the internal landscaping (one tree/500 square feet is required).
7. State that 50% of the ground cover is live materials.
8. State that the docking area and refuse area cannot be seen by adjacent properties.

The following technical corrections should be made to the **development plan** as part of the approval process:

1. Location and size of all signs.
2. Notes which describe any covenants or easements permitting the use of land by adjacent property owners.
3. Location of proposed retaining walls with dimension information, including typical detail/cross-section drawings.

Item 5 - CPC SP 95-70-A2 - Non-Use Variance
Approve the variance for the ten foot wall.



BACKGROUND:

Existing Zoning/Land Use - R-Estate/Vacant/Single Family Dwelling

Surrounding Zoning/Land Use - North - R-Estate/Single Family Dwellings
South - R-Estate/Yorkshire Estates/Single Family Dwellings
East - R-Estate/Single Family Dwelling
West - R-Estate/Woodmen Plaza East/Single Family Dwellings

Annexation - 1992, Woodmen Plaza West. 1993, FCY Annexation. A master Plan change and zone change was approved by the Planning Commission in May, 1994. The City Council postponed action on these items until a resolution of the development plan was voted on by the Planning Commission.

Zoning - R-Estate, 1994/1995.

Subdivision - Falcon Estates No. 1 and 3.

Zoning Enforcement Action - None.

Proposal - To seek development plan approval for a Home Depot Store of 103,790 sq. ft., 35 feet in height. To seek approval for a variance for a 8' to 10' wall in the building setback where the requirement is not to exceed 6'.

Physical Characteristics - The property has native grasses with gentle slopes from the southeast corner to the northwest corner.

Master Plan - Woodmen Plaza Master Plan and the FCY Master Plan.

DEPARTMENTAL REPORTS:

Item 4 - CPC DP 95-70-A1 - Development Plan

Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense.
We will not allow the General Utility Enclosure if the proposed propane is within 20 feet of our electric.
All clearances must be maintained according to the N.E.S.C.

Traffic Engineering

1. Construct a raised median in Academy Blvd. to accommodate dual left turn lanes and six lanes thru at Woodmen Road. Provide plan and profiles to this office.
2. Construct a right turn lane on Academy Blvd. at Venhorst. Additional ROW will be required north of access - provide plan and profiles for this turn lane design.
3. Construct the full widening of Woodmen Road per the directions of the City Traffic Engineer.
4. Show and construct a 40' wide private reverse frontage road from Prince Dr. to Venhorst - what is depicted is not acceptable.
5. The Prince Drive/Woodmen Road signal shall be at this owners expense. Submit an intersection design that protects cut thru traffic into Yorkshire Estates from Woodmen Plaza for approval.
6. Per the annexation agreement, this owner may be required to participate in an interchange at Academy Boulevard and Woodmen Road. Full right-of-way dedication shall be required.

Water - Further study will be required for the existing water facilities proposed to be removed.

Police - Adequate lighting should be installed throughout the area including the parking lot and the buildings. Business numbers should be visible for emergency vehicles both day and night (both on the front of the businesses and on the rear of the buildings).

Fire - Standard comments 11,3,10,2,1, and 8.

Wastewater - The request for approval of the development plan is NOT acceptable. Facilities plan not acceptable. Extend 8" public wastewater mainline up east side of the proposed building instead of 6" private service. A revised Facilities Plan will be required.

Item 5 - CPC SP 95-70-A2 - Non-Use Variance

Wastewater - Request for approval of the variance is acceptable.

Police Dept. - Standard comment number 1.

Traffic Engineering - This Division has no objections to the variance for the wall heights.

Electric - We cannot approve the variance for the masonry wall as I noted on the previous buckslip. We have existing electric along lots 16, 17, & 18. I need a plan showing the wall and proposed landscaping (which has now been submitted since the electric comments) in relationship to the existing electric to determine possible conflicts. Some other concerns we have which are still shown on the development plan are the location of the transformer (which is not allowed near a propane tank) and all of the existing

electric which will need to be relocated at the developer's/owner's expense. All of the existing electric needs should be reflected in easements.
Water - Prior to constructing proposed wall, all proposed relocation of existing water facilities must be completed.
All Reporting Departments - Standard or no comment.

PETITIONER'S JUSTIFICATION: FIGURE 1

ANALYSIS OF MAJOR ISSUES:
DEVELOPMENT PLAN REVIEW CRITERIA
At the last Planning Commission meeting, the master plan and zone changes were approved by a 7 to 1 vote. The development plan was postponed thirty (30) days until certain issues could be resolved. Quoting Commission Gruen in the motion for postponement..."The purpose (for postponement) was to seriously work to resolve the outstanding technical issues such as the frontage road, safety issues related to the closure of Prince Drive and the neighborhood concerns that have surfaced today." The application was again postponed from the June, 1995 to the July, 1995 to continue to work on the outstanding issues.

Since the Planning Commission meeting, the staff has met with the applicant four times: May 9, 17, 23, and June 15. In addition, the staff has meet with adjacent property owners on May 8, 15, June 5, 13, 15, 19, 22, and 26. At these meetings, a discussion of adjusting or relocating the frontage road was considered. Aesthetically, a road in front of the building meets many of the concerns of both the Planning Commission and the City planning staff which allows for the road to be open on both sides with ample landscaping. However, the traffic department and the applicant would prefer the road to be behind the building which allows for more overall parking on site (in front), prevents motorists confusion (and the glare of headlights) by having a parallel frontage road adjacent to a major arterial (Academy Blvd.), and prevents the closure of parking aisles adjacent to the frontage road. The Fire Department must have a minimum of a twenty (20) foot aisle in the back of the building and has no preference on the ultimate placement of the frontage road as long as their requirements are met. The two adjacent property owners who opposed the plan at the Planning Commission in May would prefer the road to be in the front of the building to reduce the noise and pollution of traffic from a road immediately adjacent to their houses.

There is no easy solution to this problem. Parking is a major issue for this retail use and a reduction in parking would not be advisable. Closure of parking aisles is also not an option. The glare of headlights by two parallel roads can be mitigated with a landscaped berm. Unless the building is rotated to face Woodmen Road, a frontage road in front of the building may not be reasonable given the design and layout of the building. One solution would be to modify the plan where to provide for two landscaped roads, one in the rear and one directly in front of the building. In addition, the rear frontage road would feed directly into Venhorst that would also be landscaped. This solution would funnel traffic in three directions while still maintaining the integrity of the front parking area. Venhorst Road could also be used as an outlet for traffic coming from the north.

Concerning Prince Drive, the Fire Department has worked out a solution with the neighbors dealing with emergency access into Yorkshire Estates. Prince Drive will be closed with the appropriate walls erected along Woodmen Road. The Yorkshire Homeowners Association approves this solution.

The final solution to the development plan is attached to this report **(FIGURE 1).** The building has been moved further to the south. The southerly most parking lot has been deleted. A fifteen to twenty-five foot landscape buffer has been placed to the west of a ten foot and six foot wall. The "tunnel effect" of the frontage road has been reduced to one lot wide (along Richard Brown's property). The frontage road is reoriented to feed traffic both in front and behind the building. Venhorst Road has been cul-de-saced on the applicant's property to meet the fire department comments. All fences on the plan will be split face concrete block. A concrete sound wall will encircle the lumber off-load area. A wall will be placed along Woodmen Road adjacent to Yorkshire Estates. A final landscape plan showing the internal and frontage road vegetation has been submitted to the City.

Given these latest changes, most of the concerns of the Planning Commission and staff have been addressed. The "tunneling effect" of the frontage road has been reduced. The building has been physically moved to the south reducing its impact on adjacent properties. Additional landscaping has been placed along the frontage road. Wall elevations have been submitted to the City. This plan is a substantial improvement and attempts to reach a compromise between the major players of this project.

While the most desirous plan would be to have the frontage road paralleling Academy Boulevard, that alternative is not practical or functional. The new plan best represents an attempt to satisfy the major groups and players who have been involved in this process.

All other review criteria for a development plan is met. A wall will completely encircle the commercial property and protect the remaining residential neighborhood. Landscape buffers will be placed between the commercial and the residential zone districts. The appropriate dedication will be made for Woodmen Road. Also, a wall is proposed along the boundary with Yorkshire Estates to protect that neighborhood from increased traffic flows on Woodmen Road.

CONFORMANCE WITH NON-USE VARIANCE CRITERIA OF ZONING ORDINANCE

There are three criteria necessary for approval of a non-use variance. Those criteria deal with extraordinary circumstances, reasonable use of the property, and adverse impact on adjacent properties. The erection of a ten (10) foot wall will mitigate impacts between the residential and non-residential uses. This wall will provide a more significant benefit than a six foot wall which is allowed by right. The criteria are met and a ten (10) foot wall should be allowed as part of the Home Depot project.

Commissioner Hjelkrem asked about lighting and security? Mr. Bulmann replied that all lighting will be directed downward and no higher than 9'. They will be turned off at night and substituted with motion detectors so the lights will only come on if anyone is walking behind the buildings. The entire complex will have electronic gates. Commissioner Hjelkrem asked if anyone will be living on the site? Mr. Bulmann said they have provisions for an apartment but the plan is not to have anyone live on-site. Someone will be in the office until 6:00 p.m.

Commissioner Gruen asked if the Fire Department's concerns have been addressed? Mr. Bulmann replied yes. They recommended we move two (2) of the buildings around to insure that fire trucks could get through safely, which we've done.

Commissioner Gruen asked if there will be electrical outlets and water taps in each of the units? Mr. Bulmann said no. In talking with other warehouse managers, they've stated it's a very bad idea because people tend to misuse them. Utilities will come into the building but won't be hooked up to the individual units.

Commissioner Baruth said he's unclear about the hours of operation. Will people be able to use the facility at midnight, 1:00 a.m. etc., or will it be closed at a certain time? Mr. Bulmann replied normal business hours will be from 7:00 a.m. to 9:00 p.m. If a customer needs access at another time we have the capability of opening it for an individual user upon request and need.

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It was moved by Commissioner Hjelkrem, seconded by Commissioner Ruggiero to deny a conditional use to allow a mini-storage in an R-5/NP (Multi-Family Residential with Navigation Preservation Overlay) zone consisting of 4.767 acres located east of Murray Boulevard and Chelton Road at 1975 S. Chelton Road.

Commissioner Hjelkrem said he doesn't feel the three conditional use criteria are met. This is a somewhat unique piece of property. It would not be good planning and inappropriate to have this commercial type venture located within the boundaries of what is a very definitive residential area.

Commissioner Gruen said he'll be supporting the motion for the reasons stated by Commission Hjelkrem.

Commissioner Ruggiero stated there are a number of permitted uses in this zone and a mini-warehouse would not be the best use where it is in close proximity to residential homes. He agrees with Commissioner Hjelkrem and doesn't believe he's seen a mini-warehouse that looks all that good no matter what you do.

Commissioner Jones said he won't be supporting the motion. He agrees in part with Commissioner Hjelkrem but in this case the mini-warehouse will make a reasonable transition into the residential neighborhood rather than a high density multi-family use. Sand Creek isn't that much of a physical separation but rather more of a visual separation.

The motion passed 6-3. (Commissioners Bowers, Esmiol & Jones opposed.)

ITEM 4. **CPC DP 95-70-A1 - Peitz - Quasi-Judicial**

Request by LDC, Inc. on behalf of Alan Ginsborg-Pacific Retail Partners for approval of the Woodmen Plaza West Development Plan consisting of 14.62 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

ITEM 5. **CPC SP 95-70-A2 - Peitz - Quasi-Judicial**

Request by Nolte and Associates, Inc. on behalf of Home Depot U.S.A., Inc. for approval of a variance to Section 14.1-3-102.A of the City Code to build a 8' to 10' variable height wall for noise retention where a 6' wall is the maximum allowed in a PBC (Planned Business Center) zone consisting of 22.35 acres located northwest of Woodmen Road and Academy Boulevard.

Quinn Peitz, Development Services Division, said this request is for the proposed Home Depot on the corner of Woodmen Road and Academy Boulevard. Initially there were five (5) requests which have been separated. The two (2) master plans and zone change were approved by the Planning Commission in a 7-1 vote and were appealed to the City Council but have not been heard yet. The mayor requested the Planning Commission to resolve the development plan so that if it's appealed all the items can be heard by City Council at once. He quoted Commissioner Gruen in his motion to postpone the development plan as follows: "The purpose (for postponement) was to seriously work to resolve the outstanding technical issues such as the frontage road, safety issues related to the closure of Prince Drive and the neighborhood concerns that have surfaced today." Since this postponement, there have been countless meetings with all parties concerned including City staff. The applicant has made the following changes:

1. The building has been moved southward and a row of parking has been eliminated. The building now only intrudes one lot deep into the FAY Master Plan. The prior plan showed it intruding 1-1/2 lots deep. The impact on adjacent property owners has been reduced by moving the building.
2. The building is between 23' to 27' high. There's a 10' high wall along the adjacent property lines creating a tunneling effect. That effect has been reduced to one lot deep because the road veers away from the residential properties on the northern portion of the site.
3. A final landscape plan has been submitted to the City which meets all our requirements and shows all necessary buffers internally and externally to the site.
4. The cul-de-sac on Venhorst Road has been moved onto the applicant's site and meets the turning radius required by the Fire Department. This location takes the road away from the residential properties and allows for the landscape maintenance trucks to come onto Home Depot's property without trespassing on residential property.

Staff recommends approval with the following technical changes to the landscape plan as part of the approval process:

1. Place on the landscape plan all retaining walls and pedestrian walkways.
2. State the number of trees in the parking area (one tree/15 stalls is required).
3. State the number of trees in the frontyard setback (one tree/20 feet of frontage is required).
4. State on the plan the number of trees in the buffered area adjacent to the wall (one tree/ 15 feet of buffer length is required).
5. State on the plan the total net area of the plan that is landscaped (5% percent is the minimum).
6. State on the plan the number of trees for the internal landscaping (one tree/500 square feet is required).
7. State that 50% of the ground cover is live materials.
8. State that the docking area and refuse area cannot be seen by adjacent properties.

The following technical revisions should be made to the development plan as part of the approval process:

1. Location and size of all signs.
2. Notes which describe any covenants or easements permitting the use of land by adjacent property owners.
3. Location of proposed retaining walls with dimension information, including typical detail/cross-section drawings.

The development plan is supported by both the Yorkshire Estates Homeowner's Associations and the Falcon Estates Homeowner's Associations. They submitted the following technical revisions:

1. The access road shall be narrowed to 30' behind the building and the additional space shall become part of the landscaped buffer. Home Depot will notify truck drivers on bills of lading to enter the facility via Woodmen Road and not travel the access road.

2. Construction of an earthen berm which will be 5' high on the homeowners side and perhaps higher on the Home Depot side. The Home Depot side will be supported by a retaining wall. Home Depot will take proper measure to ensure that no drainage problems are created for the homeowners as a result of the construction of the berm.
3. Construction of a 10' masonry wall which will be consistent in height parallel to Academy Boulevard.
4. Lighting on the north end of the home Depot facility shall not exceed 17' including the concrete pedestals on which the light posts rest.
5. No loudspeaker intercom systems on the north end of the facility.
6. No truck deliveries, unloading or trash collection between the hours of 9:00 p.m. and 7:00 a.m.
7. No diesel engines left running for more than 10 minutes during deliveries.
8. Stand alone "billboard" type signage will be restricted to the area southeast of the facility and will not exceed 25' in height.
9. No wall mounted signage on the north and west sides of the building.

Staff supports the additional revisions submitted by the Homeowner's Associations. The amount of infrastructure changes brought into this area by Home Depot cannot be underestimated. The entire site has to be developed to bring it up to City standards. Along with this, the developer is providing off-site improvements with a 10' high noise retention wall for Yorkshire Estates to the south. They're required to build a center island down Academy Boulevard extending the length of their property and making the proper land dedication for the ultimate overpass. They're cul-de-sacing residential streets and making the necessary road dedications for the future widening of Academy Boulevard. Staff believes the applicant meets the criteria of the development plan. Regarding the wall variance; the 10' masonry wall will be a benefit for the neighbors to protect them from this commercial development and traffic along the frontage road. One of the conditions of the Falcon Estates Master Plan is that the wall is to be put on a 5' berm which will result in improvements up to 15' high. Although this may not be the perfect plan, it certainly meets all the criteria outlined by the City in it's Zoning Ordinance and is in compliance with the master plan. This plan represents the wishes of the vast majority of residents in this area and staff encourages the Planning Commission to approve it today.

Commissioner Hjelkrem asked if the nine (9) technical revisions submitted by the Homeowner's Association are in addition the three (3) recommended by staff? Mr. Peitz replied yes, however, some of the revisions submitted will be conditions of record rather than technical revisions. Commissioner Hjelkrem asked if there will be a right-in/right-out off of Academy Boulevard into the project? Mr. Peitz replied yes.

Speaking for:

Jim Lloyd, representing Home Depot, said they started working on this project last Fall. Before we signed contracts with the nineteen (19) owners whose properties we were buying, we held neighborhood meetings to see if it was possible to remove the restrictive covenants against retail. We got 105 signatures out of approximately 160 homeowners to remove the covenants. We've worked diligently with staff and the neighbors throughout this process and tried to respond to all concerns raised; we've tried to use sound planning principles and still accommodate our project. We're happy that the Homeowner's Associations now support our project. The building has been moved 19' to 20' south and 9' to 10' from the wall to the west to alleviate some of the tunnel effect. We've improved the radius on the road entering from Academy Boulevard. There will be a noise retention wall along Yorkshire Estates and a signal light at Prince Drive. We will specify on the bills of lading that all delivery trucks will enter via Woodmen Road. There is no direct entry from the access road to the lumber loading dock. Mr. Lloyd pointed out an expanded drawing showing all the landscaping. The wall off the access road and to the west of the site will be 10' minimum and may vary from 15' to 19'. Our traffic engineer has quoted 2,200 vehicle trips going north and 600 vehicle trips going south per day on this access road. Of those numbers approximately 10% will be Home Depot traffic. In moving our building further south, it will no longer be adjacent to Mr. Tilney's property.

Commissioner Hjelkrem said there was mention of a 'split-face concrete block' fence and asked if that's what they'll construct? Mr. Lloyd responded they're going to landscape the area so densely that the primary feature won't be the fence.

Frank Coda, architect for Home Depot, said a 'split-face block' is a textured concrete block so the wall will be textured on both sides. We presented four (4) variations and color schemes to the neighbors, all of which are concrete block, for their approval and choice of block.

Commissioner Hjelkrem asked if there will be pillars? Mr. Coda said they have stepped the wall so every 8' to 10' there will be a 2' step-back or step-forward. Commissioner Hjelkrem asked how this will differ from the wall near Applebee's? Mr. Peitz replied it's the same split-face block. Mr. Lloyd said the median mentioned is a condition of their construction and has to be done in conjunction with the construction of the Home Depot project, subject to City Traffic's direction. One last design feature; near the lumber loading area we're putting in a wing wall extending out 15' from the building to create an additional sound buffer from trucks that access that area. We've lowered the light poles and there will be signs only in front and on the Woodmen Road side of the building. We're still talking to the neighbors who are in opposition to further address their concerns. Commissioner Hjelkrem asked if he's seen the technical revisions presented by the Homeowner's Association and asked if they agree? Mr. Lloyd replied yes.

Heather Beer, Chairman Falcon Estates Homeowner's Association, said she's reviewed everything submitted by Home Depot along with letters from surrounding homeowners both in favor and opposed to the project. We came to agreement with Home Depot on essentially everything that concerned the Board. With regard to the access road, we understand the Traffic Department is willing to narrow it to 30' behind the building but as it veers out towards Academy Boulevard they want to keep it at 40'. The Board is concerned and wants to find a way to slow down traffic as it comes in through that access.

Dick Wolfrum, Yorkshire Estates resident, said they're in favor of the project because they'll be getting their noise retention wall immediately. There's been mention of a 10' high wall and wants it to return to the original 12' high as previously discussed. Also, he wants to know if the height will be measured from road level or property level, which lies 4' to 6' below the road. A 10' barrier from property level greatly diminishes the effectiveness of the wall. In their documentation, Home Depot has not made it clear as to where the measurement will be taken from. He likes the concept of a 10' high fence sitting on top of a 5' high berm which is what Home Depot is doing on their site to the west.

Commissioner Gruen asked if he's referring to the fence along the south portion of Woodmen Road adjacent to Yorkshire Estates? Mr. Wolfrum replied correct.

Elberon Andrews, Yorkshire Estates resident, said he would like to see the closing of Prince Drive done in Phase I of the construction. Another concern is the deciduous trees proposed for the site. They make a good sound barrier in the summer but provide none in the winter so we'd like to see evergreen or juniper trees to provide year round noise abatement.

Tom Tully, adjacent neighbor, applauded Home Depot for their willingness to work with the neighbors regarding the wall and landscaping.

Chuck Nauert, adjacent neighbor, said he's delighted to see Home Depot coming on board. It will probably be the best thing that's happened to our neighborhood. They've worked with each homeowner individually and have come to some good conclusions in addressing our concerns. We feel they'll continue to work with us during Phase II of their project.

Martin Llamas, adjacent neighbor, said there was no one more opposed to the Woodmen Plaza West development than he and his wife. Everything we have we've built together but after several meetings with Mr. Ginsborg we realized we could be just as happy elsewhere. We were happy to sign a contract selling our property to Home Depot after experiencing their honesty and integrity. We can't stop the progress in Falcon Estates but can surely be thankful that we're dealing with Home

Depot. They've provided everything in writing and fulfilled all their promises so now we're very much in favor of the project.

James Snyder, adjacent neighbor, said if this development is not approved the City or some other developer will have to widen Woodmen Road and condemn some homes in the process. Home Depot didn't have to do this so it will be to everyone's advantage to approve the project. Rejecting this proposal may cost the City a lot of money.

Mary Anderson, adjacent neighbor, said they had no idea what Academy Boulevard and Woodmen Road would become so the sound barrier alone is enough to approve this project. The noise is unbearable. It will not only reduce noise but make it a safer area for our children. Currently there are no sidewalks or safe streets to ride their bikes. The berm in conjunction with the landscaping will be pleasant to look at. They've proposed to drain any excess water. A lot of homeowners have sump pumps going day and night, some have failing septic tanks and leech fields. Home Depot is willing to bring City sewer for these people which is above and beyond the call of anyone else who has expressed interest in that site. Neighbors opposing the project have stated their property value will diminish when in fact that isn't going to happen. A home directly adjacent to Phase II of the project sold for the asking price within a month.

Opposed:

David Tilney, adjacent neighbor, said his concern is still the access road. In the master plan it's shown parallel to Academy Boulevard but this development has moved is directly adjacent to my property line. They're creating a smaller version of Academy Boulevard next to my property. Traffic figures I've seen show 9,800 vehicle trips per day on that access road. This traffic count does not reflect Phase II of the development. It will also be one of two accesses to the interior of Falcon Estates residential community creating additional traffic. The minimum setback in the higher density master plan is 25' and Home Depot is proposing less than that. They've stated the footprint of the building only covers one (1) lot in the FCY Plan, however, the footprint isn't portraying the density of the plan. Home Depot is certainly going to pull a higher density on the other three (3) lots. The lumber loading dock, which is directly adjacent to my property, is more of a concern than the physical structure of the building. The existing plan shows lights on the rear of the building along the frontage road and it's my understanding they will be removed. There will only be 15' pole lights along the wall facing the rear of the building. They're proposing a 10' high wall on top of a 5' berm so we're requesting that the lights not be higher than the wall. The trees along the wall are shown as higher than what is called for in the landscape plan so we would like to have the exact height of the landscaping clarified so a landscaper doesn't bid what's on the plan and end up with shorter trees.

Scott Toniolli, adjacent neighbor, said there was some discrepancy in the traffic report concerning the number of cars. The following should apply to Home Depot and all future developments in Falcon Estates:

> 'Let it be a matter of record that I support development and progress as long as it's accomplished in such a manner that it provides a fine balance between residential quality of life and development objectives. Implicitly in the planning and consideration of how harmoniously the business can cohabitate on the fringe of a residential area without decreasing property values, increasing noise and generally detracting from the quality of life in the residential area. I believe the original master plan for the development of this area supports the premise of quality of life and development objectives. I realize that not all parts of the master plan are stable and changes must be made. There are basic elements of the master plan that should not be changed which relate to the type, the business originally intended by the plan, adherence to the original pad site and the type of buffer required to protect the residential property values and quality of life. All future development should require adherence to the master plan and any changes impacting the elements stated above should be approved by all adjacent homeowners since these factors impact the environment.

With the Planning Commission's approval of this project, my quality of life will change. My concern is that when a negative development is forced onto a site it will greatly decrease my property value.

Commissioner Esmiol asked how far it is from his home to the Home Depot building? Mr. Toniolli replied his home is across the street from Home Depot and positioned in the center of a one (1) acre lot but didn't know the exact distance between them. All the parking area and north side of the building will be visible from my home. The building is stable but the high density traffic is what will create constant movement into and out of the area.

Rebuttal:

> Jim Lloyd, said the lumber loading area is not a structure but rather a flat pad with a roll-up door. There will be a step-down wall to buffer any noise from that area and Mr. Tilney's property. Mr. Toniolli's home is between 300' to 320' from our building. When we moved the cul-de-sac on Venhorst Road it increased the buffer between our properties.

Commissioner Esmiol asked if the HVACs will be visible to the neighbors? Mr. Coda replied the parapet wall on the rear of the building is approximately 8' high and the HVAC units are approximately 4' high so they will be screened from adjacent properties.

Commissioner Hjelkrem stated that Mr. Tilney commented about the lighting being lower and the landscaping being higher than the wall? Mr. Lloyd said that some of the design elements they've agreed to with the Homeowner's Association will also be acceptable to Mr. Tilney. The wall mounted lights have been removed from the rear of the building so there will only be the 15' high pole lights facing the rear. The pole lights will be blocked by the wall from the adjacent neighbors. Phase I, the Home Depot development, encompasses approximately 15 acres and our typical projects fit onto 11 acres so this is not a 'shoehorn' project in terms of our experience. Commissioner Hjelkrem asked if they've accepted responsibility for the construction along the Yorkshire Estates? Mr. Lloyd replied correct. It was one of the tradeoffs and is to be a mutually acceptable design with the residents.

Commissioner Bevington asked if the wall will be at road or property level? Mr. Lloyd said the wall hasn't been designed as yet. The topography at the road sits higher than the properties. It's a function of whether we put it on City property or private property. The closer the wall is to the road, the higher it will be. Mr. Peitz added the City will be maintaining the wall so we're looking to put it in the public right-of-way. Mr. Coda said the edge of the right-of-way is at the adjacent neighbors' property line which has a 4' to 5' drop from the road. The Traffic Department would like the wall to be at the edge of the right-of-way line which determines how high it will ultimately be. There are also utility lines in the right-of-way which present complications in the placement of this wall. We'll have to meet with Utilities, Traffic and the neighbors to resolve this issue. Mr. Peitz added if the applicant agrees they will berm the wall so it sits above the roadway because the intent is to buffer the homes from the roadway. The City wants it as far back as possible because Woodmen Road will eventually be widened. Mr. Lloyd said their intent is to make it an effective wall so that it intercepts as much noise a possible.

Commissioner Bowers asked when Prince Drive would be closed? Mr. Peitz responded that before Home Depot opens they're required to do all the things listed on the development plan. That includes the construction of the median on Academy Boulevard and construction of all the walls.

Commissioner Jones asked if the Colorado Department of Transportation (C.D.O.T.) has approved the median on Academy Boulevard? Mr. Mark Heine, Engineer of Record, said they've spoken to Brian Borge and he's approved it in concept but would like to get the final plans and permits approved.

Commissioner Ruggiero asked if the following statement by City Traffic has been resolved, "Show and construct a 40' wide private reverse frontage road from Prince Dr. to Venhorst - what is depicted is not acceptable," Mr. Peitz replied yes. Commissioner Ruggiero said City Wastewater's comment was, "The request for approval of the development plan is NOT acceptable. Facilities plan not acceptable. Extend 8" public wastewater mainline up east side of the proposed building instead of 6" private service. A revised Facilities Plan will be required." Mr. Peitz said the City now owns the Woodmen Water and Sanitation District. The comment by Wastewater was made over three (3) months ago and presumes that it's not an issue which would prevent the development plan from being approved. Commissioner Ruggiero said the comment by Electric states, "We cannot approve the variance for the masonry wall" and asked if this has been addressed? Mr. Peitz said the electric to the property is still an issue but as yet has not heard from that department.

Commissioner Esmiol asked approximately how much acreage the applicant would be giving to the City for road access? Mr. Peitz replied it's approximately 2.50 acres.

Commissioner Gruen said initially the Fire Department had some concern with closing Prince Drive and asked if that's been resolved? Dave Linebaugh, City Fire, replied yes. We agree with having Prince Drive closed but want a locked, gated entry as an emergency access mechanism. Commissioner Gruen asked if this has been discussed with the Yorkshire residents? Mr. Peitz responded yes. Also, if the variance is approved, we should include a condition approving the relocation of the electric lines to address the Electric Department's comments. Of the nine (9) technical revisions submitted by the Homeowner's Association, numbers 1, 2, 3, 4, 8 and 9 will be added to the development plan along with the three (3) recommended by staff for a total of nine (9). Numbers 5, 6, 7 and the following statement will be added to the development plan as conditions of record for a total of four (4): "The materials and character of the wall buffer will be consistent with the walls that will be constructed to the north of this site."

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<u>Item 4 - CPC DP 95-70-A1 - Development Plan</u>
It was moved by Commissioner Gruen, seconded by Commissioner Esmiol to approve the Woodmen Plaza West Development Plan consisting of 14.62 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard subject to the technical revisions and conditions of record on the landscape and development plans as part of the approval process.
<u>Landscape Plan - technical revisions:</u>
1. **Place on the landscape plan all retaining walls and pedestrian walkways.**
2. **State the number of trees in the parking area (one tree/15 stalls is required).**
3. **State the number of trees in the frontyard setback (one tree/20 feet of frontage is required).**
4. **State on the plan the number of trees in the buffered area adjacent to the wall (one tree/ 15 feet of buffer length is required).**
5. **State on the plan the total net area of the plan that is landscaped (5% percent is the minimum).**
6. **State on the plan the number of trees for the internal landscaping (one tree/500 square feet is required).**
7. **State that 50% of the ground cover is live materials.**
8. **State that the docking area and refuse area cannot be seen by adjacent properties.**

<u>Development Plan - conditions of record:</u>
1. **No loudspeaker intercom systems on the north end of the facility.**
2. **No truck deliveries, unloading or trash collection between the hours of 9:00 p.m. and 7:00 a.m.**
3. **No diesel engines left running for more than 10 minutes during deliveries.**
4. **The materials and character of the wall buffer will be consistent with the walls to be constructed north of this site.**

<u>Development Plan - technical revisions:</u>
1. **Location and size of all signs.**
2. **Notes which describe any covenants or easements permitting the use of land by adjacent property owners.**
3. **Location of proposed retaining walls with dimension information, including typical detail/cross-section drawings.**
4. **The access road shall be narrowed to 30' behind the building and the additional space shall become part of the landscaped buffer. Home Depot will notify truck drivers on bills of lading to enter the facility via Woodmen Road and not travel the access road.**
5. **Construction of an earthen berm which will be 5' high on the homeowners side and perhaps higher on the Home Depot side. The Home Depot side will be supported by a retaining wall.**

Home Depot will take proper measure to ensure that no drainage problems are created for the homeowners as a result of the construction of the berm.

6 **Construction of a 10' masonry wall which will be consistent in height parallel to Academy Boulevard.**

7 **Lighting on the north end of the home Depot facility shall not exceed 17' including the concrete pedestals on which the light posts rest.**

8. **Stand alone "billboard" type signage will be restricted to the area southeast of the facility and will not exceed 25' in height.**

9. **No wall mounted signage on the north and west sides of the building.**

Commissioner Gruen commented that despite Mr. Tilney's and Mr. Toniolli's opposition he believes the Home Depot representatives and the homeowners within Yorkshire & Falcon Estates have done a tremendous job. This is the way things should work and everyone connected with Home Depot should be very pleased with the job they've done. He's very impressed with their organization and this process.

The motion passed unanimously.

Item 5 - CPC SP 95-70-A2 - Non-Use Variance

It was moved by Commissioner Gruen, seconded by Commissioner Esmiol to approve a variance to Section 14.1-3-102.A of the City Code to build a 8' to 10' variable height wall for noise retention where a 6' wall is the maximum allowed in a PBC (Planned Business Center) zone consisting of 22.35 acres located northwest of Woodmen Road and Academy Boulevard subject to the Electric Department's approval.

The motion passed unanimously.

ITEM 6. CPC P 95-159 - Tegler - Quasi-Judicial

Request by Yergensen, Obering & Whittaker, PC on behalf of Jeffrey B. Smith for approval of a change of zone classification from PIP-1/HS (Planned Industrial Park with Hillside Overlay) and PBC/CR/HS (Planned Business Center with conditions of record and Hillside Overlay) to PIP-1 (Planned Industrial Park) consisting of 9.05 acres located northeast and southeast of Corporate Drive and Corporate Centre Circle at 6235 Corporate Drive.

ITEM 7. CPC DP 95-159-A1 - Tegler - Quasi-Judicial

Request by Yergensen, Obering & Whittaker, PC on behalf of Jeffrey B. Smith for approval of the development plan for Lot 8, Corporate Centre Filing No. 3 consisting of 10.4 acres in a proposed PBC/HS (Planned Business Center with Hillside Overlay) and PIP-1 (Planned Industrial Park) zones located northeast and southeast of Corporate Drive and Corporate Centre Circle at 6235 Corporate Drive.

ITEM 8. CPC S 95-160PF - Tegler - Quasi-Judicial

Request by Benchmark Surveying Associates on behalf of Jeffrey B. Smith for preliminary and final plat approval of Corporate Centre Subdivision Filing No. 5 consisting of 4 lots on 10.4 acres in a proposed PBC/HS (Planned Business Center with Hillside Overlay) and PIP-1 (Planned Industrial Park) zones located northeast and southeast of Corporate Drive and Corporate Centre Circle at 6235 Corporate Drive.

Bob Tegler, Development Services Division, said the development plan is for a 4-story office building, two 1-story office warehouse buildings and a restaurant. The only issue with this proposal was with the view of the two office warehouse buildings from I-25. Staff's concern is that the office warehouse loading docks will be facing the interstate and would like them screened as much as possible. The buildings will be of smooth surface concrete, painted and will have no rooftop structures. Staff would like to see a change in trees from deciduous to evergreen along that area and some upright junipers for screening along the

CITY PLANNING COMMISSION

ITEM NO(S): 14., 15., 16. & 17
STAFF: Quinn Peitz
FILE NO(S): CPC MP 90-171-A5 - Legislative
CPC MP 94-14-A1(95) - Legislative
CPC P 95-70 - Quasi-Judicial
CPC DP 95-70-A1 - Quasi-Judicial

PROJECT: Home Depot Plaza

APPLICANT: LDC, Inc.

OWNER: Pacific Retail Partners

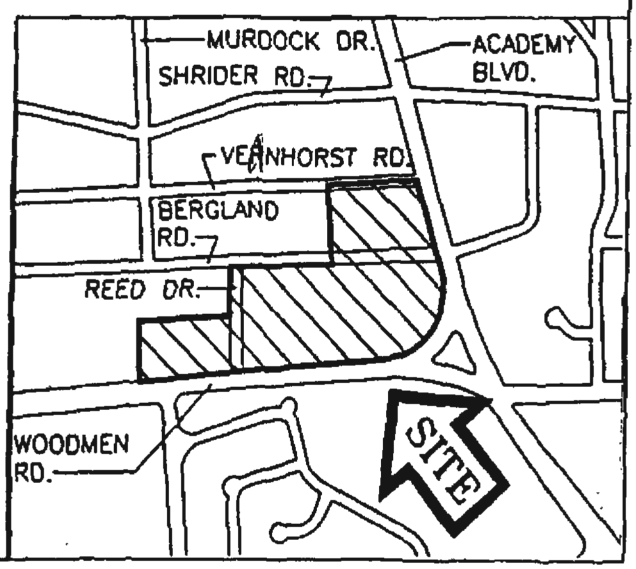
PROJECT DESCRIPTION:
To change the master plan for Woodmen Plaza West and FCY; to change the zoning to PBC; for approval of a development plan for a Home Depot Store.

STAFF'S RECOMMENDATION:
Items 14 & 15 - CPC MP 90-171-A5 & CPC MP 94-14-A1(95) - Master Plans
Approve the Master Plan changes to the FCY and Woodmen Plaza West Master Plans.

Items 16 - CPC P 95-70 - Zone Change
Approve the zone changes to PBC.

DP
Items 17- CPC P 95-70-A1 - Development Plan
With the submittal of a final landscape plan, approve the development plan.

COMPREHENSIVE PLAN:
Policy 5.1.3
Policy 5.1.5



BACKGROUND:

Existing Zoning/Land Use - R-Estate/Vacant/Single Family Dwelling

Surrounding Zoning/Land Use - North - R-Estate/Single Family Dwellings
South - R-Estate/Yorkshire Estates/Single Family Dwellings
East - R-Estate/Single Family Dwelling
West - R-Estate/Woodmen Plaza East/Single Family Dwellings

Annexation - 1992, Woodmen Plaza West. 1993, FCY Annexation.

Zoning - R-Estate, 1994/1995.

Subdivision - Falcon Estates No. 1 and 3.

Zoning Enforcement Action - None.

Proposal - To amend the Woodmen Plaza West Master Plan and the FCY Master Plan by deleting Berglind Road as an access and substituting Venhorst, by including four lots from FCY into the Woodmen Plaza West Plan, by providing a masonry wall for separation between the residential and the non-residential; to rezone the entire parcel PBC; and, to seek development plan approval for a Home Depot Store of 103,790 sq. ft., 35 feet in height.

Physical Characteristics - The property has native grasses with gentle slopes from the southeast corner to the northwest corner.

Master Plan - Woodmen Plaza Master Plan and the FCY Master Plan.

DEPARTMENTAL REPORTS:

Items 14 - CPC MP 90-171-A5 - Master Plan

US West - Any existing telephone facilities will be relocated at the owners expense.

Traffic Engineering

1. Construct a raised median in Academy Boulevardto accommodate dual left turn lanes and six lanes thru at Woodmen Road. Provide plan and profiles to this office.
2. Construct a right turn lane on Academy Boulevard at Venhorst Road. Additional R.O.W. will be required north of access - provide plan and profiles for this turn lane design.
3. Construct the full widening on the north side of Woodmen Road including a raised median and turn lanes full length of the property. Submit plan and profiles to this office to confirm geometrics and right of way needs.
4. Show and construct a 40' wide private reverse frontage road from Prince Drive to Venhorst Road - what is depicted is not acceptable.
5. The Prince Drive/Woodmen Road signal shall be at this owners expense. Submit an intersection design that protects cut thru traffic into Yorkshire Estates from Woodmen Plaza for approval.
6. This owner shall participate in an interchange at Academy Boulevard and Woodmen Road Full right of way dedication shall be required.

Fire - Standard comments 11,2,8,10,3, and 1.

Items 15 - CPC MP 94-14-A1(95) - Master Plan

Traffic Engineering

1. Construct a raised median in Academy Boulevard to accommodate dual left turn lanes and six lanes thru at Woodmen Road. Provide plan and profiles to this office.
2. Construct a right turn lane on Academy Boulevardat Venhorst Road. Additional R.O.W. will be required north of access - provide plan and profiles for this turn lane design.
3. Construct the full widening on the north side of Woodmen Road including a raised median and turn lanes full length of the property. Submit plan and profiles to this office to confirm geometrics and right of way needs.
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5. The Prince Drive/Woodmen Road signal shall be at this owners expense. Submit an intersection design that protects cut thru traffic into Yorkshire Estates from Woodmen Plaza for approval.
6. This owner shall participate in an interchange at Academy Boulevard and Woodmen Road. Full right of way dedication shall be required.

Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense.

US West - Any existing telephone facilities will be relocated at owners expense.
Wastewater - The request for approval of the amendment to master plan is acceptable.
Fire - Standard comments 3,4,5,1,2,8,10, and 11. Throughout the development/site a minimum of 28' wide roadways must be maintained at all times for all CSFD required accessways. All fire dept. access roads are to meet H-20 engineered design loading and are to be able to support at least a design wheel load of 18,000 pounds (GVW 80,000 pounds minimum). Access roads are to be finished by application of an all weather driving surface of hot mix asphaltic concrete or concrete pavement over a flexible base capable of supporting the engineer design loads.
All Other Reporting Departments - Standard or no comment.

Items 16 - CPC P 95-70 - Zone Change
Traffic Engineering - No objections to zone change requests.
Engineering - The R.O.W. line for Woodmen Road as depicted along the south boundary of the site may no longer be in the correct location due to the proposed grading along the south of the site. If the ground elevation is lowered, the R.O.W. line may need to be moved further north in order for the future Woodmen Road fill slope to catch grade. An alternative may be a future retaining wall for the Woodmen Road fill, but if this is required due to site grading, City Engineering feels that the added cost of a wall should be the responsibility of the developer. This matter will need further study and we request that the site Civil Engineer meet with us to go over this matter. City Engineering does not support the proposed "half vacation" of Venhorst Road. The applicant needs to contact us to discuss an alternate plan. The typical cross section showing curb on one side of Venhorst Road and a ditch on the other is not accepted by City Engineering. Again, the applicant needs to discuss the design requirements with us. The proposed cul-de-sacs for Venhorst Road must meet current standards and additional R.O.W. may be needed. If so, the developer must obtain the additional R.O.W. and include it in the plat as dedicated R.O.W. An easement is needed for the sidewalk along Academy which lies out of the R.O.W. Why is there no sidewalk proposed along Woodmen Road? At the time of a building permit financial assurances are required for the cost of all required street improvements including the street cul-de-sacs, Academy Boulevardwidening and medians, and all drainage facilities.

The following condition of approval applies to this development plan: *Approval of this plan does not grant any variance to the adopted Subdivision Ordinance and does not waive any of the requirements of design as contained in the City of Colorado Springs Subdivision Policy Manual and Public Works Design Manual. (14-4-605)*

Fire - Standard comments 11,2,8,1,10, and 3.
Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense
All Other Reporting Departments - Standard or no comment.

Items 17- CPC P 95-70-A1 - Development Plan
Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense.
We will not allow the General Utility Enclosure if the proposed propane is within 20 feet of our electric. All clearances must be maintained according to the N.E.S.C.
Traffic Engineering
1. Construct a raised median in Academy Boulevard to accommodate dual left turn lanes and six lanes thru at Woodmen Road. Provide plan and profiles to this office.
2. Construct a right turn lane on Academy Boulevard at Venhorst Road. Additional R.O.W. will be required north of access - provide plan and profiles for this turn lane design.
3. Construct the full widening on the north side of Woodmen Road including a raised median and turn lanes full length of the property. Submit plan and profiles to this office to confirm geometrics and right of way needs.
4. Show and construct a 40' wide private reverse frontage road from Prince Drive to Venhorst Road - what is depicted is not acceptable.
5. The Prince Drive/Woodmen Road signal shall be at this owners expense. Submit an intersection design that protects cut thru traffic into Yorkshire Estates from Woodmen Plaza for approval.

6. This owner shall participate in an interchange at Academy Boulevardand Woodmen Rd. Full right of way dedication shall be required.

Water - Further study will be required for the existing water facilities proposed to be removed.

Police - Adequate lighting should be installed throughout the area including the parking lot and the buildings. Business numbers should be visible for emergency vehicles both day and night (both on the front of the businesses and on the rear of the buildings).

Fire - Standard comments 11,3,10,2,1, and 8. IN ADDITION, the cul-de-sac for Venhorst Road must meet the minimum requirements of an 84' diameter and must be approved by the Fire Department. The plan is NOT acceptable until these changes are made.

Wastewater - The request for approval of the development plan is NOT acceptable. Facilities plan not acceptable. Extend 8" public wastewater mainline up east side of the proposed building instead of 6" private service. A revised Facilities Plan will be required.

PETITIONER'S JUSTIFICATION: FIGURE 1

ANALYSIS OF MAJOR ISSUES:

CONFORMANCE WITH THE COMPREHENSIVE PLAN

Policy 5.1.3 deals with changes to master plans. This proposal requires changing two master plans to accommodate the construction of a 131,845 square foot building Home Depot. The location of the southern portion of the building in the Woodmen Plaza West Master Plan is in complete compliance with this plan that contemplated commercial uses in the southeastern portion of the original master plan. However, the building location of Home Depot into a portion of the original FCY Master Plan is not in keeping with the original intent of what the FCY Master Plan proposed for the "two lot deep" changes along Academy Boulevard. Initially, the changes along Academy Boulevard were to be pad sites to accommodate smaller commercial/office uses. With the addition of a portion of the Home Depot, this is a facility much larger than anticipated. The major redeeming value to this plan is the construction of a ten' wall to mitigate noise and visual intrusion. Given this major barrier along with the proper closure of Venhorst Street, the possibility of changing the FCY Master Plan incorporating into the Woodmen Plaza Master Plan becomes more feasible. Home Depot has worked diligently with the neighbors to satisfy most concerns about the construction of the Home Depot. As of the publication of this staff report, only two neighbors have not been satisfied with the design elements of the Home Depot. The letters of Mr. Tilney and Mr. Tonilli are attached. The staff recommends changing the FCY Master Plan to incorporate uses from the Woodmen Plaza Master Plan due primarily to the landscaping and wall elements that are included in the final design elements. Policy 5.1.5 is met. The zone changes propose a PBC zone for the entire subject property. The staff recommends approval of this request with the condition that lots 16, 17, and 18 may not be suited for some of the commercial uses allowed in the PBC zone districts due to the sizes of the lots. Development plans will be scrutinized to ascertain compatibility with the adjacent residential uses. Policy 5.1.3 is met

DEVELOPMENT PLAN REVIEW CRITERIA

The review criteria for a development plan is met. A wall will completely encircle the commercial property and protect the remaining residential neighborhood. Landscape buffers will be placed between commercial and the residential zone districts. The appropriate dedication will be made for Woodmen Road. Also a wall is proposed along the boundary with Yorkshire Estates to protect that neighborhood from increased traffic flows on Woodmen Road. At the time of publication, two issues are still unresolved. First, two lot owners on Venhorst Street are opposed to the request due to commercial intrusion into their neighborhood. Secondly, a design for Prince Drive has not been submitted to satisfy neighborhoods to the south concerning traffic intrusion into Yorkshire Estates. These two issues are being worked on by Home Depot and may be resolved prior to the Planning Commission meeting. Appropriate letters are attached reflecting these concerns. **FIGURE 2**

The motion failed 4-4. (Commissioners Bradley, Esmiol, Gruen & Ruggiero opposed. Commissioner Friesen was absent.)

Item 13 - CPC P 95-111 - Zone Change
It was moved by Commissioner Ruggiero, seconded by Commissioner Jones, to deny a change of zone classification from R-5 (Multi-Family Residential) to C-6 (Commercial) consisting of .330 acres located southwest of Circle Drive and Willamette Place at 2716 and 2723 Willamette Place

The motion passed 8-0. (Commissioner Friesen was absent.)

ITEM 14. **CPC MP 90-171-A5 - Peitz - Legislative**

Request by LDC, Inc. on behalf of Alan Ginsborg-Pacific Retail Partners for approval of an amendment to the Woodmen Plaza West Master Plan consisting of 22.35 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

ITEM 15. **CPC MP-94-14-A1(95) - Peitz - Legislative**

Request by LDC, Inc. on behalf of Alan Ginsborg-Pacific Retail Partners for approval of an amendment to the FCY Master Plan consisting of 22.35 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

ITEM 16. **CPC P 95-70 - Peitz - Quasi-Judicial**

Request by LDC, Inc. on behalf of Alan Ginsborg-Pacific Retail Partners for approval of a change of zone classification from R (Single Family Residential) to PBC (Planned Business Center) consisting of 22.35 acres located northwest of Woodmen Road and Academy Boulevard.

ITEM 17. **CPC DP 95-70-A1 - Peitz - Quasi-Judicial**

Request by LDC, Inc. on behalf of Alan Ginsborg-Pacific Retail Partners for approval of the Woodmen Plaza West Development Plan consisting of 14.62 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

Quinn Peitz, Development Services Division, said this request is for four items; merging the Woodmen Plaza and FCY Master Plans, a zone change and a development plan. The development plan is for Home Depot, a retail store which will locate at the corner of Woodmen Road and Academy Boulevard. The store will be 103,000 square feet parallel to Academy Boulevard and will straddle two master planned areas. The Woodmen Plaza Master Plan contemplated this site would be used for commercial. In order to make the building parallel to Academy Boulevard, the applicant has merged the southern portion of the FCY Master Plan with the Woodmen Plaza Master Plan. There are four major issues surrounding this application:

1. The siting of Home Depot itself and whether it's appropriate to have it parallel to Academy Boulevard. When the FCY Master Plan was initially approved, we went 2 lots deep off of Academy Boulevard and City staff repeatedly stated these lots would be occupied by smaller pad sites. Today's proposal has a 103,000 square foot building extending into the FCY area.
2. The impact the development of this corner will create with Yorkshire Estates, the residential development immediately south and across the street from this site. The master plans show a frontage road that parallels Academy Boulevard. Prince Drive is where all commercial traffic will enter and exit these commercial developments. One concern is that Prince Drive is a major residential entrance into Yorkshire Estates. Another concern is whether the traffic from Home Depot will continue to create additional traffic along Woodmen Road which is already an aggravated situation.

3. What's going to happen in Phase II on the portion facing Woodmen Road? Currently there are houses on that site but will eventually be removed. The issue is what they will be replaced with.
4. The frontage road and what it will look like as it extends behind Home Depot.

Staff has incorporated some conditions of record to the development plan which will address these issues and are as follows:

1. A deceleration lane is to be placed along Academy Boulevard at the entrance to the center.

This was not done on the initial development plan and needs to be added.

2. Revise the Traffic Department's condition to state, "The cost of the right-of-way dedication will be factored into the pro rata share of the cost of the upgrades to Woodmen Road and Academy Boulevard."

There's going to be a bridge at the Woodmen Road/Academy Boulevard intersection and some of the cost for the bridge will be extracted from the adjacent property owners. The City will take into consideration the portion of land they dedicate as part of their pro rata share.

3. Prince Drive will be closed and the developer is required to submit details of the closure to the Traffic Engineering Department.

The Yorkshire Neighborhood Association took a survey of their property owners with an 80% response rate. Of these, 62% favored the closure of Prince Drive. The applicant has agreed to close it and build a wall to block off the neighborhood.

4. A masonry sound barrier will be placed along Yorkshire Estates adjacent to the properties that line Woodmen Road. The wall will be placed in the public right-of-way and maintained by the City.

5. Venhorst Road will cul-de-sac with the required 84' diameter as requested by the Fire Department.

The developer has agreed to build a 10' masonry wall as well as landscape to buffer the Venhorst residents from this development. Setbacks will be staggered so the wall won't have a 'federal prison' look. Some neighbors are still not pleased with this, but it's an attempt by the developer to mitigate their commercial use against a residential use.

6. The frontage road should be redesigned to require landscaping on both sides of the road.

This road will be redesigned so it acts as a true frontage road from north to south and not just for the exclusive use of Home Depot customers.

Commissioner Bevington asked how far into the FCY Master Plan does this Home Depot extend? Mr. Peitz pointed out the portion that will be in the Woodmen Plaza Master Plan and the portion extending into the FCY Master Plan, which encompasses 4 lots.

Commissioner Esmiol asked if the Yorkshire residents can now go north? Mr. Peitz replied no, they can only go east on York Road. With only one ingress/egress, the residents realize they're taking a certain level of risk with slower response times for emergency vehicles.

Commissioner Bradley asked what the Traffic Department's initial condition 2 was? Mr. Peitz said it was a blanket condition saying that this property would participate in the construction of the bridge over Academy Boulevard. The property owners said that was too vague and unclear because it appeared they would have to give a disproportionate share to the bridge which is a multi-million dollar project. The new condition 2 clarifies the issue by saying the City is going to factor in the cost of this land dedication and will be taken off the property owners' pro rata share. Commissioner Bradley asked if the masonry wall along Yorkshire Estates will extend west of Prince Drive? Mr. Peitz said the wall will begin one lot west of Prince Drive and extend east to the beginning of Woodmen Valley Shopping Center. The height of this wall has yet to be determined and will be part of the development plan approval. Staff is recommending approval of these four items with six conditions of record attached to the development plan. These conditions are the result of negotiations with adjacent property owners as well as some last minute Traffic Department comments.

The following technical revisions should be made to the landscape plan as part of the approval process:
1. Place on the plan the existing and proposed zoning of the subject property and the adjacent properties.
2. Place on the landscape plan all lighting standards (height), retaining walls, fences, and pedestrian walkways. Submit an elevation of the retaining walls and the fences.
3. State which areas are to be sodded.
4. State the number of trees in the parking area (one tree/15 stalls is required).
5. State the number of trees in the front yard setback (one tree/20' of frontage is required).
6. A 15' landscape setback is required along Venhorst Road and the 2 westerly residential properties.
7. State on the plan the number of trees in the buffered area adjacent to the wall (one tree/15' of buffer length is required).
8. State on the plan the total net area of the plan that is landscaped (5% is the minimum).
9. State on the plan the number of trees for the internal landscaping (one tree/500 square feet is required).
10. State that 50% of the ground cover is live materials.
11. State that the docking area and refuse area cannot be seen by adjacent properties.

The following technical revisions should be made to the development plan as part of the approval process:
1. Location, dimensions and intended use of any common areas.
2. Location and size of all signs and fences. Elevation of the fences.
3. Dimensions of the parking stalls and handicapped stalls.
4. Existing and proposed zoning of the subject property and the adjacent properties.
5. Notes which describe any covenants or easements permitting the use of land by adjacent property owners.
6. Location of proposed retaining walls with dimension information, including typical detail/cross-section drawings.

Commissioner Hjelkrem asked about the frontage road? Mr. Peitz said people were concerned that they'd be driving along a stark wall which is the back of the Home Depot building. The frontage road will have landscaping and trees on both sides. It will be 60' across with 40' being the paved right-of-way area. Commissioner Hjelkrem asked if there will be a sidewalk along this road? Mr. Peitz replied currently there's no sidewalk planned and is an issue that needs to be addressed. The applicant has talked about putting some landscape islands or medium strips. He has done a lot of off-site work for a the neighbors and should be commended for this effort. Commissioner Hjelkrem asked if Prince Drive will remain a full signalized intersection since it's being closed? Mr. Peitz replied it will remain a full movement intersection for all properties to the north.

Commissioner Bradley asked why they're entertaining a major change when initially the building was suppose to run east/west; now it's proposed north/south and going into the OC zone? Mr. Peitz said they anticipated smaller building pads along Academy Boulevard and never expected a 10' wall along the back portion of the site, however, this does not preclude a developer from rearranging building placements to make things work. Most of the mitigation factors here will assist in blocking noise, light and other issues into the 2 or 3 lots that are impacted behind the Home Depot. This is a change from the originally approved master plans and the request today is an amendment to those plans.

Speaking for:

Bob Martin, LDC Inc., representing Home Depot, said the original Woodmen Plaza Master Plan consisted of 12 lots designated for commercial usage. The FCY Master Plan came in and added all of Falcon Estates. In turn, we have added 4 lots to the north and 3 lots to the west on the Woodmen Plaza Plan for a combined total of 19 lots. The majority of adjacent property owners are now in favor of this project.

Michael Elkin, Greenberg Farrow Architects, said Home Depot is one of the most successful home improvement centers in the country with approximately 340 stores nationwide generating sales in excess of 12 billion dollars. He presented designs of the walls which will run along Yorkshire Estates and the Home Depot site. It will extend north, turn down along the west to act as a buffer to those adjacent property owners. The neighbors were given a choice of 4 designs for the wall and they've settled on one with 2 colors of concrete block which will match the building. It will be 10' high on the neighborhood side but may vary on the Home Depot side from 10' to 15' because of grading. The building will be done with a precast concrete wall panel. We've increased the rear wall parapet so there's actually a 7' high difference between the roofline and the top of the wall. Because of this, no one on ground level or the surrounding neighbors will be able to see any of the rooftop mechanical equipment. The exits shown in the rear of the building are emergency access points only and not for normal customer use. A metal canopy will run along the full length of the building in front. There will be a vestibule with store front glass where customers will enter from the sides. The garden center will be on the south end of the building. The building is situated north/south because the loading dock area, which is in a 4' depressed loading zone, needs to be placed on the end and will create the largest possible buffer from the neighbors. If the building is turned east/west, the loading dock will directly face the residents to the west. As it's proposed now, part of the parking lot and Woodmen Road lie between the building and the Yorkshire residents.

Commissioner Hjelkrem asked what the large overhead door is in the rear? Mr. Elkin replied in other Home Depot stores it's a lumber loading area that's separate from the loading dock, however, in this store that door will be around the corner. This will keep the frontage road clear of any kind of loading. Commissioner Hjelkrem asked about lighting in the rear of the building? Mr. Elkin replied the lighting is for security reasons and will be shielded wall packs placed directly on the building. The packs are shielded on three sides and directed downward so there's no horizontal glare. Normally they're 18' high but we've agreed to lower them to 15' so they won't be visible by the adjacent neighbors. Commissioner Hjelkrem asked about the landscaping? Mr. Elkin said they have some concern about the added landscaping directly against the building. The soils engineer has indicated there's a very high water table at this location and any additional irrigation being done so close to our footings could cause problems with water seepage and deterioration of those footings. Mr. Martin added the wall is 40' from the west curb line of the frontage road. If additional landscaping is put there the reduction in the width of the road could allow from 5' to 10' separation from the building to the driving surface of the roadway. Mr. Elkin said if City Traffic allows us to go down to 30' we'd be able to get a 10' band of landscaping or something along the rear of the building. Commissioner Hjelkrem asked if there will be a sidewalk along the road? Mr. Martin said there's been no discussion of sidewalks but doesn't know if they're required on the north portion of the site. Mr. Peitz said the north side is more complex because they're taking a preexisting road, Heath Drive, relocating it and will have sidewalks, curb & gutter, etc. Mr. Martin said sidewalks will be placed along the Academy Boulevard side. That's where people should be walking and not along the frontage road. Commissioner Bradley commented the spirit of the frontage road was to unload some traffic from Academy Boulevard and access all the way north and south. Mr. Martin said exactly, traffic but not pedestrians. Commissioner Hjelkrem said he understood the wall was going to be compatible from Ruby Tuesdays down to this project. Mr. Martin said what happens on this site could be projected all the way north, in other words, the first one in sets the example of how it could look. Commissioner Hjelkrem said they agreed on an absolute masonry stucco at Ruby Tuesdays. Mr. Peitz said the wall north of Ruby Tuesdays is detached and goes along with that single-family residential subdivision. The wall that starts at Home Depot and goes up to Cragin Road will be the same. We're trying the make the walls and colors as compatible as possible.

Commissioner Gruen asked about the building height including the parapet? Mr. Elkin said the overall building wall in the rear will be about 30'. Commissioner Gruen asked what the neighbors on the west side of the wall will be looking at? Mr. Elkin replied primarily landscape greenery then the 10' wall behind that.

Commissioner Bradley said you usually see bollards around fire exit doors. Mr. Elkin said there is protection needed around those doors but won't be shown until we finalize what will go into the driving aisle. It's a Fire Department requirement so there will be bollards by each door to prevent anyone from parking and blocking the exits. Commissioner Bradley asked if Home Depot will be responsible for maintenance of the landscaping and the 10' wall? Mr. Elkin replied yes, it's on Home Depot's property.

Commissioner Esmiol asked about the frontage road? Mr. Martin said the original intent of this service road was to bring it along the front in which case the continuation to the north would preclude certain developments from happening. Rather than having the road zigzag all the way around, it was mutually agreed upon by the City and ourselves that it would be better to locate it in the rear of the property rather than the front. Commissioner Esmiol said he feels it will have heavier traffic than they're anticipating. Mr. Martin said not necessarily because anyone wanting to go north isn't going to traverse south to a light at Prince Drive/Woodmen Road, turn left to Academy Boulevard and then proceed north, not when Cragin Road is just a few blocks up.

Commissioner Bradley asked about signage? Mr. Elkin said a sign will be over the main entrance, a smaller illuminated sign at the lumber pickup area and a third at the north elevation on the Academy Boulevard end of the building. Commissioner Bradley asked about the lighting in the parking lot? Mr. Elkin said lighting is all shielded and reflected downward. There will be no lighting on the building in front. The poles along Academy Boulevard will be 30' with 25' poles on the north side near the residential area. Commissioner Bradley felt that 30' was excessive. Mr. Peitz said there are no height requirements for lights in the Zoning Code but we've established them in shopping centers at 25' or less. Mr. Martin summarized with one final point that the development plan is for the eastern portion of the property only, but Phase I will include all landscaping, all grading and everything needed to accommodate the future Phase II.

Mark Heine, Nolte & Associates project Engineer, said they've examined grading and all utilities extensions that will need to take place within the development. He talked about the landscaping that will shield the wall and building, the cul-de-sac on Berglind Road and screening from the Phase II portion of the development that fronts on Woodmen Road. The building will be situated to sit lower than Venhorst Road. There's a wetlands area primarily located in the future right-of-way and will be dedicated to the City. We will construct an additional 10' strip along Academy Boulevard with all the improvements required to build another southbound lane. We're going to reconstruct the lane that goes from southbound Academy Boulevard to westbound Woodmen Road and add 20' to 24' of pavement on the north side of Woodmen Road with curb, gutter and sidewalks. We've offered to put the waterline on our side and pay for it's construction. It's approximately 2,000' of line running up through the parking lot and there will be an easement for it's maintenance. We're also extending the wastewater mains up through the parking lot and will be stubbing across so any properties on the east side of Academy Boulevard could eventually be serviced.

Commissioner Bradley asked if the landscape berm will be eliminated when the bridge (overpass) is constructed on Academy Boulevard? Mr. Heine replied the right-of-way they're dedicating for the bridge is going to be the ultimate right-of-way location. The original grading plans done in 1989 show there would be several retaining walls required because the grade from Woodmen Road elevates quickly. Our grading plans eliminate the need for retaining walls and the landscaping inside the right-of-way will probably disappear with future development. Commissioner Bradley asked if their project will abut the right-of-way with no landscape buffer in between? Mr. Martin said if the overpass ever happens, the ramp will be going up and over Academy Boulevard. The right-of-way dedication we're suppose to give is for the slope easements of the ramp and will become a grassy knoll.

A.T. Stoddard, Leigh, Scott & Cleary, pointed out that his firm worked on the Woodmen Plaza Annexation and Master Plan, Falcon Estates Filing 2 to the north and the FCY Annexation. From a traffic impact standpoint the amendment to these 2 master plans is minor. On a square foot basis the Home Depot generates less traffic than a typical shopping center so it's in line with the overall master plan and traffic analysis. One of the differences to the master plan is the access to Academy Boulevard. The original Woodmen Plaza West Master Plan showed the access being at Berglind Road. It was also shown on the FCY Master Plan and limited to a right-in/right-out access. The amendment today shows Berglind Road being closed and the right-in/right-out access is now located at Venhorst Road. This is a better location because it moves the access point further away from the Academy Boulevard/Woodmen Road intersection. Another issue is Prince Drive where the original Woodmen Plaza West Master Plan showed the access being in close proximity to Reed Drive. The road system through Yorkshire Estates has Prince Drive extending south from Woodmen Road to York Road which extends east to a signal at Academy Boulevard. Closing Prince Drive at Woodmen Road will eliminate traffic from taking short cuts through this residential neighborhood which most of the residents favor.

Commissioner Hjelkrem commented since Prince Drive is going to be closed, the signal can be eliminated. Dr. Stoddard replied what really drives the need for that light is the area to the north of Woodmen Road not the south. As the road extends north, our recommendation is to have 2 left-turn lanes coming onto Woodmen Road to move that traffic out.

Commissioner Gruen said regarding the degree of relief the service road is ultimately going to provide, it seems like a lot of people will be choosing that road over Academy Boulevard. Dr. Stoddard said he doesn't believe it's going to be used as an alternate to Academy Boulevard for any through traffic. It will be used mostly by people going into or leaving the development. The traffic volumes at the Prince Drive/Woodmen Road intersection aren't just volumes from this development but also includes traffic coming from the north.

Commissioner Bradley asked where he anticipated the heavy traffic will be coming from? Dr. Stoddard said this center tends to be more of a regional facility and our assumption is that traffic will be evenly distributed in all 4 directions. Commissioner Bradley asked if he concurs with Traffic Engineering's comment with regard to constructing a raised median at Academy Boulevard to accommodate dual left-turn lanes and 6 lanes through Woodmen Road? Dr. Stoddard replied it conforms with their current design and improvements they're putting in and allows for that median to be extended further north. The double left-turns are needed at this intersection. Commissioner Bradley asked what type of stack he projects on Woodmen Road going east and turning left into this project? Dr. Stoddard said they're projecting 130 cars during afternoon peak hours. The technical details of that left-turn lane are still being worked out, but my recommendation would be that it continue as a striped two-way left-turn median.

> Alan Ginsborg, Pacific Retail Partners, said they haven't identified specific retail companies that might open a store in Phase II of the project, however, they'll be compatible with the Home Depot store and significantly smaller because of the acreage left on the site. They'll typically be from 10,000 to 25,000 square feet as compared to the 103,000 square feet for Home Depot.

Commissioner Esmiol commented there's 9 lots left for Phase II. Mr. Ginsborg said because of the shallow depth of the site, it will restrict our ability to put too many buildings or very large buildings in there. He guessed there will be 3 smaller buildings at most.

Commissioner Bradley asked what type controls or restrictions they put on the land to insure that they have a compatible user? Mr. Ginsborg replied their concern for the community, being good neighbors and creating a presentable project is as important to their sales as anything they do. We're going to control those uses with the sale of the Phase II site. There will be a reciprocal easement agreement and a set of conditions, covenants and restrictions that will prohibit certain uses which we find incompatible or offensive to the Home Depot use. Commissioner Bradley asked about signage? Mr. Ginsborg said they will conform to City codes. Signage is very critical to any retailers success because if people drive by and don't know you're there, it's hard to sell your goods. The smaller retailers will have very little or no visibility from Academy Boulevard.

Commissioner Gruen asked what type of retailers they might anticipate on the smaller site in Phase II? Mr. Ginsborg said the general flavor of merchants could range anywhere from a Circuit City, a furniture store, apparel store, linen store, etc. The customer profile for a Home Depot is the 'do-it-yourselfer' and much of that business is driven by women with 48% to 51%.

> Jim Lloyd, Western Region Real Estate Manager for Home Depot, said they own the majority of their properties and plan to be commercial neighbors indefinitely. We work with the City and neighbors to try and create win-win situations.

Commissioner Bradley asked about signage? Mr. Martin stated a PBC zone of 12 acres or more is allowed 2 major signs, each being 150 square feet. This will also accommodate other tenants of the developed area.

Jennings Larson, resident, said he's pleased they're down to facts and wants the Planning Commission to unanimously approve this development for 2 reasons:

1. Is it good planning? Does it meet the objectives of the Comprehensive Plan? Is it something that's pretty livable, even though it's not perfect. We, the neighbors, feel that it is.
2. Home Depot is a good neighbor. They've worked diligently with the neighborhood to address our concerns.

Commissioner Hjelkrem asked where he lives? Mr. Larson pointed out his residence, which was purchased by Home Depot, and said with this development he'll be gone as a neighbor.

Commissioner Bradley asked for a show of hands of those in favor of the item: 27. Opposed: 3.

Opposed:

Scott Toniolli, adjacent resident, said that unlike Mr. Larson he will remain a neighbor after Home Depot develops the site. He stated the plans presented by Mr. Martin need a lot of work and asked that this item be postponed. There are several issues in these plans that aren't correct. After numerous discussions with the developer my concerns still haven't been addressed. Some of these concerns include setbacks, cul-de-sacs, frontage road, crime & deviant behavior and miscellaneous.

1. He pointed out a total of 144' setback from the Home Depot building to residential property. As for the visualization of this building it's 132,000 not 103,000 square feet. The garden area encompasses an additional 29,000 square feet. This development will directly affect me as it continues northward. Because the topography elevates as you go north, the subject site is completely visible from my home.
2. It appears Home Depot may have to purchase some ground from either myself or Mr. Tilney, owner across Venhorst Road, for the cul-de-sac. The developers have yet to approach us on the matter, much the same as with the wall. We've been shut off from any negotiations concerning these matters. In the beginning they solicited input from the neighbors but final negotiations never took place.
3. A sidewalk should be required along the frontage road. People should be able to walk, ride bicycles, etc. He believes the road should be located in front of the Home Depot and asked the Planning Commission to postpone the item so the developers can negotiate and deal with adjacent homeowners. He pointed to several breaks along the road which make it look like more of an access to parking. The breaks should be blocked off, people should have to come around, approach a stop sign and then proceed. Speed bumps haven't even been addressed to control speed. This road is in very close proximity to adjacent residents and these are all issues we're willing to discuss with Home Depot.
4. In discussions with Bob Nehoff, Yorkshire Estates resident, he revealed that both his neighbors and himself have had their homes burglarized within the last 5 to 10 years. People are constantly jumping the fence behind the Woodmen Valley Shopping Center to get into the neighborhood. There have been numerous complaints to the police about people racing and partying on that secluded road behind King Soopers. Even though the wall behind Home Depot will be 10', people can still park on that frontage road and maneuver it from the top of a car or bed of a pickup. Moving the road in front of the store will alleviate this problem because they won't be able to park directly adjacent to the neighbors in order to make a quick get away. Crime is something that will impact our neighborhood and is directly related to minimal setbacks as proposed in this request. Currently, there's minimal or no crime in Falcon Estates Filing No. 1.
5. Conditions of operations - such as delivery times for lumber trucks, operation of trash compactors, street sweepers, snow removal, etc. should all be established before the development is done to avoid problems in the future.

   Fire exits to the rear of the building will only be 5' to 10' from the frontage road as previously pointed out. Nothing will be there to warn people running out into that alley.

Initially the building was to be located east/west facing Woodmen Road and was shifted north/south because of severe problems. There are still problems with the applicant's plan and, at a minimum, we request that the Planning Commission postpone this item for further review or reject it entirely.

Commissioner Gruen pointed out that in his letter dated April 7, 1995, Mr. Toniolli stated he met with Mark Heine, Allen Ginsborg, Frank Coda and Bob Martin so there has been communication between the applicant and neighbors which this Commission likes to see. Mr. Toniolli said he met with the applicants at Nolte & Associates so they could present their plan. They asked for my comments so I relayed concerns dealing with setbacks and how this development would decrease my property value. To date, they haven't addressed these concerns or proposed any solutions. They've had discussions with the neighbors across Woodmen Road and have come to some resolution. We would like the same opportunity to discuss the issues since we are the closest and most impacted adjacent neighbors. Mr. Toniolli distributed a list of conditions of record that apply to the FCY and Woodmen Plaza West Master Plans. He cited condition 1 of the Woodmen Plaza West Master Plan which states, "A landscape buffer should be included on all development plans along Berglind Road and Reed Drive. The twenty-five (25) foot buffer currently on the master plan is appropriate." In the FCY Master Plan, condition 4 states, "Buffers which ensure land use compatibility shall be required of all development and/or redevelopment projects. Buffers may be designed as a wall or as a berm and wall. All buffers shall include landscaping and shall be designed to complement and be compatible with adjacent single-family residential." The FCY condition doesn't give a specific footage for setbacks, but I contend it should be a minimum of 25' to be compatible.

Commissioner Jones stated that Mr. Toniolli commented about Rosenbaum & Dean's developments having 150' of buffer in Falcon Estates East; the Heath/Goddard conversion on Falcon Estates West but failed to note that those are 2 1/2 acre parcels, not single acre parcels which makes a significant difference. We've covered the FCY plan for approximately 5 years and if Mr. Toniolli has been in the neighborhood 6 years, then he's had adequate notice as to what is occurring in this area. Mr. Toniolli responded that he found out about this specific development only a month ago when the 'adjacent property owner letters' were sent out by the Planning Department. I'm not saying this development is bad, but rather asking the Planning Commission to postpone the item for a month to continue negotiations and come to a resolution of the unsolved issues. Additionally, Rosenbaum & Dean were very proactive in negotiating and dealing with their adjacent neighbors. I wish we had had even a minute portion of consideration from this developer.

David Tilney, adjacent resident, said he's opposed to this development. His knowledge of the master plan and annexation came about from the newspapers. Personal mailings directly to me were limited because I don't live on the property. I attended a meeting approximately one year ago which revealed that high density development would take place along the Woodmen Road corridor, or Woodmen Plaza West. Low density was to border my property along Academy Boulevard according to the FCY Master Plan and that's not what is being proposed today because they've shifted the building. The FCY Master Plan specifically states, "Buffers which ensure land use compatibility..." Because the FCY Master Plan was just recorded in December 1984, Mr. Toniolli and I were told that we couldn't modify it to allow for greater buffers between the proposed commercial and existing residential neighborhood. However, we found out within the last 30 days that the developer has been negotiating to modify this plan to remove an existing cul-de-sac as a way to avoid negotiating with us about our concerns. My questions are:

1. Why should the intent of the FCY Master Plan be changed causing the quiet and enjoyment of our properties to be taken away.
2. Why should a 25' buffer be required for the Woodmen Plaza West Master Plan and only a 15' buffer for the FCY Master Plan?
3. Why should a developer be able to suggest a change to the FCY Master Plan when we, as homeowners, are told that we cannot cause a change to take place?

As property owners we feel powerless. Our understanding is that the cul-de-sac is back on as a condition by the City, which we applaud. Mr. Toniolli, the Browns and myself are the most impacted residents of this development. The Browns' issues have been dealt with but Mr. Toniolli's and mine have not. As Mr. Toniolli pointed out, neither he nor I were invited to a meeting where the architectural review of the masonry wall took place. We need more time to understand the full impact that this proposed development will have on our properties and to conclude negotiations with Home Depot. Traffic, noise and vandalism are all significant issues dealing with the frontage road directly adjacent to my backyard. Leasing my property has always been under the precept of 'country in the city'. If these issues remain unresolved, it will no longer remain so. We're asking for two things:

1. Please don't allow Home Depot to change the FCY Master Plan by removing a cul-de-sac; and
2. Please postpone approval of this project for 30 days to allow Mr. Toniolli and myself to come to terms with Home Depot. We're not developers and need the additional time to become more knowledgeable in this arena.

Larry Peters, leasee of Mr. Tilney's property, said he's one of the 3 immediate neighbors to the Home Depot. He stated he'd never been concerned about living so close to this development or any development on Academy Boulevard because the FCY Master Plan stipulates it's for a low density use. He wouldn't mind living next to a 2-story office because their hours are normally 8:00 a.m. to 5:00 p.m. Monday through Friday, whereas Home Depot is open seven day per week. From the corner of my living room to the lot line is 40 steps and if they put their building 60' beyond that, it's another 20 steps. The lumber loading dock is on the end closest to my residence which means heavy equipment with backup alarms and a lot of noise. I pay a premium price for a home on one acre with no close neighbors which is what I was looking for 5 years ago. This will no longer be the tranquil homestead it's been in the past. There's a new Home Base just 5 minutes north, Hugh M. Woods and Ace Hardware are 5 minutes south of this site so I really don't need a Home Depot in my front yard. It's my impression that you're trying to cram an 800 pound gorilla into a 400 pound cage right in front of my house.

Rebuttal:

Bob Martin said notice was sent out February 14, 1995; a neighborhood meeting was called on February 15, 1995 and additional adjacent property owner meetings were held on March 8th, 23rd, April 4th and 19th, 1995 so notification has been widespread. There is limited space on this site and doesn't have the 1,000' depth compared to areas further north. There are 300' and 200' building-to-building setbacks from Mr. Toniolli's and Mr. Tilney's homes from the Home Depot, respectively. Putting a 10' wall helps us reduce the amount of setback necessary for landscaping. The frontage road is going to be well lit and have various stop signs so it won't be a major raceway. To compare this site to the Woodmen Valley Shopping Center, (which we refer to as one of the worst examples of putting something next to a residential neighborhood), is erroneous because there are no buffers on that site. The rear drive behind that center is a loading dock, service area and a mish-mash of other things which doesn't even compare to the Home Depot site. Scaling a 10' wall will be very difficult. Putting in the cul-de-sac coming in from the west will help buffer and keep neighbors isolated from through traffic. There will be discussion with Mr. Toniolli and Mr. Tilney regarding this issue. We intend to vacate 30' of Venhorst Road but the northern 30' won't be vacated until the neighbor directly north of Home Depot develops that site. Until then, that site will need it's access. In response to 'Why change the FCY Master Plan?', we believe that bringing Home Depot to this area has been a benefit to the neighborhood. They have gone above and beyond economic and diplomatic lengths to mitigate the neighbors' concerns. Development won't occur tomorrow because there's still a lot of details such as the wall, fire access, noise barrier for Yorkshire Estates, final engineering plans, drainage, etc. to be worked out. Construction won't commence until later this Fall. We respectfully request the Commission to approve and not postpone this project.

Commissioner Jones asked if the noise barrier at Yorkshire Estates closes the entrance from Prince Drive to Woodmen Road? Mr. Martin replied yes.

Commissioner Bradley asked what the applicant's position is on the frontage road? City Traffic has stated that what's depicted is 'not acceptable' so what exactly are we entertaining? Mr. Martin replied they're entertaining the 6 conditions of record recommended by staff as follows:

1. A deceleration lane is to be placed along Academy Boulevard at the entrance to the center.
2. Revise the Traffic Department's condition to state, "The cost of the right-of-way dedication will be factored into the pro rata share of the cost of the upgrades to Woodmen Road and Academy Boulevard."
3. Prince Drive will be closed and the developer is required to submit details of the closure to the Traffic Engineering Department.
4. A masonry sound barrier will be placed along Yorkshire Estates adjacent to the properties that line Woodmen Road. The wall will be placed in the public right-of-way and will be maintained by the City.

5. Venhorst Road will cul-de-sac with the required 84' diameter as requested by the Fire Department.
6. The frontage road should be redesigned to require landscaping on both sides of the road.

All we have to establish for the frontage road is if you want a 5' or 10' landscape buffer, or 5' of landscaping and 5' of sidewalk? This can be added to condition 6. Commissioner Bradley asked him to comment on the cuts into the frontage road to include the loading dock? Mr. Martin said that's where the flatbeds that deliver lumber will turn in from the service road. We're assuming there will be a stop sign north of there so that when Venhorst Road connects, there may even be a 3-way stop sign. There will only be 2 cuts onto this road. Mr. Elkin added the loading dock is recessed 4' and there's a low wall to protect anyone from falling in. If the right-of-way is allowed to go down to 30', we could extend the landscaping along the road to make it a wider area. Commissioner Bradley said his concern is that this doesn't look like a frontage road but rather a delivery alley exclusively for Home Depot.

Commissioner Esmiol asked if this is the only loading dock? Mr. Elkin replied there's also a lumber loading dock on the north end of the building.

Commissioner Hjelkrem asked if they could move the building further east towards Academy Boulevard? Mr. Elkin said the main problem would be parking. All customer entries are in front of the building and we want all parking to be directly in front also. Commissioner Hjelkrem said they would be eliminating 1 parking stall all along the front if they were to comply with some kind of landscaping requirement along the west side of the building. Mr. Elkin said they would be losing 2 spaces per row, not one. Commissioner Hjelkrem said their concern is the frontage road and conditions 6 states, "The frontage road should be redesigned to require landscaping on both sides of the road." Mr. Elkin replied as long as they can get Traffic Engineering to agree with the size of the actual roadway down to 30', it would give us a 10' band for either sidewalk or landscape. Commissioner Hjelkrem said decreasing the aisleway would give it more of an 'alley' effect.

Commissioner Esmiol said if they move the building 9' to the east, they lose a total of 22 parking spaces so how much does this affect your planning? Mr. Lloyd replied they don't have a 'volume per space' but they like to have 500 spaces out front. The 2 buildings here in Colorado Springs are designed a little shallower and wider than other Home Depots just to pick up one space per stall, so every 10 or 20 spaces are important. Currently, we have 422 spaces in front. There's additional parking at either end of the building, however, this makes it inconvenient for our customers.

Commissioner Bradley asked why this store is being placed north/south instead of east/west? Mr. Lloyd replied it's the only place it fits on the site. We couldn't get a parking field of even 200 spaces in front if the store were to face Woodmen Road and wouldn't be functional. There isn't enough depth to situate the store facing Woodmen Road. I told Mr. Toniolli and Mr. Tilney that if we had a 1,000' deep site and we needed some retention or extra landscape we could pool it behind the building, but with the shallow depth between Academy Boulevard and the back of the site we don't have the room to move the building. It's not that we wouldn't listen to their ideas or talk about them but this situation is dictated by the physical constraints of the site.

Commissioner Gruen asked if the 422 spaces was total parking or just what is in front of the store? Mr. Lloyd said those are spaces in front only. There's another 100 spaces to the north and 42 on the south. We're over on the total parking requirement but in terms design, you like your parking in a bubble at about 300' out in front of the store for more customer convenience. Commissioner Gruen said this Commission is very concerned about the frontage road behind the building so if something has to give along those lines, would you consider modifying the parking as it exists? Mr. Lloyd replied it's a matter of grades; how much pain do we have to go through and what do we really accomplish? We will certainly work with the City and neighbors because we want to locate on this site. We've already flattened our prototype some so we can look at other suggestions to try and come up with the best solution. Mr. Ginsborg recapped that this process has taken 10 months and entailed assembling and purchasing the 19 parcels required for Home Depot and getting to know the 12 immediate adjacent property owners. Of the 12 neighbors, 10 are basically satisfied with our plans and it's been a personal disappointment that we've not been able to fully resolve the concerns of the other 2 individuals. Regarding the placement of the building going north/south; from a marketing perspective, the most valuable place to own excess land to dispose of is on Academy Boulevard, however, we haven't been able to create a site plan that makes it work. Mr. Lloyd said both Mr. Toniolli and Mr. Tilney have requested further negotiations. The last 15 days I've gone back and forth on various issues; they didn't like the proposed buffer or sewer. I don't believe we can find a middle ground so we'd prefer the City to address their concerns. If the City wants to put any conditions in terms better solutions, we're agreeable to that.

Commissioner Gruen said regarding conditions 3 which states, "Prince Drive will be closed and the developer is required to submit details of the closure to the Traffic Engineering Department," and asked if the Fire Department has any concerns with respect to safety? Dave Linebaugh, City Fire, replied they became aware of this on Monday. One of the things we shared with the residents in that area was that the Fire Department likes to see 2 points of access. We understand why the residents feel the need to have Prince Drive closed, however, we would like to retain the opportunity to have that entry gated in order to have access in an emergency. There are 130 to 150 homes in Yorkshire Estates and with a single point of access it poses some level of concern for us. We shared our list of concerns with the Homeowners Association and they have no objection to that entry being gated.

Commissioner Ruggiero asked how recently they reviewed and approved the master plans for this site? Mr. Peitz said the Woodmen Plaza West Master Plan was approved in 1991 and the FCY Master Plan was approved in August/September 1994. Commissioner Ruggiero asked if amendments have been made to other plans for the Falcon Estates area? Mr. Peitz responded yes, this plan itself was down zoned from OR/OC to single-family residential. The 4 lots on the FCY Master Plan encompassed by this proposal are going to a higher density than what was contemplated.

Larry Lane, City Traffic, said a lot of the traffic concerns brought up are very valid transportation concerns. Quite a few are major financial issues as well as design issues. We can work further with the applicant to resolve the width and design of the frontage road, the depth of the entrance, the amount of the widening of Academy Boulevard and Woodmen Road. In our opinion, these items should be entirely at the cost of this development. We've stated to City Council that the improvements along Woodmen Road and Academy Boulevard on the north side will be the responsibility of future commercial developments. My job is to see that the ingress/ egress of the thousands of vehicles onto this site will work from the beginning as well as 10 years from now. Condition 2 states, "Revise the Traffic Department's condition to state, 'The cost of the right-of-way dedication will be factored into the pro rata share of the cost of the upgrades to Woodmen Road and Academy Boulevard'." This seems totally inappropriate because we don't have the authority to change an Annexation Agreement as condition 2 alludes to. We have no problem with the dedication of the right-of-way to be part of the obligations that they went into the elections with, but it's not appropriate to make it a condition of record. Condition 6 states, "The frontage road should be redesigned to require landscaping on both sides of the road." City Traffic prefers the 40' width, however, we can live with the narrowing of the width adjacent to the building depending where the building ends up. We also prefer a pedestrian walkway along the frontage road to connect with the one on Woodmen Road. The major sound barrier along Yorkshire Estates is an appropriate condition. The preliminary design for Woodmen Road shows it as a 12' sound barrier wall. It starts on the extreme east end of the Yorkshire development and continues to the extreme west end. We concur with the Fire Department that there should be some type of locked gateway at Prince Drive to allow emergency entrance into the area. The section of the frontage road at Woodmen Road should be signalized.

Commissioner Gruen asked if the frontage road could eventually carry a lot more traffic than it's designed for? Mr. Lane replied he feels comfortable with a 40' width as it leaves the physical building area heading towards Woodmen Road. It's already a determined dimension at Goddard Street that it's adequate to handle the traffic we anticipate.

Commissioner Bradley asked him to comment about the frontage road near the loading dock and having 40' tractor trailer backing up to the building? Is this an appropriate type of cut? Mr. Lane said as the frontage road design is finalized we'll have to determine how the tractor trailers will get in and out. We won't allow them to back in and out of the frontage road but rather have to do it entirely on-site. There are still things we have to look at with the final designs such as the median on Woodmen Road, the turn lane accessing Academy Boulevard, etc. Mr. Peitz stated with regard to condition 2, the ballot conditions for Woodmen Plaza said they would participate in the upgrades of Woodmen Road and Academy Boulevard. The City has it contracted out to make it a separated grade interchange, essentially build a bridge over

Academy Boulevard. The applicant asked if they could include the right-of-way dedication and after discussions with the City Attorney, the Annexation Agreement could be interpreted to include the dedication as a pro rata share. Condition 2 is our interpretation of what we would require from the developer, however, deleting it will not affect the outcome of the requests today.

Commissioner Hjelkrem asked with regard to condition 6 which states, "The frontage road should be redesigned to require landscaping on both sides of the road" if 'landscaping' can also mean rocks and boulders rather than planted trees, shrubs, etc.? Mr. Peitz replied yes, it might be appropriate to reword this condition to state the frontage road should be redesigned to meet the comments and modifications as talked about today. It may be difficult to grow things behind a solid walled building. In addition to the irrigation problem there is also going to be a problem with lack of sunlight. We want it to look distinctive and not appear like a back alley or exclusive access for Home Depot.

Commissioner Esmiol said his concerns are whether these items are ready to be voted on today or if there are enough unresolved problems that may require additional time for resolution?

Commissioner Gruen said he's prepared to vote on the items. The key outstanding issues are Mr. Linebaugh's and Mr. Lane's concerns about safety. If those concerns can be incorporated into the motion, then I'm prepared to vote.

Commissioner Bradley said he has a real problem with the 2 issues mentioned by Commissioner Gruen and a 3rd issue being a conflict between City Traffic and City Planning. The Commission is being put into a very uncomfortable position. He also wondered how they interpret the FCY Master Plan which was very clear with regard to the 25' buffer. As pointed out by Mr. Toniolli, condition 4 on the FCY Plan states, "Buffers which ensure land use compatibility shall be required of all development and/or redevelopment projects. Buffers may be designed as a wall or as a berm and wall. All buffers shall include landscaping and shall be designed to complement and be compatible with adjacent single-family residential", and condition 1 on the Woodmen Plaza Plan states, "A landscape buffer should be included on all development plans along Berglind Road and Reed Drive. The twenty-five foot (25) buffer currently on the master plan is appropriate." I'm uncomfortable that this issue has not been addressed with regard to the frontage road.

Commissioner Ruggiero said he's ready to vote but would be voting against the proposals. There are still significant problems unresolved. Even though we've made other minor amendments to other FCY Master Plans, we're making these right out of the box. Normally we deal with questions relating to whether a master plan is obsolete; here we're dealing with, 'Is the ink even dry on it' and we're already making significant changes. The frontage road, which is a major traffic issue, isn't well addressed.

Commissioner Esmiol said the proponents have done a lot of giving and yet there are still major things that need to be considered.

Commissioner Hjelkrem said this is a huge involvement including a development, subdivisions and people. It was a foregone conclusion there would be changes to this plan to make it work, especially for the frontage road. He's ready to vote and there's no way to do this properly without some rearrangement of things. Through all the discussion over the last few years the entire neighborhood knew there would be changes.

Commissioner Jones said he agrees with Commissioner Hjelkrem. We knew when we did the FCY Plan that this frontage road was going to cause some grief and would have to make some modifications. Commissioner Bradley interjected that it's not their job to make the modifications. Commissioner Hjelkrem said they're not making the decision on how this is all going to fit. We're expressing our concern and throwing it back to the applicant and City to come up with a satisfactory arrangement. That's really what condition 6 states.

Commissioner Gruen asked if the issues can be addressed in a favorable manner between now and the City Council meeting? Mr. Peitz said the City Council meeting is on May 23, 1995. Certainly we will continue to work diligently to make them happen. You can't discount the fact that the applicant and proponents have worked very hard in what we all know historically is a decisive neighborhood. They've reached about as much consensus as they can, at least from a neighborhood standpoint. City Traffic and City Planning can work on the technical issues regarding the frontage road before going to City Council. Commissioner Gruen asked what the impact would be if they voted on Items 14, 15 & 16 and postponed Item 17? Mr. Peitz said there could be some logic to that. The issues are all development plan issues and not master planning issues. The development plan can be heard again at the June 8,1995 Planning Commission meeting for final resolution. This will also give the opposition a chance to continue negotiations with the applicant.

Commissioner Bradley said the opposition isn't what they're talking about but rather the technical issues that haven't been resolved between City staff. There's no agreement with regard to condition 2 or the width of the frontage road. Mr. Peitz said they'll have 30 days to work out the issues and come to 100% consensus before the development plan is heard again.

Commissioner Jones asked for the applicant's reaction to postponement of the development plan? Mr. Martin replied that assuming they're going to act favorably on the master plans and zoning proposals, then postponing the development plan is agreeable.

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<u>Items 14 - CPC MP 90-171-A5 - Master Plan</u>
It was moved by Commissioner Gruen, seconded by Commissioner Jones, to approve an amendment to the Woodmen Plaza West Master Plan consisting of 22.35 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

The motion passed 7-1. (Commissioner Bradley opposed. Commissioner Friesen was absent.)

<u>Items 15 - CPC MP 94-14-A1(95) - Master Plan</u>
It was moved by Commissioner Gruen, seconded by Commissioner Jones, to approve an amendment to the FCY Master Plan consisting of 22.35 acres in a proposed PBC (Planned Business Center) zone located northwest of Woodmen Road and Academy Boulevard.

Commissioner Gruen added the applicant has done a magnificent job of working with the neighbors.

The motion passed 7-1. (Commissioner Bradley opposed. Commissioner Friesen was absent.)

<u>Items 16 - CPC P 95-70 - Zone Change</u>
It was moved by Commissioner Gruen, seconded by Commissioner Jones, to approve a change of zone classification from R (Single Family Residential) to PBC (Planned Business Center) consisting of 22.35 acres located northwest of Woodmen Road and Academy Boulevard.

The motion passed 7-1. (Commissioner Bradley opposed. Commissioner Friesen was absent.)

<u>Items 17- CPC DP 95-70-A1 - Development Plan</u>
It was moved by Commissioner Gruen, seconded by Commissioner Jones, to postpone Item 17 for *thirty (30) days to the June 8, 1995 City Planning Commission Meeting.*

Commissioner Gruen stated the motion to postpone was for the purpose of seriously working to resolve the outstanding technical issues such as the frontage road, safety issues related to the closure of Prince Drive and other neighborhood concern that have surfaced today.

The motion passed 8-0. (Commissioner Friesen was absent.)

Scott Toniolli
1374 Venhorst
Colo. Spgs. CO. 80920

8 August 1995

Colorado Springs City Council
P.O. Box 1575. Mail Code 410
Colo. Spgs. CO. 80901-1575

Request for Postponement of:
CPC P 95-70-A1
CPC P 95-70-A2
Venhorst cul-de-sac
CPC P 95-70

I requested several items from Mr. Quinn Peitz on 28 July 1995 at attachment one. Mr. Peitz stated that items "e" and "f" were not available for my review but insisted on 4 August and again on 7 August that the Water Division and Electric Division had been satisfied. He provided me with a Facsimile from Mr. Mark Heine (Home Depot engineer) at attachment two. After speaking to Mr. Peitz on 7 August, I contacted Mrs. Cheryl Murphy-Gates (Colorado Springs Electric Division). Mrs. Murphy-Gates took time to meet with me and explained that the Electric Division is still awaiting the development plan and therefore has **not approved** it due to several technical shortfalls. See attachment three.

Postponement should be granted for for three reasons: 1) The Electric Division has not seen the development plan with required changes therefore have not approved it. 2) Mr. Peitz has not provided me all information requested at attachment one. 3) The confusion leads me to question the validity of information I have received to date and therefore I respectfully request a postponement to better analyze the Home Depot CPC items.

Section 14.1 article 4 part 10 section 1008 B states: "If new or additional evidence is set forth as the grounds for a postponement, the appeal shall be referred to the Planning Commission for further hearing and recommendations." I therefore, respectfully request the above agenda items be referred back to the Planning Commission.

Scott Toniolli

AUG 8 1995
CITY CLERK-TREAS.

Item Nos. 25, 26 & 27

Scott Toniolli
1374 Venhorst
Colo. Spgs. CO. 80920
Phone: W(719) 570-8841

28 July 1995

Colorado Springs Planning Commission
attn. H. Quinn Peitz, Jr., AICP
P.O. Box 1575, Mail Code 310
Colo. Spgs. CO. 80901-1575

In reference to:
CPC P 95-70
CPC P 95-70-A1
CPC P 95-70-A2
Venhorst Cul-de-sac master plan change

I request the following information be provided for my pick up on 2 August 1995. It is time critical that I receive this data in preparation for the 8 August 1995 City Council meeting. All referenced information must including changes as indicated in the 6 July 1995 Planning Commission meeting.

a) A current Development Plan. In 'Staff's Recommendation' you required technical corrections be made to the development plan (three items). In addition, provide wall heights as they pertain to the refuse & docking areas.
b) A Current Grading/ elevation map of the site (it was insinuated in the July Planning Commission meeting that the floor elevation has changed).
c) A Current Drainage Plan (as it refers to the changed elevation).
d) A Current Landscaping plan. In 'Staff's Recommendation' you required technical corrections be made to the landscape plan (eight items).
e) A Current Traffic study, if it has changed.
f) As of 6 July 1995, Waste water had not approved the development plan (CPC DP 95-70-A1) or the facilities plan. Please provide the revised plans.
g) As of 6 July 1995, Electric had not approved the non-use variance (CPC DP 95-70-A2). Please provide the revised plan(s).
h) Approval letter, with rational granting request of 'minor' amendment to the master plan as it pertains the Venhorst cul-de-sac. Why the change from what you had indicated to me?
i) Hanz Blicker workbook.
j) A list of 'The Planners relief to the above CPC items" (as it pertains to the Zoning Codes, etc...).

Thank you for your time and corporation. Please call should you have any questions.

Scott Toniolli

Delivered 8-2-95
Q. K

Attachment one

Colorado Springs

Facsimile Cover Sheet

To: Quinn Peitz
Company: City of Colorado Springs, Development Services
Phone:
Fax:

From: Mark Heine
Company: Colorado Springs Office
Phone:
Fax:

Date: August 2, 1995
Pages including this cover page: 1

Comments: Proposed Home Depot Plaza, Woodmen Rd. and Academy Blvd.

Mr. Peitz, per your request we have coordinated our proposed improvement locations with the Water Resources Division and Electric Division. The location of the proposed sanitary sewer lines is sastisfactory to the Water Resources Division. The wall location within the setback has been coordinated and verbally approved by the Electric Division. Additional work to provide underground services to adjacent neighbors has also been verbally approved.

We are currently working on final design and will submit final drawings to the respective City of Colorado Springs agencies upon approval from the City of Colorado Springs City Council for this project.

Please call or contact us if you have any further questions regarding this matter.

Mark Heine, P.E.

NOLTE and ASSOCIATES
Engineers / Planners / Surveyors

5350 N. Academy Blvd., Suite 216, Colorado Springs, CO 80918 Tel: (719) 528-1159; FAX (719) ~~594-0331~~ 528-6244

Attachment Two

Memorandum

DATE: August 8, 1995

TO: SCOTT TONIOLLI

FROM: CHERYL MURPHY-GATES

RE: PROPOSED HOME DEPOT - WOODMEN RD. AND ACADEMY BLVD

CC: QUINN PEITZ

MR. TONIOLLI, PER YOUR REQUEST ON THE APPROVAL OF THE DEVELOPMENT PLAN FOR THE PROPOSED HOME DEPOT, WE HAVE MET WITH MARK HEINE AND WE ARE STILL WAITING TO SEE THE DEVELOPMENT PLANS WITH THE CHANGES THAT OUR DEPARTMENT REQUIRES. WE CANNOT GIVE APPROVAL UNTIL WE HAVE SEEN THE PLANS, WITH THE CHANGES .

Attachment Three

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO 22.35 ACRES LOCATED NORTHWEST OF WOODMEN ROAD AND ACADEMY BOULEVARD

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The zoning map of the City of Colorado Springs is hereby amended by rezoning the real property described in Exhibit A, attached hereto and made a part hereof by reference, from R (Single Family Residential) to PBC (Planned Business Center), pursuant to the Zoning Ordinance of the City of Colorado Springs.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the Office of the City Clerk.

Introduced, read, passed on first reading and ordered published this_____day of__________, 1995.

____
Mayor

ATTEST:

____
City Clerk

CPC P 95-70

DEVELOPMENT SERVICES DIVISION
LEGAL DESCRIPTION FORM

FOR OFFICIAL USE ONLY

DATE REC'D 2/23/95

FILE NO. P95-70

CHECKED (FOR LOC. & CONFIG. 3/6/95

STAFF [illegible]

HOME DEPOT - WOODMEN & ACADEMY SITE

LEGAL DESCRIPTION:

A PORTION OF THE NORTH HALF OF SECTION 8, TOWNSHIP 13 SOUTH, RANGE 66 WEST, OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING ALL OF LOTS 5, 6, 7 AND 8 OF BLOCK 13, ALL OF LOTS 16, 17 AND 18 OF BLOCK 11, ALL OF LOTS 1 AND 2, 4-12, BLOCK 14 AND A PORTION OF THE PLATTED ROADWAYS OF BERGLIND ROAD, REED DRIVE, AND VENHORST ROAD, ALL WITHIN THE PLAT OF FALCON ESTATES NO. 1, AS SAID PLAT IS RECORDED IN BOOK B-2 OF PLATS, AT PAGE 59, OFFICIAL RECORDS OF EL PASO COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 8 AS SAID CORNER IS WITNESSED BY A 2" DIAMETER IRON POST LYING 31.00 FEET WEST OF SAID CORNER AND ON THE NORTHERLY LINE OF SAID SECTION 8; THENCE NORTH 90°00'00" WEST ALONG SAID NORTHERLY LINE, 1503.47 FEET TO THE NORTHEAST CORNER OF SAID PLAT OF FALCON ESTATES NO. 1, BEING A POINT ON THE CENTERLINE OF ACADEMY BOULEVARD AS EFFECTED BY SAID PLAT; THENCE CONTINUING NORTH 90°00'00" WEST ALONG THE NORTHERLY LINE OF SAID SECTION AND ALONG THE NORTHERLY LINE OF SAID FALCON ESTATES NO. 1, 51.65 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF ACADEMY BOULEVARD BEING A LINE LYING 50.00 FEET WESTERLY WHEN MEASURED AT RIGHT ANGLES OF SAID CENTERLINE OF ACADEMY BOULEVARD, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF LOT 8, BLOCK 2 OF SAID FALCON ESTATES NO. 1; THENCE SOUTH 14°32'01" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE 1694.86 FEET TO A TAG SET IN CONCRETE MARKED L.S. NO. 23050 AT THE INTERSECTION OF THE CENTERLINE OF VENHORST ROAD AS PLATTED BY SAID PLAT OF FALCON ESTATES NO. 1 AND SAID WESTERLY RIGHT-OF-WAY LINE OF ACADEMY BOULEVARD AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL:

THENCE CONTINUING SOUTH 14°32'01" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 541.41 FEET TO A REBAR AND CAP MARKED L.S. NO. 23050 AT A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 340.00 FEET; THENCE ALONG SAID CURVE 621.19 FEET THROUGH A CENTRAL ANGLE OF 104°40'51" TO A REBAR AND CAP MARKED L.S. NO. 23050 AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WOODMEN ROAD BEING A LINE 50.00 FEET NORTHERLY WHEN MEASURED AT RIGHT ANGLES OF THE CENTERLINE OF SAID WOODMEN ROAD, SAID CENTERLINE BEING THE SOUTH LINE OF THE NORTH HALF OF SAID SECTION 8, AND SAID CENTERLINE BEING THE SOUTH LINE OF SAID FALCON ESTATES NO. 1; THENCE NORTH 89°51'10" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, 1389.99 FEET TO A REBAR AND CAP, MARKED L.S. NO. 23050 AT THE SOUTHWEST CORNER OF LOT 18, BLOCK 11 OF SAID FALCON ESTATES NO. 1; THENCE NORTH 00°02'17" WEST ALONG THE WEST LINE OF SAID LOT 18, 258.58 FEET TO A REBAR AND CAP, MARKED L.S. NO. 23050 AT THE NORTHWEST CORNER OF SAID LOT 18; THENCE NORTH 89°57'43" EAST ALONG THE NORTH LINE OF LOTS 18, 17 AND 16 OF SAID BLOCK 11, 503.72 FEET TO A REBAR AND CAP MARKED L.S. NO. 23050 AT A POINT ON THE WEST LINE OF REED ROAD AS SAID ROAD IS PLATTED ON SAID PLAT OF FALCON ESTATES NO. 1; THENCE NORTH 00°02'17"

WEST ALONG SAID WEST LINE AND THE EAST LINE OF LOT 15 OF SAID BLOCK 11, 260.20 FEET TO A 1-INCH IRON PIPE AT THE NORTHEAST CORNER OF SAID LOT 15 BEING A POINT ON THE SOUTH LINE OF BERGLIND ROAD; THENCE NORTH 89°57'43" EAST ALONG SAID SOUTH LINE, 60.00 FEET TO A 4-INCH IRON PIPE AT THE NORTHWEST CORNER OF LOT 1 OF BLOCK 14 OF SAID FALCON ESTATES NO. 1; THENCE CONTINUING NORTH 89°57'43" EAST ALONG SAID SOUTH LINE OF BERGLIND ROAD AND THE NORTH LINE OF SAID BLOCK 14, 537.38 FEET

TO A REBAR AND CAP MARKED L.S. NO. 23050 AT A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 14; THENCE NORTH 00°02'17" WEST, 60.00 FEET TO A REBAR AND CAP, MARKED L.S. NO. 23050 AT THE SOUTHWEST CORNER OF LOT 8 OF BLOCK 13 OF SAID FALCON ESTATES NO. 1, SAID POINT ALSO BEING ON THE NORTH RIGHT OF WAY LINE OF BERGLIND ROAD; THENCE NORTH 00°04'06" WEST ALONG THE WEST LINE OF LOT 8 AND LOT 5 OF SAID BLOCK 13, 336.00 FEET TO A REBAR AND CAP MARKED L.S. NO. 15686 AT THE NORTHWEST CORNER OF SAID LOT 5, BEING A POINT ON THE SOUTH LINE OF VENHORST ROAD AS SAID ROAD IS PLATTED ON SAID PLAT OF FALCON ESTATES NO. 1; THENCE NORTH 00°02'17" EAST, 30.00 FEET TO SAID CENTERLINE OF VENHORST ROAD; THENCE NORTH 89°57'43" EAST ALONG SAID CENTERLINE, 483.81 FEET TO THE POINT OF BEGINNING.

CONTAINING 22.354 ACRES, MORE OR LESS.

CITY PLANNING COMMISSION

ITEM NO(S): 14., 15., 16. & 17
STAFF: Quinn Peitz
FILE NO(S): CPC MP 90-171-A5 - Legislative
CPC MP 94-14-A1(95) - Legislative
CPC P 95-70 - Quasi-Judicial
CPC DP 95-70-A1 - Quasi-Judicial

PROJECT: Home Depot Plaza

APPLICANT: LDC, Inc.

OWNER: Pacific Retail Partners

PROJECT DESCRIPTION:
To change the master plan for Woodmen Plaza West and FCY; to change the zoning to PBC; for approval of a development plan for a Home Depot Store.

STAFF'S RECOMMENDATION:
Items 14 & 15 - CPC MP 90-171-A5 & CPC MP 94-14-A1(95) - Master Plans
Approve the Master Plan changes to the FCY and Woodmen Plaza West Master Plans.

Items 16 - CPC P 95-70 - Zone Change
Approve the zone change to PBC.

Items 17- CPC P 95-70-A1 - Development Plan
With the submittal of a final landscape plan, approve the development plan.

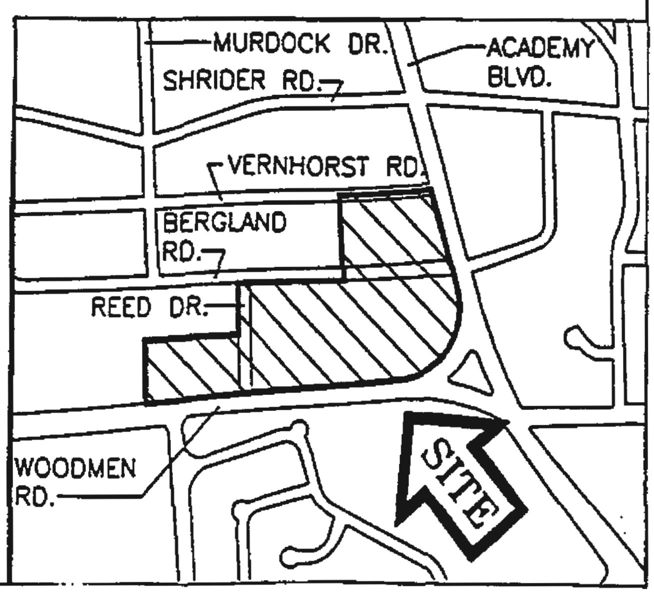
COMPREHENSIVE PLAN:
Policy 5.1.3
Policy 5.1.5

PLANNING COMMISSION'S DECISION:
Items 14 - CPC MP 90-171-A5 - Master Plan
Approved 7-1.

Items 15 - CPC MP 94-14-A1(95) - Master Plan
Approved 7-1.

Items 16 - CPC P 95-70 - Zone Change
Approved 7-1.

Items 17- CPC P 95-70-A1 - Development Plan
Postponed to 6-8-95 CPC.



BACKGROUND:

Existing Zoning/Land Use - R-Estate/Vacant/Single Family Dwelling

Surrounding Zoning/Land Use - North - R-Estate/Single Family Dwellings
South - R-Estate/Yorkshire Estates/Single Family Dwellings
East - R-Estate/Single Family Dwelling
West - R-Estate/Woodmen Plaza East/Single Family Dwellings

Annexation - 1992, Woodmen Plaza West. 1993, FCY Annexation.

Zoning - R-Estate, 1994/1995.

Subdivision - Falcon Estates No. 1 and 3.

Zoning Enforcement Action - None.

Proposal - To amend the Woodmen Plaza West Master Plan and the FCY Master Plan by deleting Berglind Road as an access and substituting Venhorst, by including four lots from FCY into the Woodmen Plaza West Plan, by providing a masonry wall for separation between the residential and the non-residential; to rezone the entire parcel PBC; and, to seek development plan approval for a Home Depot Store of 103,790 sq. ft., 35 feet in height.

Physical Characteristics - The property has native grasses with gentle slopes from the southeast corner to the northwest corner.

Master Plan - Woodmen Plaza Master Plan and the FCY Master Plan.

DEPARTMENTAL REPORTS:

Items 14 - CPC MP 90-171-A5 - Master Plan

US West - Any existing telephone facilities will be relocated at the owners expense.

Traffic Engineering

1. Construct a raised median in Academy Boulevardto accommodate dual left turn lanes and six lanes *thru at Woodmen Road. Provide plan and profiles to this office.*
2. Construct a right turn lane on Academy Boulevard at Venhorst Road. Additional R.O.W. will be required north of access - provide plan and profiles for this turn lane design.
3. Construct the full widening on the north side of Woodmen Road including a raised median and turn lanes full length of the property. Submit plan and profiles to this office to confirm geometrics and right of way needs.
4. Show and construct a 40' wide private reverse frontage road from Prince Drive to Venhorst Road - what is depicted is not acceptable.
5. The Prince Drive/Woodmen Road signal shall be at this owners expense. Submit an intersection design that protects cut thru traffic into Yorkshire Estates from Woodmen Plaza for approval.
6. This owner shall participate in an interchange at Academy Boulevard and Woodmen Road Full right of way dedication shall be required.

Fire - Standard comments 11,2,8,10,3, and 1.

Items 15 - CPC MP 94-14-A1(95) - Master Plan

Traffic Engineering

1. Construct a raised median in Academy Boulevard to accommodate dual left turn lanes and six lanes thru at Woodmen Road. Provide plan and profiles to this office.
2. Construct a right turn lane on Academy Boulevardat Venhorst Road. Additional R.O.W. will be required north of access - provide plan and profiles for this turn lane design.
3. Construct the full widening on the north side of Woodmen Road including a raised median and turn lanes full length of the property. Submit plan and profiles to this office to confirm geometrics and right of way needs.
4. Show and construct a 40' wide private reverse frontage road from Prince Drive to Venhorst Road - what is depicted is not acceptable.
5. The Prince Drive/Woodmen Road signal shall be at this owners expense. Submit an intersection design that protects cut thru traffic into Yorkshire Estates from Woodmen Plaza for approval.
6. This owner shall participate in an interchange at Academy Boulevard and Woodmen Road. Full right of way dedication shall be required.

Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense.

US West - Any existing telephone facilities will be relocated at owners expense.
Wastewater - The request for approval of the amendment to master plan is acceptable.
Fire - *Standard comments 3,4,5,1,2,8,10, and 11. Throughout the development/site a minimum of 28'* wide roadways must be maintained at all times for all CSFD required accessways. All fire dept. access roads are to meet H-20 engineered design loading and are to be able to support at least a design wheel load of 18,000 pounds (GVW 80,000 pounds minimum). Access roads are to be finished by application of an all weather driving surface of hot mix asphaltic concrete or concrete pavement over a flexible base capable of supporting the engineer design loads.
All Other Reporting Departments - Standard or no comment.

Items 16 - CPC P 95-70 - Zone Change
Traffic Engineering - No objections to zone change requests.
Engineering - The R.O.W. line for Woodmen Road as depicted along the south boundary of the site may no longer be in the correct location due to the proposed grading along the south of the site. If the ground elevation is lowered, the R.O.W. line may need to be moved further north in order for the future Woodmen Road fill slope to catch grade. An alternative may be a future retaining wall for the Woodmen Road fill, but if this is required due to site grading, City Engineering feels that the added cost of a wall should be the responsibility of the developer. This matter will need further study and we request that the site Civil Engineer meet with us to go over this matter. City Engineering does not support the proposed "half vacation" of Venhorst Road. The applicant needs to contact us to discuss an alternate plan. The typical cross section showing curb on one side of Venhorst Road and a ditch on the other is not accepted by City Engineering. Again, the applicant needs to discuss the design requirements with us. The proposed cul-de-sacs for Venhorst Road must meet current standards and additional R.O.W. may be needed. If so, the developer must obtain the additional R.O.W. and include it in the plat as dedicated R.O.W. An easement is needed for the sidewalk along Academy which lies out of the R.O.W. Why is there no sidewalk proposed along Woodmen Road? At the time of a building permit financial assurances are required for the cost of all required street improvements including the street cul-de-sacs, Academy Boulevardwidening and medians, and all drainage facilities.

The following condition of approval applies to this development plan: *Approval of this plan does not grant any variance to the adopted Subdivision Ordinance and does not waive any of the requirements of design as contained in the City of Colorado Springs Subdivision Policy Manual and Public Works Design Manual. (14-4-605)*

Fire - Standard comments 11,2,8,1,10, and 3.
Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense
All Other Reporting Departments - Standard or no comment.

Items 17- CPC P 95-70-A1 - Development Plan
Electric - Any relocation of the existing electric facilities will be at the owner/developer's expense.
We will not allow the General Utility Enclosure if the proposed propane is within 20 feet of our electric. All clearances must be maintained according to the N.E.S.C.
Traffic Engineering

1. Construct a raised median in Academy Boulevard to accommodate dual left turn lanes and six lanes thru at Woodmen Road. Provide plan and profiles to this office.
2. Construct a right turn lane on Academy Boulevard at Venhorst Road. Additional R.O.W. will be required north of access - provide plan and profiles for this turn lane design.
3. Construct the full widening on the north side of Woodmen Road including a raised median and turn lanes full length of the property. Submit plan and profiles to this office to confirm geometrics and right of way needs.
4. *Show and construct a 40' wide private reverse frontage road from Prince Drive to Venhorst Road* - what is depicted is not acceptable.
5. The Prince Drive/Woodmen Road signal shall be at this owners expense. Submit an intersection design that protects cut thru traffic into Yorkshire Estates from Woodmen Plaza for approval.

6. This owner shall participate in an interchange at Academy Boulevardand Woodmen Rd. Full right of way dedication shall be required.

Water - Further study will be required for the existing water facilities proposed to be removed.

Police - Adequate lighting should be installed throughout the area including the parking lot and the buildings. Business numbers should be visible for emergency vehicles both day and night (both on the front of the businesses and on the rear of the buildings).

Fire - Standard comments 11,3,10,2,1, and 8. IN ADDITION, the cul-de-sac for Venhorst Road must meet the minimum requirements of an 84' diameter and must be approved by the Fire Department. The plan is NOT acceptable until these changes are made.

Wastewater - The request for approval of the development plan is NOT acceptable. Facilities plan not acceptable. Extend 8" public wastewater mainline up east side of the proposed building instead of 6" private service. A revised Facilities Plan will be required.

PETITIONER'S JUSTIFICATION: FIGURE 1

ANALYSIS OF MAJOR ISSUES:

CONFORMANCE WITH THE COMPREHENSIVE PLAN

Policy 5.1.3 deals with changes to master plans. This proposal requires changing two master plans to accommodate the construction of a 131,845 square foot building Home Depot. The location of the southern portion of the building in the Woodmen Plaza West Master Plan is in complete compliance with this plan that contemplated commercial uses in the southeastern portion of the original master plan. However, the building location of Home Depot into a portion of the original FCY Master Plan is not in keeping with the original intent of what the FCY Master Plan proposed for the "two lot deep" changes along Academy Boulevard. Initially, the changes along Academy Boulevard were to be pad sites to accommodate smaller commercial/office uses. With the addition of a portion of the Home Depot, this is a facility much larger than anticipated. The major redeeming value to this plan is the construction of a ten' wall to mitigate noise and visual intrusion. Given this major barrier along with the proper closure of Venhorst Street, the possibility of changing the FCY Master Plan incorporating into the Woodmen Plaza Master Plan becomes more feasible. Home Depot has worked diligently with the neighbors to satisfy most concerns about the construction of the Home Depot. As of the publication of this staff report, only two neighbors have not been satisfied with the design elements of the Home Depot. The letters of Mr. Tilney and Mr. Tonilli are attached. The staff recommends changing the FCY Master Plan to incorporate uses from the Woodmen Plaza Master Plan due primarily to the landscaping and wall elements that are included in the final design elements. Policy 5.1.5 is met. The zone changes propose a PBC zone for the entire subject property. The staff recommends approval of this request with the condition that lots 16, 17, and 18 may not be suited for some of the commercial uses allowed in the PBC zone districts due to the sizes of the lots. Development plans will be scrutinized to ascertain compatibility with the adjacent residential uses. Policy 5.1.3 is met

DEVELOPMENT PLAN REVIEW CRITERIA

The review criteria for a development plan is met. A wall will completely encircle the commercial property and protect the remaining residential neighborhood. Landscape buffers will be placed between commercial and the residential zone districts. The appropriate dedication will be made for Woodmen Road. Also a wall is proposed along the boundary with Yorkshire Estates to protect that neighborhood from increased traffic flows on Woodmen Road. At the time of publication, two issues are still unresolved. First, two lot owners on Venhorst Street are opposed to the request due to commercial intrusion into their neighborhood. Secondly, a design for Prince Drive has not been submitted to satisfy neighborhoods to the south concerning traffic intrusion into Yorkshire Estates. These two issues are being worked on by Home Depot and may be resolved prior to the Planning Commission meeting. Appropriate letters are attached reflecting these concerns. **FIGURE 2**

8-8-95

CROSS, GADDIS, KIN, HERD & KELLY, P.C.

Thomas R. Cross
Larry R. Gaddis
James W. Kin
Thomas J. Herd
Debra L. Kelly
David L. Quicksall
(1950-1991)

Attorneys At Law
118 S. Wahsatch, Suite 100
Colorado Springs, CO 80903
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Telecopier (FAX): (719) 471-0317

James B. Turner
of Counsel

June 13, 1995

VIA HAND-DELIVERY

City Clerk
City of Colorado Springs
P. O. Box 1575, Mail Code 110
Colorado Springs, CO 80901-1575

Re: Appeal of Action of Planning Commission, CPC CU 95-148, Regarding Application for Condition Use at 4401 Mark Dabling Boulevard

Dear Madam:

This notice of appeal is filed to the action of the Planning Commission approving CPC CU 95-148 at their regular meeting on June 8, 1995, on behalf of Jack Mason. Mr. Mason owns a 39,000 square foot building at 4385 Northpark Drive, which is approximately one block West of the subject property.

The action of the Planning Commission approved a conditional use for a high-volume retail liquor store in an M-1 light industrial zone. The materials associated with the application identified a use of approximately 19,000 square feet. The applicant at the hearing stated that approximately 12,000 square feet was the subject of the application. The applicant also has an application for approval of a liquor license at that location and has identified the lease space for the liquor license to be 30,000 square feet. Mr. Mason objects to the approval of any conditional use which will result in the establishment of a high-volume warehouse-style liquor store for the following reasons:

1. **Traffic**: The area has been zoned and is designed for light industrial use which has significantly less volume and different patterns than a high-volume retail store such as Wal-Mart, Sam's or Cheers. The intended use is a regional liquor store which would attract traffic from all over the City. There are only two accesses to the property, one from the North from the intersection of Mark Dabling and Garden of the Gods, and the other from the South off of Fillmore through the new ballpark facilities and the light industrial park along Mark

Dabling. The intersection at Fillmore and Mark Dabling is poorly designed for high-volume use and will not allow for left-hand turns to the East going back towards the residential north end. Further, Mark Dabling is not designed for high traffic flows and has a number of severe curves. The ballpark facility at the south end of Mark Dabling brackets the road, and it is anticipated that it will be a high-pedestrian area. The inclusion of a high-volume retail liquor store is incompatible with these traffic and pedestrian patterns.

2. **Character of Neighborhood**: A high-volume retail liquor store changes the character of the light industrial park. The area has low traffic volume retail such as a carpet showroom, recreational vehicle lot, and ranch supply store which are similar to the usage and traffic patterns of a light industrial facility. The area from Garden of the Gods along Mark Dabling to Fillmore is all light-industrial use. While there are a number of beer distributor facilities, they are wholesale only and do not generate any retail traffic. The inclusion of a high-volume retail liquor store requires different infrastructure and changes the character of the light-industrial neighborhood.

3. **Not in Compliance with the Comprehensive Plan**: We disagree with the planning staff conclusion that the Comprehensive Plan policy of utilizing zoning to permit a limited number of areas for lower cost commercial and industrial sites has any application to the subject application. The issue is whether a high-volume Wal-Mart style liquor store is compatible in this light-industrial neighborhood. High volume retail is not compatible with light industrial. The present zoning in Colorado Springs has provided numerous areas for this type of high-volume retail.

For the reasons stated, the application should be denied.

Very truly yours,

CROSS, GADDIS, KIN, HERD & KELLY, P.C.

James W. Kin

cc: Client

JUN 13 1995
CITY CLERK
TREAS.

ITEM O. **CPC P 95-142 - Peitz - Quasi-Judicial**

Request by the City of Colorado Springs on behalf of Andersen Mahon Enterprises for approval of the establishment of a PBC (Planned Business Center) zone classification consisting of .573 acres located southeast of Academy Boulevard and Woodmen Road at 6975 N. Academy Boulevard.

Approval.

****

It was moved by Commissioner Esmiol, seconded by Commissioner Bevington to approve Items A. through K., M. and O. on the Consent Calendar.

The motion passed 6-0. (Commissioners Bradley, Friesen & Hjelkrem were absent.)

ITEM L. **CPC CU 95-148 - Rapp - Quasi-Judicial**

Request by Keith D. McCandless on behalf of Richard Bingman and Ralph Young for approval of a conditional use to allow retail sales within an existing warehouse building in an M-1 (Light Industrial) zone consisting of 3.46 acres located southeast of Garden of the Gods Road and Mark Dabling Boulevard at 4401 Mark Dabling Boulevard.

Gary Rapp, Development Services Division, stated this is a proposal for retail sales of wine and liquor in a warehouse which will allow 19,300 square feet for additional retail sales. Staff finds that all criteria for a conditional use are met in this case and the 3 technical revisions will bring the development plan into conformance with submittal and review criteria.

Speaking for:

Keith McCandless, applicant, said the square footage has been dropped from the original 19,300 to approximately 12,000 to 13,000 square feet of retail sales.

Commissioner Esmiol asked if it will be the same as Cheers? Mr. McCandless said it started out that way but they plan to expand and have more open aisles and will be a warehouse format such as Sam's.

Commissioner Gruen asked what accounted for the decrease in the square footage? Mr. McCandless replied he doesn't know where the 19,300 square feet came from. The area were leasing is approximately 30,000 square feet but some of that will be subleased for office space.

Commissioner Bevington asked if the carpet store will remain? Mr. McCandless said yes, Stone Mountain will remain.

Opposed:

James Kin, attorney representing Jack Mason who owns a 39,000 square foot office building at 4385 Northpark Drive, said his client's building is one block west of the subject site. We disagree with the Planning Department's recommendation because we see two (2) major problems with this conditional use: 1) Traffic, and 2) Character of the neighborhood. The neighborhood is basically light industrial and to the south, Park and Recreation has recently added ball diamonds which will be a fairly intense use. We understand this is going to be a high volume liquor store and won't be serving just the people in the immediate area thus, traffic becomes a major concern. Traffic at Garden of the Gods Road and Mark Dabling Boulevard was not designed for high-volume retail but rather for light industrial. The buildings for the light industrial are nice and the liquor store will change the character of the neighborhood. Even though there's other retail stores in the area, they're low volume uses, unlike the proposed conditional use. The next guy who comes in with a high volume use can't be turned down because you've already set the trend. There was a comment in the staff report about the Comprehensive Plan and how this was designed to accommodate low-cost commercial and light industrial. We don't see any relevance between that policy and accommodating a high-volume retail store. We ask that you deny the application.

Commissioner Gruen asked if he can quantify the difference in traffic they anticipate based on this use versus a lower-volume retail or industrial use? Mr. Kin replied he can only give his own observations as to what traffic volumes Wal-Mart, Cheers or Sam's generate. Commissioner Gruen asked if he knew the square footage of Wal-Mart or Cheers versus this sort of use? Mr. Kin said a Wal-Mart would be significantly larger but the proposed use is comparable to Cheers.

Jack Mason said he's owned his building since the early 1970s. As a planner and developer you try to establish the character of the neighborhood. Garden of the Gods has become a spot zoning with various uses. The proposed use is going into a building that was designed as a manufacturing facility and the arterials that service it were not designed to accommodate a high-volume use. Retail traffic is coming and going constantly, whereas manufacturing is more stable.

Valerie Edgerly said her parents own Lakeview Liquor on Nevada Avenue and Garden of the Gods Road. She added the neighborhood has been a stable area and hasn't changed very much residentially and commercially over the years. It's not a good idea to place a liquor store in close proximity to a high-density ball park which may create undesirable, residual effects.

Rebuttal:

Keith McCandless said the intersection at Mark Dabling Boulevard/ Garden of the Gods Road has a traffic light and three (3) out of the four (4) directions have a left-turn arrow. It's true there will be increased traffic which we're hoping for. The park will have young patrons but they certainly won't be served at our establishment. Fillmore Street is approximately two (2) miles south and not relevant to the traffic at the Mark Dabling Boulevard/ Garden of the Gods Road intersection. MCI is three (3) miles west with a number of other industrial sites and businesses along Garden of the Gods Road. To the north there's a battery of retail shops so we're not the first in the area by a long shot. With regard to the character of the neighborhood, there's a liquor wholesaler across the street, a beer wholesaler even closer to the park and a second beer wholesale about a half mile north on Northpark Drive. The site was posted daily since May 19, 1995 as requested by the Planning Department so the required notice was given. We respectfully request that the conditional use permit be approved.

Commissioner Jones asked if it's possible to egress this site directly onto Garden of the Gods Road? Mr. McCandless said they will have an entrance off Garden of the Gods Road going eastbound. The other ingress/egress will be off of Mark Dabling Boulevard.

Commissioner Ruggiero asked about this being an M-1 (Light Industrial) area and the concern that if we keep approving high-volume conditional uses it may dilute the effectiveness of that and that the area is planned for light industrial versus retail uses with heavy traffic? Mr. Rapp said there's no master plan for this area. It's zoned M-1 (Light Industrial) and retail uses are allowed by conditional use in the light industrial zone. There's nothing in staff's mind that's detrimental about the proposed use in that location and recommend approval of the conditional use. The proposal meets the criteria for a conditional use in that zone which is provided for in the Zoning Ordinance. He added there's a carpet store, a feed store, and Taco John's which are significant traffic generators, but the acreage remains predominantly M-1.

Commissioner Gruen asked if City Traffic has any concerns? Larry Lane, City Traffic, replied that the access onto Garden of the Gods Road has not been finalized by Taco John's. We would require that the turn lane be put in place prior to anyone else using that access. The capacity of the intersection at Mark Dabling Boulevard/Garden of the Gods Road can handle this type of liquor retail sales.

Commissioner Esmiol asked if this will be right-in/right-out turn only? Mr. Lane responded yes, once they get the eastbound right-turn lane constructed.

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It was moved by Commissioner Gruen, seconded by Commissioner Ruggiero to approve a conditional use to allow retail sales within an existing warehouse building in an M-1 (Light Industrial) zone consisting of 3.46 acres located southeast of Garden of the Gods Road and Mark Dabling Boulevard at 4401 Mark Dabling Boulevard with the following technical revisions:

1. **Note proposed conditional use as "retail sales of wine and liquor (warehouse format)" and show correct boundary of 19,300 sq. ft. retail area.**
2. **Correct the Parking Schedule to include all uses and show seven additional parking spaces.**
3. **Note file number, CPC CU 95-148, in lower right-hand corner and fold 8 1/2" x 14".**

Ten copies of the revised development plan shall be submitted to the Development Services Division by June 16, 1995.

The motion passed 6-0. (Commissioners Bradley, Friesen & Hjelkrem were absent.)

ITEM N. **<u>CPC CU 95-150</u> - Rapp - Quasi-Judicial**

Request by John McFall on behalf of Joseph Luk for approval of a conditional use to allow an automotive transmission repair/replacement facility in a C-5/CR (Commercial with conditions of record) zone consisting of .50 acres located northeast of Betty Drive and Van Teylingen Drive at 3616 Betty Drive.

Commission Jones commented he pulled this item off the Consent Calendar because of a statement by the Fire which says, "Plans are disapproved for Fire Department requirements."

Gary Rapp, Development Services Division, said another technical revision can be added to staff's recommendation so the applicant can meet the Fire Department's requriements. The applicant will have to do some redesign of the site in order to respond to staff's revisions on the development plan. These will be coordinated with the Fire Department.

Brett Lacey, City Fire, said one of the issues is to let the applicant know that this type of occupancy may need additional Fire Code requirements that were not anticipated. A second concern was the issue of access. City Fire would like the applicant to come in and discuss the scope of this facility so we can resolve the issues.

Speaking for:

Jon McFall, applicant, said he wasn't aware of any objection from the Fire Department so we're willing to discuss the issues with them.

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It was moved by Commissioner Bevington, seconded by Commissioner Esmiol to approve a conditional use to allow an automotive transmission repair/replacement facility in a C-5/CR (Commercial with conditions of record) zone consisting of .50 acres located northeast of Betty Drive and Van Teylingen Drive at 3616 Betty Drive with the following technical revisions to the development plan:

1. **Show existing and proposed topography.**
2. **Show required public sidewalk with pedestrian ramps where required.**
3. **Correct parking formula (1/200) and total required spaces to 27.**
4. **Relocate building or reduce size to accommodate parking and landscaping requirements.**
5. **Delete 5 gallon specification from tree sizes.**
6. **Show all plants at approximate mature size.**
7. **State type of equipment and methods to be used to irrigate required landscaping.**

CITY PLANNING COMMISSION

ITEM NO(S): L.
STAFF: Gary Rapp
FILE NO(S): CPC CU 95-148 - Quasi-Judicial

PROJECT: Spirit World Wine & Liquor sales

APPLICANT: Keith D. McCandless

OWNER: Richard Bingman & Ralph Young

PROJECT DESCRIPTION:
Approval of a conditional use to allow 19,300 sq. ft. of retail sales of wine and liquor (warehouse format) in an M-1 zone.

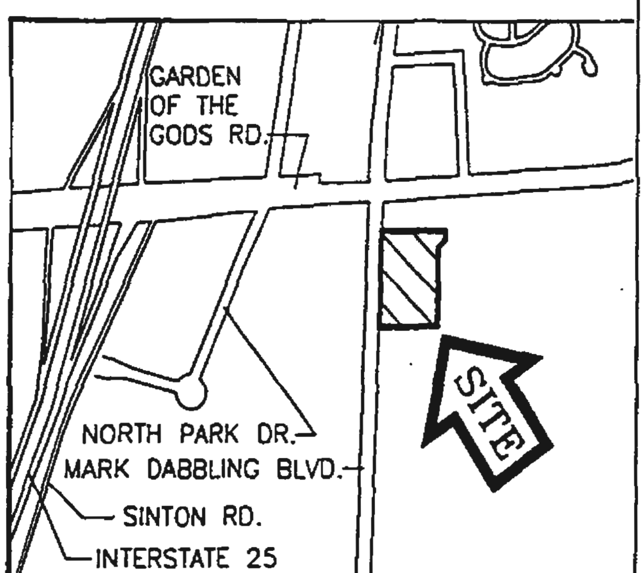
STAFF'S RECOMMENDATION:
Approve the conditional use for retail sales of wine and liquor (warehouse format) in an M-1 zone.

The following technical revisions to the development plan must be completed before final approval is granted:
1. Note proposed conditional use as "retail sales of wine and liquor (warehouse format)" and show correct boundary of 19,300 sq. ft. retail area.
2. Correct the Parking Schedule to include all uses and show seven additional parking spaces.
3. Note file number, CPC CU 95-148, in lower right-hand corner and fold 8 1/2" x 14".

Ten copies of the revised development plan shall be submitted to the Development Services Division by June 16, 1995.

SUMMARY:
1. Request conforms to Conditional Use Criteria of Zoning Ordinance Section 14.1-4-8.
2. With revisions, request will conform to Development Plan Submittal and Review Criteria of Zoning Ordinance Article 4 so as to insure use to use compatibility.

COMPREHENSIVE PLAN:
Policy 4.3.2



BACKGROUND:

Existing Zoning/Land Use - M-1/Carpet & furniture sales
Surrounding Zoning/Land Use - North - M-1/vacant
FIGURE 1 South - M-1/Police impoundment lot
East - R-5/Pikeview Reservoir
West - M-1/Wholesale distribution

History - Buildings constructed in 1968 and 1974.
Annexation - April, 1967.
Zoning - Zoned M-1 at annexation. Conditional Use CPC CU 94-154 approved in 1994 for carpet and furniture showroom/retail.
Subdivision - BY Subdivision No. 2.
Zoning Enforcement - 6-18-86 violation junk. 9-9-86 junk removed.
Proposal - **(FIGURE 2)** Approval of a conditional use to allow 19,300 sq. ft. of retail sales of wine and liquor (warehouse format) in a 44,100 sq. ft building in an M-1 zone.
Physical Characteristics - Site is developed with a 44,100 sq. ft. warehouse building and a 1600 sq. ft. office building with paved parking and loading areas.
Master Plan - None.

DEPARTMENTAL REPORTS:

Traffic Engineering - Installation of a public sidewalk shall be required per city standards.
Electric - Contact Electric Field Engineering Office at 636-5563 PRIOR to start of construction. Note: Any alterations to existing electric facilities will be at developer's expense.
Fire - Standard comments 1 and 3. An inspection will be required to be made by the C.S.F.D. to insure this facility is in compliance with fire codes. The building will be required to be a fully sprinklered facility, and if high piled stocking is to be done, the building will need to meet Article 81 for high piled stocking along with NFPA 231C sprinkler system requirements in the warehouse areas. This request will not be accepted by the C.S.F.D. until additional information has been submitted concerning the exact type of facility this building will be, and specific data on the types of storage, stacking, commodities, etc. that will be kept in this building. An on site fire inspection will also be required to be made to insure compliance with fire sprinkler requirements and fire code compliance.
All Other Reporting Departments - Standard or no comment.

PETITIONER'S JUSTIFICATION: FIGURE 3

ANALYSIS OF MAJOR ISSUES:

CONFORMANCE WITH CONDITIONAL USE CRITERIA OF ZONING ORDINANCE SECTION 14.1-4-8

1. **The values and qualities of the surrounding neighborhood must not be substantially injured.** There are other nearby retail uses in this M-1 zone, such as the recreational vehicle dealer and Circle Ranch Supply on Garden of the Gods Road, as well as the adjacent Taco John's Restaurant. Adequate off-street parking is provided and Mark Dabling Boulevard is wide enough to handle traffic to the proposed business.

2. **The conditional use must be consistent with the intent and purpose of the Zoning Ordinance to promote health, safety and general welfare.** The proposed showroom/retail use will pose no unusual hazards.

3. **The conditional use must be in keeping with the Comprehensive Plan of the City.** Comprehensive Plan Policy 4.3.2 states, "Utilize zoning to permit a limited number of areas for lower cost commercial and industrial sites." This site and building are appropriate for retail sales of wine and liquor (warehouse format) without the costs of a prime commercial location or major compatibility issues.

The three criteria for approval of a conditional use are met.

CONFORMANCE WITH DEVELOPMENT PLAN SUBMITTAL AND REVIEW CRITERIA OF ZONING ORDINANCE ARTICLE 5

The development plan will meet the submittal requirements and review criteria of Article 5 subject to the following technical revisions:

1. Note proposed conditional use as "retail sales of wine and liquor (warehouse format)" and show correct boundary of 19,300 sq. ft. retail area.
2. Correct the Parking Schedule to include all uses and show seven additional parking spaces.
3. Note file number, CPC CU 95-148, in lower right-hand corner and fold 8 1/2" x 14".

Motion by Are' Cook, second by Forrest, that this matter be withdrawn from the agenda. The motion unanimously carried. Absent, Councilmember Makepeace.

PUBLIC HEARINGS

14. **Public Hearing for the purpose of approving revisions to the 1995 Consolidated Funding application to the U.S. Department of Housing and Urban Development. The revision changes the approved 1995 Annual Action Plan in the Five Year Consolidated Plan, which includes all 1994 Program Year Close Out Funds and reflects all CDBG ($7,257,654), ESG ($112,000) and Home Funds ($2,039,405.).**

Motion by Young, second by Are' Cook, that the revisions to the 1995 Consolidated Funding application to the U.S. Department of Housing and Urban Development be approved. The motion unanimously carried. Absent, Councilmember Makepeace.

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15. **Public Hearing on an appeal by Terry Cohen on behalf of Silco Distributing Company of the Fire Board of Appeals decision relating to a request by Paul LaBate, Silco Distributing Company, for revocation of Order Notice EAG-221 which was issued for failure to remove the underground fuel storage tanks at 530 West Garden of the Gods Road.**

City Attorney Colvin stated Silco has filed a lawsuit against Midas to determine who is to remove the tanks; that he does not see any point in asking Silco to remove the tanks and recommends the extension be granted to Silco until this matter is decided in Court.

Motion by Hazlehurst, second by Forrest, that this matter be postponed until a determination has been made by the Court regarding removal of the tanks. The motion unanimously carried. Absent, Councilmember Makepeace.

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Councilmember Are' Cook was excused.

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16. **CPC CU 95-148: Public Hearing on an appeal by Cross, Gaddis, Kin, Herd and Kelly, P.C., on behalf of Jack Mason of a request by Keith D. McCandless on behalf of Richard Bingman and Ralph Young for approval of a conditional use to allow retail sales within an existing warehouse building in an M-1 (Light Industrial) zone consisting of 3.46 acres located southeast of Garden of the Gods Road and Mark Dabling Boulevard at 4401 Mark Dabling Boulevard.**

Gary Rapp, Development Services, gave a brief overview of the request and stated the Planning Commission unanimously approved this request and the Department is recommending approval as well.

Keith McCandless, applicant, stated his application and request is based on the prior use of this corner and he believes it meets the criteria.

Jack Mason stated he is opposed to the proposal for retail liquor sales at 4401 Mark Dabling Boulevard; that requests like this continue to change the character of the neighborhoods and adversely impact traffic. He stated this request is not necessary because there are other areas throughout the City zoned for this type of use.

Motion by Purvis, second by Guman, to overturn the decision of the Planning Commission and deny the applicant's request for a conditional use.

Ayes: Gillaspie, Guman, Forrest, Hazlehurst, Purvis
Noes: Isaac, Young
Absent: Are' Cook, Makepeace

Mayor Isaac declared the motion carried.

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17. **CPC P 95-162: Public Hearing on an appeal by Gregory D. Timm on behalf of Keith Ringler of a request by the City of Colorado Springs for the expansion of the Hillside Overlay consisting of 168.31 acres zoned R-Estate (Single-Family Residential), R-2/P (Two-Family Residential with Planned Provisional Overlay), R-2 (Two-Family Residential), R-1 6000/P (Single-Family Residential with Planned Provisional Overlay), r-1 6000 (Single-Family Residential) and PK (Park) located west of Mesa Road and north and south of Uintah Street.**

Motion by Young, second by Guman, that this matter be postponed to the Council meeting of July 11, 1995. The motion unanimously carried. Absent, Councilmembers Are' Cook and Makepeace.

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18. **CPC DS S 94-289P: Public Hearing on an appeal by Becker-Johnson, Inc., on behalf of Keith A. Ringler of a request for preliminary plat approval of Ringler Subdivision No. 2 consisting of 4 lots on 4.2 acres zoned R-Estate (Single-Family Residential) located southwest of Mesa Road between Mesa Road and Oswego Street.**

Motion by Young, second by Guman, that this matter be postponed to the Council meeting of July 11, 1995. The motion unanimously carried. Absent, Councilmembers Are' Cook and Makepeace.

CITY PLANNING COMMISSION

STAFF: Quinn Peitz
FILE NO(S): CPC CP 85-178-A1 (95) - Quasi-Judicial
CPC SP 95-216 - Quasi-Judicial
CPC SP 95-216-A1 - Quasi-Judicial
CPC SP 95-216-A2 - Quasi-Judicial
CPC SP 95-216-A3 - Quasi-Judicial
CPC SP 95-216-A4 - Quasi-Judicial

PROJECT: United Technologies Microelectronics Corporation/Rockwell International

APPLICANT: NES, Inc.

OWNER: United Technologies Microelectronics Corporation

STAFF'S RECOMMENDATION:
Approve the revised concept plan; approve the height variances; approve the extensions of the expiration dates. The Concept Plan should have the following conditions placed on it:

1. An eastbound continuous right turn lane should be constructed along the entire property frontage beginning 380' prior to the west access (including a 180' taper) and continuing to 480' past the east access including a 180' taper.
2. A raised median should be constructed on Garden of the Gods Road along the entire frontage. The east access when moved 270' to the east should be converted to a three quarter movement access, permitting all turning movements except northbound left turn. Further widening of Garden of the Gods Road will likely be necessary as not to force elimination of the eastbound left turn lane at the Kaman/Safetran intersection and be able to provide adequate stacking distance.
3. The proposed main access should be signalized with northbound and southbound dual left turn lanes. A dual left turn lane should be provided westbound to accommodate the large volume of left turns into the site during the morning peak hours.
4. The west access should be limited to right in and right out turning movements only.

SUMMARY:

1. With revisions, request will conform to the Concept Plan Submittal
2. Request conforms to Non-use Variance Criteria of Zoning Ordinance Section 14.1-7-103.
3. Request conforms to allowing an extension of the expiration date for variances and concept plans.

BACKGROUND:

Existing Zoning/Land Use - PIP-1 (Planned Industrial Park)/Industrial and R & D Business

Surrounding Zoning/Land Use - North - PIP-1(Planned Industrial Park)/Industrial and R & D
South - PIP-1, PUD, R-1-6000/DF/HS (Planned Industrial Park, Planned Unit Development, Single Family Residential with Design Flexibility and Hillside Overlay)/Vacant Land and Residential
East - PIP-1 (Planned Industrial Park)/ Industrial and R & D Business
West - PIP-1 (Planned Industrial Park)/Industrial and R & D Business

Annexation - Mesa Addition No. 2, July 1971 and Pope's Bluff Addition No. 2, April 1968.

Zoning - PIP-1 zoning established at time of annexation.

Subdivision - Unplatted.

Zoning Enforcement Action - None.

Master Plan - None.

DEPARTMENTAL REPORTS:

CPC CP 85-178-A1 (95):

City Engineering - No comment.

Traffic Engineering - This development shall be financially responsible for the following improvements necessary to accommodate the additional traffic volumes generated by the proposed facilities additions:

1. An eastbound continuous right turn lane should be constructed along the entire property frontage beginning 380' prior to the west access (including a 180' taper) and continuing to 480' past the east access including a 180' taper.
2. A raised median should be constructed on Garden of the Gods Road along the entire frontage. The east access when moved 270' to the east should be converted to a three quarter movement access, permitting all turning movements except northbound left turn. Further widening of Garden of the Gods Road will likely be necessary as not to force elimination of the eastbound left turn lane at the Kaman/Safetran intersection and be able to provide adequate stacking distance.
3. The proposed main access should be signalized with northbound and southbound dual left turn lanes. A dual left turn lane should be provided westbound to accommodate the large volume of left turns into the site during the morning peak hours.
4. The west access should be limited to right in and right out turning movements only.

Electric - Need to show easements for existing electric facilities. Any alterations to existing electric facilities will be at developer's expense.

Water - Maximum finished floor service elevation - 6,570' (USGS datum based). The City of Colorado Springs does not guarantee water to the subject area. Allocation of the water to service this area will depend upon the supply available at the time of application. The City's policy if first come, first serve. A water plan showing the location of all existing and proposed water mains, valves, hydrants, storm sewers, sidewalks, street curbs and any other structures must be submitted to and approved by the Colorado Springs Fire Department and the Water Division. All 12" and smaller water mains must be installed at the expense of the owner/developer of the property and in accordance with Water Division and Colorado Springs Fire Department requirements. Water mains larger than 12" are installed in accordance with the major main policy, a copy of which can be obtained from the Water Division System Engineer's Office.

Gas - Request denied. Should show easement on east side of plan for 2" plastic gas main that exists in private street.

Wastewater - Request for approval of the amendment to the concept plan is acceptable. Public wastewater mainline exists in 100' on-site utility/drainage easement. Private wastewater mainline exists on-site. Wastewater mainline or service line extension will be required by the developer.

Police - Standard comment 1.

Fire - Disapproved. Throughout the development/site, a minimum of 28' wide roadways must be maintained at all times for all C.S.F.D. required accessways. Amendment plan approved for hazardous materials review only. Facility to meet Article 51-UFC 1994-5101.1, semi-conductor facilities. This facility will be required to comply with all hazardous material requirements for semi-conductor fab Article 51 of the

fire code and UBC H-6 Hazardous requirements of the building codes. Standard comments 1, 2, 3, 8, 10, 11 and 12.
Parks - The trail easements as shown are approved and requested by the Parks and Recreation Department.
Regional Building - Portions of this site are located in a designated 100 year floodplain. Development of these areas are subject to the floodplain development regulations.
County Health - Earthmoving activities which exceed one acre must have a construction activity permit prior to commencement of project. Please contact Air Quality at 578-3137.
All Other Reporting Departments - Standard or no comment.

CPC SP 95-216, -A1, -A2, -A3 and -A4
City Engineering - No comment.
Traffic Engineering - Standard comment.
Electric - Standard comments.
Water - See CPC CP 85-178-A1 (95).
Gas - Request denied. See CPC CP 85-178-A1 (95).
Wastewater - Request for approval of the variance is acceptable.
Police - Standard comment 1.
Fire - Standard comments 1, 2, 3, 8, 10, 11 and 12. Facility to comply with all applicable fire and building codes for hazardous facilities.
Parks - No comment.
County Health - Earthmoving activities which exceed one acre must have a construction activity permit prior to commencement of project. Please contact Air Quality at 578-3137.
All Other Reporting Departments - Standard or no comment.

PETITIONER'S JUSTIFICATION: See Attachments

ANALYSIS OF MAJOR ISSUES:
1. Conformance with Concept Plan Submittal and Review Criteria of Zoning Ordinance Article 4.
2. Conformance with Non-use Variance Criteria of Zoning Ordinance Section 14.1-9-902.
3. Waiver of the requirements for the expiration to non-use variances and concept plans.

CONFORMANCE WITH NON-USE VARIANCE CRITERIA OF ZONING ORDINANCE SECTION 14.1-7-103

A variance to Zoning Ordinance Section 14.1-8-103.A.18, to allow where this is not allowed in a PIP-1 zone, must meet the review criteria for variances listed in Zoning Ordinance Section 14.1-7-103 discussed below:

1. Existence of Extraordinary Physical Conditions: This property sits slightly below adjacent properties in this area. This topography allows for buildings to go higher then the 45 foot requirement without blocking significant views of the foothills. The nearest residential uses are hundreds of feet away. The Garden of the Gods corridor is design for high-tech industrial buildings which face the main thoroughfare. This criteria is met.
2. No Reasonable Use: Since 1991, all wafer manufacturing facilities have had to seek height variances. These variances have been as high as 80 feet. With the exclusion of the nitrogen tower, the new buildings at this facility will not exceed 75 feet.
3. No Adverse Impact on the Surrounding Properties: There have been meetings with the adjacent property owners to discuss impact. Those property owners have had no objections to this use or the variances being requested. The Chelsea Glen neighbors will still have visibility to the foothills

The three criteria for a non-use variance are met.

CONFORMANCE WITH CONCEPT PLAN SUBMITTAL AND REVIEW CRITERIA OF ZONING ORDINANCE ARTICLE 4

The concept plan meets all the review and submittal requirements as outlined in Article 4 of the Zoning Ordinance. The following conditions should be placed on the concept plan:

1. An eastbound continuous right turn lane should be constructed along the entire property frontage beginning 380' prior to the west access (including a 180' taper) and continuing to 480' past the east access including a 180' taper.
2. A raised median should be constructed on Garden of the Gods Road along the entire frontage. The east access when moved 270' to the east should be converted to a three quarter movement access, permitting all turning movements except northbound left turn. Further widening of Garden of the Gods road will likely be necessary as not to force elimination of the eastbound left turn lane at the Kaman/Safetran intersection and be able to provide adequate stacking distance.
3. The proposed main access should be signalized with northbound and southbound dual left turn lanes. A dual left turn lane should be provided westbound to accommodate the large volume of left turns into the site during the morning peak hours.
4. The west access should be limited to right in and right out turning movements only.

WAIVER OF THE REQUIREMENTS FOR THE EXPIRATION TO NON-USE VARIANCES AND CONCEPT PLANS

Section 4-204 of the Zoning Ordinance states that variances may be considered to the requirements of the Zoning Code. The applicant is requesting that the expiration dates for both non-use variances and concept plans be extended to eight years. Currently, non-use variances expire in one year and concept plans expire in four years.

The applicant is making this request to the City Council so the variance and concept plan will be good during the duration of the construction of the two new buildings. Due to the large nature of the facility and the enormous expense of the wafer manufacturing plant, the applicant would like some guarantee that the project would not be subject to an expiration date.

Garden of the Gods Road is slated for high-tech manufacturing and will be for the long term. No major changes are proposed for this manufacturing corridor. Extending the time to eight years will not hamper future development of the area or negatively impact adjacent properties. The staff recommends approval of the extension.

UTMC CONCEPT PLAN
DESCRIPTION

The UTMC Campus is located at 1575 Garden of The Gods Road. The Campus consists of an existing manufacturing (microelectronics) facility and accessory structures, including a nitrogen distillation tower for which a height variance has been granted. Current access to the site is via two driveways to Garden of The Gods Road and a secondary access drive through property owned by Hamilton Standard to Centennial Blvd.

The proposed use of the vacant land portion of the Campus is depicted on a drawing entitled UTMC Master Plan which has been approved by the City as a Development Plan. The currently approved plan envisions expansion of new buildings to the west of the existing main building.

This request proposes to modify the approved plan for the site to suit the needs of a prospective purchaser/user. Expansion of manufacturing facilities are proposed to occur in phases, west of the existing plant. Total site development, including existing buildings, is anticipated to be 1,290,000 square feet or about 60,000 more than shown on the current plan for the site. Because increased automation has become an industry wide standard, there will be a reduction of employees planned for the site, from 7000 to 4500. Proposed manufacturing buildings will be 75 feet high with vents 20 feet above the roof. Accessory structures will include a 90 foot nitrogen distillation tower, an electric substation, a mechanical plant, and other structures as shown on the Concept Plan.

Employee parking will be provided throughout the site. Access to the site will be from three access points to Garden of The Gods Road and from a street to Centennial Blvd.

At build out of the site, 4500 employees will occupy the Campus, in three work shifts. The site will be landscaped to provide a campus appearance consistent with the most attractive users of the vicinity. Particular attention will be given to screening from existing and proposed future residents to the south.

UTMC VARIANCE JUSTIFICATION

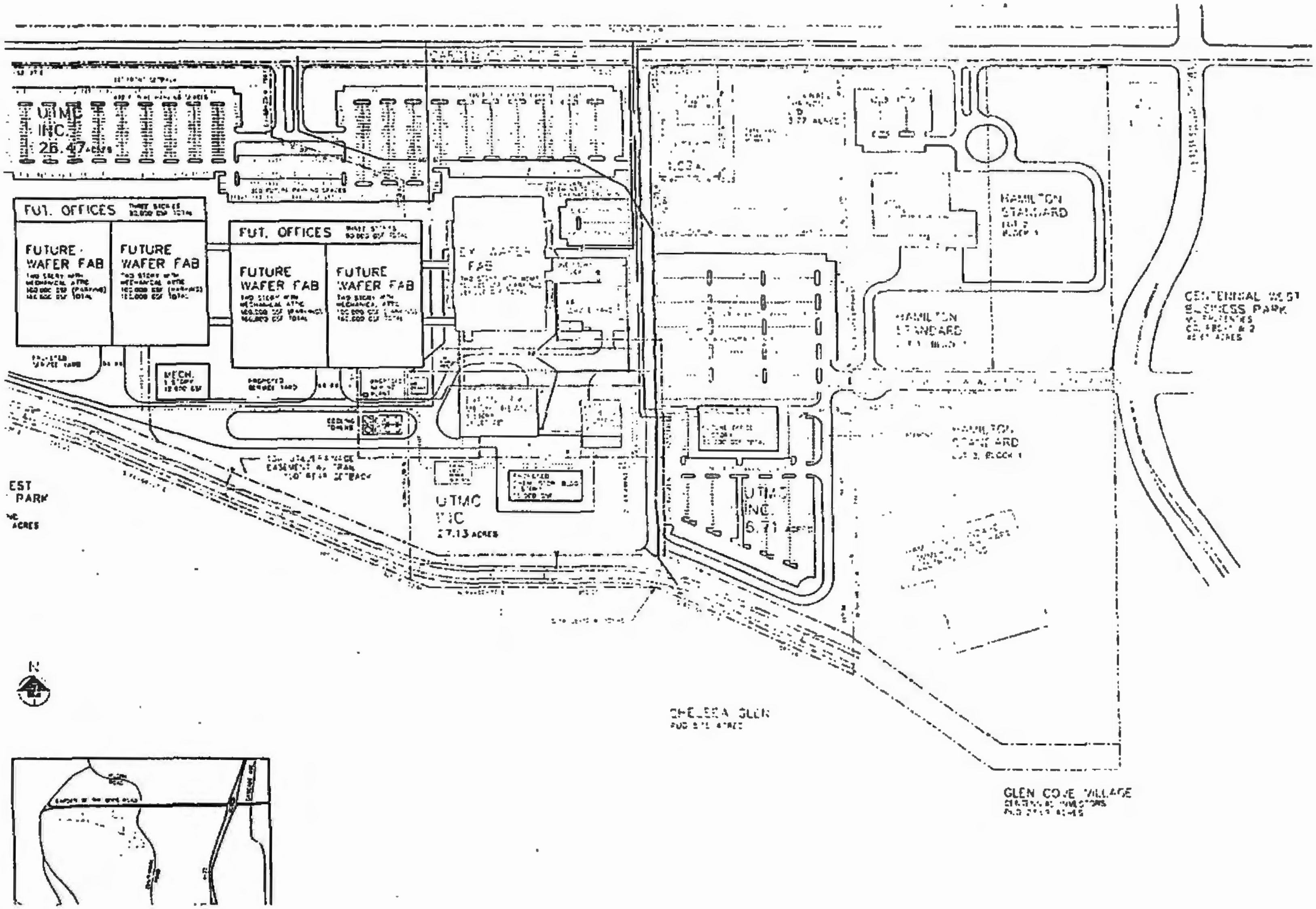
UTMC is in the process of selling its Colorado Springs facility to an internationally known American microelectronics manufacturer. The user intends to expand the existing facilities over the next 15 years as demand for its products increases. In order to ensure that this site can be put to the use for which it is being purchased by the user, UTMC is requesting a height variance for proposed buildings and equipment. The specific requests are to permit a building height of 75 feet with 20 foot vents above the roof for two new FAB buildings; to permit a 90 foot nitrogen distillation tower; and to establish a time frame during which the variance must be used. The time frame requested is for the variance to have a 8 year expiration date, during which time a building permit for Phase One shall be obtained; and that upon receipt of a Certificate of Occupancy for Phase One, the height variance will remain in effect for an additional five years, during which time a building permit for Phase Two shall be obtained.

The building heights and the assurances that a variance can be used are consistent with the needs of high-tech users. Height variances or high rise overlay zoning has been granted to every new high-tech building in Colorado Springs in the last 5 years, including MCI, USAA, NCR, ATMEL and 3M. The Garden of The Gods Road Corridor has been planned and developed as a high-tech manufacturing district for over 20 years. As technology in manufacturing has changed, it has created building needs that were not foreseen when the Zoning Ordinance was written, leading to variance requests for these facilities.

The specific site for which height variances are being requested is situated in the center of the Garden of The Gods industrial area. The ground is low relative to Garden of The Gods Road and in fact is approximately 40 feet lower than an industrial site adjacent to it to the southwest. The property is bounded on three sides by industrial users. While residential uses exist to the southeast, these homes are a considerable distance from the proposed new buildings. A visual analysis of the proposed building has been prepared to evaluate and mitigate potential impacts. Architecture, color and landscaping are being proposed to soften the potential visual impact of the proposed buildings to these homes.

Variance Request

Variance to be in effect for eight years during which time Building Permit shall be requested for Phase One. Variance to remain in effect for an additional five years after Certificate of Occupancy for Phase One, during which time Phase Two Building Permit shall be requested.



AE Associates, Inc.
Engineers and Scientists
1013 37th Avenue Court
Greeley, Colorado
(970) 350-7130

SITE DATA

TOTAL SITE AREA:
61.33 ACRES

TOTAL BUILDING COVERAGE:
22 %

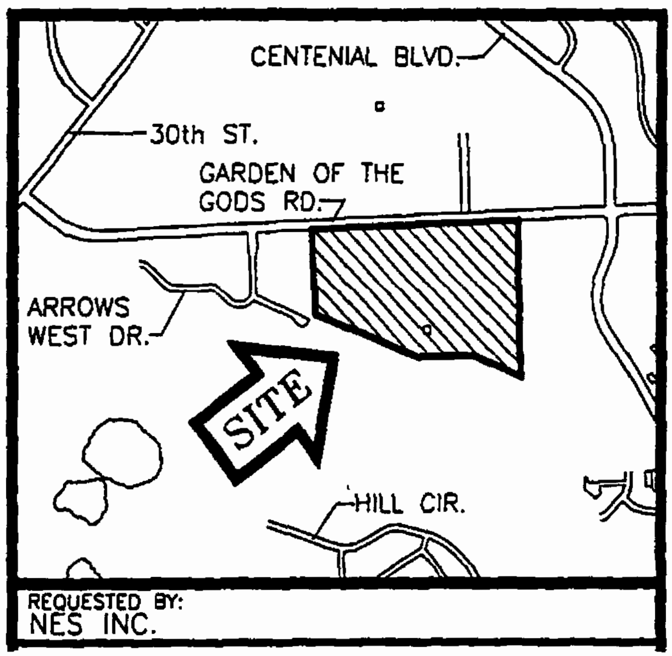
TOTAL BUILDING AREA:
1,209.4 KSF

FUTURE BUILDINGS:
910.8 KSF

EXISTING BUILDINGS:
298.6 KSF

TOTAL PARKING REQUIRED:
1,200 SPACES

TOTAL PARKING PROVIDED:
2,060 SPACES


CENTENIAL BLVD.
30th ST.
GARDEN OF THE GODS RD.
ARROWS WEST DR.
SITE
HILL CIR.
REQUESTED BY:
NES INC.

NOTES TO BE ADDED TO UTMC CONCEPT PLAN

1. Separate gas service lines to be provided for each building.

2. The following street improvements will be made in phases as required to serve the site:
   a. An eastbound continuous right turn lane should be constructed along the entire property frontage beginning 380' prior to the west access (including a 180' taper) and continuing to 480' past the east access including a 180' taper).

   b. A raised median should be constructed on Garden of the Gods Road along the entire frontage. The east access when moved 270' to the east should be converted to a three quarter movement access, permitting all turning movements except northbound left turn. Further widening of Garden of the Gods Road will likely be necessary as not to force elimination of the eastbound left turn lane an the Kaman/Safetran intersection and be able to provide adequate stacking distance.

   c. The proposed main access should be signalized with northbound and southbound dual left turn lanes. A dual left turn lane should be provided westbound to accommodate the large volume of left turns into the site during the morning peak hours.

   d. The west access should be limited to right in and right out turning movements only.

3. Adequate roadway widths will be provided throughout the site for fire fighting purposes.

Item #30

Letter to Colorado Springs Liquor Board

Date: May 23, 1995

Re: Opposition of Transfer of Liquor License for Pure Energy Nightclub
from 120 W. Cimarron to 2106 E. Platte

.We the undersigned business owners and residents in the immediate area of 2106 East Platte oppose the transfer of the liquor license for the Pure Energy Nightclub.

The Knob Hill area is making an effort to re-establish businesses to attract more residents and tourist. The area is in a revitalization zone and improvements are still under way. The Knob Hill neighborhood is changing from a troubled area to a small business corridor. More efforts are being undertaken through advertising and property improvements to induce more walk though traffic and thereby changing the image of the Knob Hill business area form a bar strip to a business center.

Currently within the boundaries set as the survey area for Pure Energy there are seven bars or taverns licensed to sell and/or serve liquor, two nightclubs and one topless bar. Nine of those establishments are within Union and Circle on Platte Avenue. An additional night club that may also cater to minors would be sandwiched between two taverns is excessive, especially on the one block between Iowa and Prairie streets.

WAS ALWAYS SANDWICHED

The associated problems of a night club are also are real concern. A 1994 police crime analysis report cites 40 police call outs to the Pure Energy establishment on 210 Cimarron St. The call outs are a type this area would like to avoid, especially at night. (See attached police analysis report)

The site Pure Energy has chosen to re-open its doors has limited access, limited parking and is very close to residents and business neighbors who will immediately feel and hear the effects of the club and it's patrons. Previous taverns / night clubs at that same location caused businesses and residents in the immediate area to be wary. Business owners and residents have witnesses the use of drugs, stabbings, shooting, drive by gunfire, fights, littering of liquor bottles and cans through out the area, loitering of bar patrons with loud and annoying car stereos, and broken windows. We have witnessed bar patrons urinating in the streets and on buildings as well as intoxicated persons trying to cross a busy street. Residents and business owners have had to endure loud music and the annoying bass sound from a poorly insulated building and have had to post signs so club patrons would not park on private property or driveways. All of this goes on while tourist are driving into our city from the east. These situations has caused some residents as well as business owners to call on the already taxed resources of the police.

Item # 36
E. Kaiser 8/8/95

We oppose the transfer of the liquor license for the above reasons and because the site has been a bar or club in the past does not mean that it should continue to be, neighborhoods do change.

1.) 1. Signature/Date Dominick S. Pollino 5-23-95
DOMINICK S. POLLINO
Print Name Address Business Name (if applicable)
2105A. E. PLATTE DOMINICKS

2.) 2. Signature /Date Mark Krabbenhoft
MARK KRABBENHOFT 310 Sunset Rd. 80909
Print Name Address Business Name (if applicable)

3.) 3. Signature /Date Roylene Horn 5/23/95
Print Name Address Business Name (if applicable)
Roylene Horn 308 Sunset 80909 Bargain House

4.) 4. Signature /Date C R Eckhoff 5-23-95
Print Name C R Eckhoff Address 2203 E Bould Eckhoff Firestone
Business Name (if applicable)

5.) 5. Signature/Date Vileen Hostetler
Print Name Address Business Name (if applicable)
Vileen Hostetler 315 Sunset Rd 80909

6.) 6. Signature /Date Mark Ford 5/23/95
Print Name Address Business Name (if applicable)
MARK FORD 2214 E. Platte Monarch Magazine

7.) 7. Signature/Date Sharon Bramhall 5/23/95
WIFE & HUSBAND SAME ADDRESS BUSINESS
Print Name Address Business Name (if applicable)
SHARON BRAMHALL 2200 E. PLATTE AVE FURNITURE CONNECTION

8.) 8. Signature/Date Ron Bramhall
Print Name Address Business Name (if applicable)
RON BRAMHALL 2200 E. PLATTE AVE The FURNITURE CONNECTION

9.) 9. Signature/Date Manuel Rivera May 23/95
Print Name Address Business Name (if applicable)
Daniel Rivera 2114 E Platte Dan's Barber Shop

We oppose the transfer of the liquor license for the above reasons and because the site has been a bar or club in the past does not mean that it should continue to be, neighborhoods do change.

1. Signature/Date 5-23-95

10.) Print Name James Tubbs Address 2211 E Platte CS/CSO7 Business Name (if applicable) Big Jims Loans

2. Signature /Date Gloria J. Christiaens 5/23/95

11.) Print Name GLORIA J. CHRISTIAENS Address 2107 & 2109 E. Platte Business Name (if applicable) QUALITY Home Improvement

3. Signature /Date John W Snider 5-24-95

12.) Print Name John W. Snider Address 2204 E Bijou Business Name (if applicable) Business Advisory & Tax Service Inc. dba Income Tax Center

~~4. Signature /Date~~

Print Name David H. Hanson Address 2220 E. Bijou Business Name (if applicable) Dist. Tesla Society

5. Signature/Date 2220 E. Bijou St.

13.) Print Name David H. H Address Business Name (if applicable)

6. Signature /Date Deborah Stinson

14.) Print Name DEBORAH STINSON Address 2132 E. BIJOU Business Name (if applicable) CPCD

7. Signature/Date Sheri D Wright

15.) Print Name Sherri D Wright Address 2128 E Bijou Business Name (if applicable) AARP/SCSEP

8. Signature/Date Roger Osten

16.) Print Name Roger Osten Address 2021 E Platte Business Name (if applicable) Ugly Duckling Rent A Car

9. Signature/Date Larry G Ross 5-24-95

17.) Print Name LARRY G ROSS Address 2011 E. PLATTE Business Name (if applicable) ACTION AUTO GLASS

We oppose the transfer of the liquor license for the above reasons and because the site has been a bar or club in the past does not mean that it should continue to be, neighborhoods do change.

1. Signature/Date

18.) Print Name Address Business Name (if applicable)
James McKaye 2226 E Platte Trinity Motors Inc

2. Signature /Date Don Belgrave 4-24-95

19.) Print Name Address Business Name (if applicable)
Don Belgrave

323 Iowa Ave Commercial Radiator

3. Signature /Date Chuck Reopelle 5/24/95

20.) Print Name Address Business Name (if applicable)
2209 E Platte #6 City Chuck Reopelle

4. Signature /Date Jean Haynes 5-24-95

SCD
E PRIOR 21.) Print Name Address Business Name (if applicable)
JEAN HAYNES 319 N. IOWA ACTION SIGNS

initially agreed before knowing any detail on church [illegible]

5. Signature/Date Larry Talcott 5/24/95 TOYOTA TECH

22.) Print Name Address Business Name (if applicable)
LARRY TALCOTT 325 N. IOWA TOYOTA TECH

23.) 6. Signature /Date 5-24-95

Print Name Address Business Name (if applicable)
GORDON R. HOFFMAN 2227 E. PLATTE AVE CITY GLASS CO.

24.) 7. Signature/Date

Print Name Address Business Name (if applicable)
Jeff McIntyre 2122 E Platte Shanty Pub

25.) 8. Signature/Date Jacqueline Chilton

Print Name Address 314 N. IOWA Business Name (if applicable)
JAMES M. Chilton Auto Revivers

26.) 9. Signature/Date Gustavo Gonzales 5-30-95

Print Name Address Business Name (if applicable)
GUSTAVO GONZALES 2105 E PLATTE HEILDELBERG MOT

We oppose the transfer of the liquor license for the above reasons and because the site has been a bar or club in the past does not mean that it should continue to be, neighborhoods do change.

1. Signature/Date

27.) Print Name Address Business Name (if applicable)
Gary V. Wilcox 2101 E. Platte Ave. Camping Country

2. Signature /Date 5/25/95

28.) Richard A Schaeffer 2022 E Platte Ave 1995 Auto Sales Inc
Print Name Address Business Name (if applicable)

3. Signature /Date Wayne O. Tucker Pres.

29.) Print Name Address Business Name (if applicable)
/ Wayne O. Tucker 2225 E. Platte Ave, Tile + Carpet

4. Signature /Date Michelle Medina May 30 1995
OMIT MICHELLE MEDINA 2105 E. PLATTE HEIDELBERG MOTEL
Print Name Address Business Name (if applicable)

5. Signature/Date
Print Name Address Business Name (if applicable)

6. Signature /Date

Print Name Address Business Name (if applicable)

7. Signature/Date

Print Name Address Business Name (if applicable)

8. Signature/Date

Print Name Address Business Name (if applicable)

9. Signature/Date

Print Name Address Business Name (if applicable)

We oppose the transfer of the liquor license for the above reasons and because the site has been a bar or club in the past does not mean that it should continue to be, neighborhoods do change.

1. Signature/Date _______ 5-24-95

25.) Print Name Address Business Name (if applicable)

Tony DuPree 2204 E. Platte DuPree Appliance III.

2. Signature /Date _______

Print Name Address Business Name (if applicable)

3. Signature /Date _______

Print Name Address Business Name (if applicable)

4. Signature /Date _______

Print Name Address Business Name (if applicable)

5. Signature/Date _______

Print Name Address Business Name (if applicable)

6. Signature /Date _______

Print Name Address Business Name (if applicable)

7. Signature/Date _______

Print Name Address Business Name (if applicable)

8. Signature/Date _______

Print Name Address Business Name (if applicable)

9. Signature/Date _______

Print Name Address Business Name (if applicable)

Phone: (212) 695-3000

Fax: (212) 695-5584

Energy Records

545 Eighth Avenue, 17th Floor · New York, NY 10018

5/31/95

To whom it may concern,

As a national record label, we have been working with Pure Energy Nightclub for over two years. In this time, we have had numerous bands perform at the club with nothing but praise about the shows. There have never been any unsafe or chaotic stories reported by either the bands or anyone else associated with Pure Energy. They are professional and competent in their job.

Thank you,

Scott Pastorell

Scott Pastorell

Item #34
E. Kaiser 8/8/95

1021 East 20th Avenue • Denver, Colorado • 80205 • (303) 863-7588 • (303) 831-4501

June 1, 1995

BY FAX TO: (719) 633-8081

TO: Responsible Authorities — Colorado Springs Liquor Board
c/o Wendy Perelstein / Mosh, Inc.
FR: Jesse Morreale / GESS PRESENTS
RE: Pure Energy Nightclub

To Whom It May Concern:

Over the last two years, Gess Presents has been involved in producing events at Pure Energy Nightclub in its old location in Downtown Colorado Springs. After being involved with numerous productions with Pure Energy Nightclub and its proprietor Mark Sampson, we have found all parties to be honest and upstanding both individually and collectively. As with all events with which Gess Presents is involved, the Pure Energy shows have always been handled professionally, with great care given to providing a safe controlled environment for their patrons.

It is my opinion that facilities like Pure Energy are important to the community, giving young people someplace to gather that provides rules and regulations governing their activities. Without this type of establishment, our youth will be forced to provide their own sources of entertainment over which we will have no control. For this, and many other reasons, I believe that the means to move Pure Energy are granted to Mr. Sampson.

Best Regards,
GESS PRESENTS, Inc.

Jesse Morreale
President