

ORDINANCE NO. 7841

AN ORDINANCE APPROVING THE AMENDED AND RESTATED HISTORIC ARKANSAS RIVERWALK OF PUEBLO (HARP) AUTHORITY INTERGOVERNMENTAL AGREEMENT AND AUTHORIZING THE PRESIDENT OF THE CITY COUNCIL TO EXECUTE SAME

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The Amended and Restated Historic Arkansas Riverwalk of Pueblo (HARP) Authority Intergovernmental Agreement dated as of May 19, 2008, a copy of which is attached hereto, having been approved as to form by the City Attorney is hereby approved. The President of the City Council is authorized to execute the Intergovernmental Agreement in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same.

Section 2.

This Ordinance shall become effective upon final passage and approval.

INTRODUCED July 14, 2008

BY Judy Weaver
Councilperson

APPROVED: 
PRESIDENT of City Council

ATTESTED BY: 
CITY CLERK

PASSED AND APPROVED: July 28, 2008



**Background Paper for Proposed
ORDINANCE**

DATE: July 14, 2008

AGENDA ITEM # 36

DEPARTMENT: Law Department

TITLE

AN ORDINANCE APPROVING THE AMENDED AND RESTATED HISTORIC ARKANSAS RIVERWALK OF PUEBLO (HARP) AUTHORITY INTERGOVERNMENTAL AGREEMENT AND AUTHORIZING THE PRESIDENT OF THE CITY COUNCIL TO EXECUTE SAME

ISSUE

Should the City Council approve the amended and restated HARP Intergovernmental Agreement?

RECOMMENDATION

HARP Authority has requested that the agreement be approved.

BACKGROUND

The Urban Renewal Authority of Pueblo, Colorado ("Authority") has agreed to be a party to the HARP Intergovernmental Agreement ("Agreement") thereby necessitating modification to the Agreement dated December 1, 1997 which created the HARP Authority ("Original Agreement"). In addition to the Authority, parties to the Agreement are: City of Pueblo, Pueblo County, Board of Water Works of Pueblo and Pueblo Conservancy District.

Amendments to the Original Agreement generally relate to the Authority being a party; increasing the number of the members of the HARP Board of Directors ("Directors") from 5 to 7, providing that the Authority may appoint one new member and the other new member will be appointed by an appointment committee composed of 5 persons appointed by the governing bodies of the 5 parties to the Agreement; and providing that 4 Directors constituted a quorum and at least 4 Directors must approve any action of the Directors

The Agreement is restated to incorporate all prior addenda to the Original Agreement.

FINANCIAL IMPACT

Although not contractually binding on the parties to the Agreement and subject to annual appropriation, the Agreement sets forth the following share of contributions of HARP Authority's expenses in excess of revenues beginning in the year 2008:

City of Pueblo	50%
County of Pueblo	40%
Pueblo Conservancy District	\$50,000 per year (contingent, see below)
Authority	\$20,000 per year to be increased to \$50,000

Pueblo Conservancy District's contribution is subject to and contingent upon the District receiving funding from a proposed Maintenance Fee Assessment levied upon property benefited by the Arkansas River Levy maintained by the District. The District has not yet levied any Maintenance Fee Assessment, however, the District has paid its \$50,000 contribution for 2008.

Amended and Restated
Historic Arkansas Riverwalk of Pueblo (HARP) Authority
INTERGOVERNMENTAL AGREEMENT

THIS Amended and Restated Intergovernmental Agreement (the "Agreement") entered into as of May 19, 2008 between Pueblo, a Municipal Corporation, organized and existing under the constitution and laws of the state of Colorado (herein "City"); Pueblo County, Colorado, a political subdivision of the state of Colorado, organized and existing under the constitution and laws of the state of Colorado (the "County"); Pueblo Conservancy District, a special district organized and existing under the laws of the state of Colorado (the "District"); the Urban Renewal Authority of Pueblo, Colorado, a corporate body organized pursuant to the Laws of the State of Colorado ("URA") and the Board of Water Works of Pueblo, Colorado an independent body established, organized and existing under the charter of the City (the "Board"), (individually the "Party" and collectively the "Parties"), WITNESSETH:

RECITALS:

A. Sections 18(2)(a) and (b) of Article XIV of the constitution of the state of Colorado and the Colorado Intergovernmental Relationships statute, §29-1-2-1 et. seq. C.R.S., authorize political subdivisions to cooperate and contract with one another, including the establishment of a separate entity, to provide any function, service or facility lawfully authorized to each of the contracting units, including the sharing of costs, if such contract sets forth fully the purposes, powers, rights, obligations, and responsibilities, financial or otherwise, of the contracting parties.

B. Each of the Parties is a political subdivision as defined in the §29-1-202(2) C.R.S. and desires to cooperate and contract among themselves to create a separate legal entity to promote, manage, supervise, operate, develop, and maintain the project within the jurisdictional boundaries of each of the Parties known as the Historic Arkansas Riverwalk of Pueblo (the "HARP").

C. The Promotion, management, supervision, operation, development, and maintenance of HARP will be in furtherance of the purposes of, and within the powers and authority of each of the Parties.

D. The Parties, except URA, entered into an Intergovernmental Agreement dated December 1, 1997 creating the Historic Arkansas Riverwalk of Pueblo Authority (the "Original Intergovernmental Agreement").

E. The Original Intergovernmental Agreement has been amended and is further amended by this agreement, which amendments include but are not limited to the addition of URA as a Party. This Agreement constitutes a restatement of the Original Intergovernmental Agreement as it exists as of the effective date hereof.

AGREEMENT

In consideration of the foregoing Recitals and mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, County, District, URA and Board agree as follows:

ARTICLE I – DEFINITIONS

For purposes of this Agreement, the following defined terms shall have the meaning given to them in this Article:

1.1 “Act” means the Colorado Intergovernmental Immunity Act, §24-10-101 et. seq. C.R.S. and any amendments thereto or substitutions therefore.

1.2 “Bonds” means the \$12,850,000 City of Pueblo, Colorado Limited Tax General Obligation Bonds, Series 1996.

1.3 “Development Plan” or “Plan” means the HARP Program Diagram dated November 26, 1996 attached hereto as Exhibit “A” and as same may be hereafter amended by consent of all of the Parties to this Agreement.

1.4 “Land” means and includes Public Land and Private Land.

1.5 “Private Land” means, Lot 2, Block 1; Lot1, Block 2; Lots 2 and 3, Block 4; and Lots 1 and 2, Block 4 and facilities thereon within the Subdivision.

1.6 “Public Land” means all the land and facilities thereon within any Subdivision except the Private Land.

1.7 “Subdivision” means the Historic Arkansas Riverwalk Project, Filing One, as amended, from time to time, by the approval of both the City and the District.

ARTICLE II – HISTORIC ARKANSAS RIVERWALK AUTHORITY

2.1 There is hereby created and organized as a separate legal entity pursuant to §29-1-203 C.R.S., the Historic Arkansas Riverwalk of Pueblo Authority (the “Authority”), whose function, purpose and obligation shall be to promote, manage, supervise, operate, develop, and maintain HARP. The Authority shall be an agency and instrumentality of the State of Colorado separate from the Parties, and, except as otherwise specifically provided in the Agreement, shall not be subject to administrative direction by the Parties nor their respective officers or employees. The creation of the Authority, effective December 1, 1997, is hereby continued, approved, confirmed and ratified.

2.2 The governing body of the Authority shall be known as the HARP Board of Directors (HARP Board). The HARP Board shall consist of seven members, two appointed by the City Council of City, one appointed by the Board of Pueblo County Commissioners; one appointed by the governing body of each of the other Parties, and one appointed by the majority vote of an appointment committee composed of five (5) persons, one (1) appointed by each of the governing bodies of the Parties. The members of the HARP Board may be persons other than members of the governing bodies of the parties. The members of the HARP Board shall be appointed for terms of three years, provided, that the members who are first appointed shall be appointed for staggered terms as follows: one appointed by the City Council of City for a term of one year; one appointed by the Board of Commissioners of County for a term of two years; one appointed by the members of the Board for a term of two years; one appointed by the directors of the District for a term of three years; and one appointed by the City Council of City for a term of three years. The member appointed by the URA shall serve an initial term of two years and the member appointed by the appointment committee shall serve an initial term of three years. Any member of the HARP Board may be removed at any time by a majority vote of the members of the governing body or bodies of the Party who appointed such member. In the event of the death, resignation or removal of a member, the Party or Parties who appointed such member shall promptly appoint a successor member to fill the unexpired term of such member.

2.3 Four members of the HARP Board shall constitute a quorum. An affirmative vote of at least four members is necessary to approve or authorize any action by the HARP Board. The HARP Board shall annually elect a chairperson, vice-chairperson, secretary and treasurer from its members and shall adopt its own bylaws, which shall not be inconsistent with any provision of the Agreement.

2.4 The Assistant City Manager for Community Development shall be an ex-officio member of the HARP Board without vote.

2.5 The HARP Board shall have the power and the authority to exercise all the powers of the Authority.

2.6 All meetings of the HARP Board shall be conducted in accordance with the Colorado Open Meetings Law, §24-6-401 et. seq. C.R.S., as amended or replaced.

2.7 Members of the HARP Board shall serve without compensation.

ARTICLE III – POWERS OF THE AUTHORITY

3.1 The Authority may exercise any and all powers in the furtherance of its function, purpose, and obligation, which powers shall include, but shall not be limited to the following powers:

(a) To make and enter into contracts that are in the furtherance of the function, purpose and obligation of the Authority with the Parties to the Agreement (either jointly or separately), the state of Colorado, the federal government, any other governmental body or unit, or any private person, partnership or corporation or other private entity; provided, however, that (i)

before the purchase of supplies, materials, services, or equipment ample opportunity be given for competitive bidding, in accordance with an established HARP Authority Purchase Policy, and (ii) contracts for improvements be awarded to the lowest and best bidder by competitive sealed bidding after ample advertising. The Authority, however, may use design-build arrangements and contracts with contractors and material suppliers when a donor's restrictions so limit the nature or scope of a construction project or the installation of a public improvement is so singularly unique that it does not lend itself to competitive sealed bidding procedures and requirements. The Authority shall, however, use its best efforts to solicit proposals from companies and contractors who build or supply materials for such unique projects before selecting any contractor or construction supplier for a design build project or purchase.

(b) To have the management, control and supervision of all the business and affairs of the Authority.

(c) To appoint, hire, and retain employees and independent agents, contractors, engineers, and attorneys.

(d) To fix and from time to time increase or decrease fees, rates or charges for services, programs, or facilities furnished by the Authority.

(e) To promote and market HARP and activities conducted thereon.

(f) To request proposals for, negotiate, and make recommendations to the City Council of City with respect to contracts, leases and permits for the development, use, lease, sale or other disposition of Private Land. Each recommendation shall be detailed and include, without limitation, data and information in support of the recommendation, a copy of the request of proposals and responses thereto by parties other than the party who is the subject of the recommendation.

(g) To review and make recommendations to the City Council of City for the use, development, construction, installation, removal and renovation of Public Land and disposition of funds available therefor.

(h) To sue or be sued and to be a party to suits, actions, and proceedings.

(i) To obtain appropriate liability and casualty insurance.

(j) To appropriate and expend funds in accordance with the Approved Annual Plan and Budget adopted and approved as provided in Article IV hereof.

(k) To issue or reissue revenue bonds, notes or other obligations payable from the revenue derived from the functions, services, or facilities of the Authority; provided, however, that the term, conditions, details, sale and payment of such bonds, notes or other obligations, the proceedings relating thereto, the pledge of revenue, and the refunding thereof shall be set forth in a resolution approved by the governing body of each Party (except the Board).

- (l) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers hereby granted.

3.2 The Authority shall maintain in good repair, and renovate, rebuild, and replace all public improvement within HARP including without limitation, all buildings, structures, waterways, waterfalls, statuary and exhibits, and shall insure upon completion such improvements against damage, injury, loss, theft, malicious mischief and vandalism in amount not less than their full insurable value. For purposes hereof, "public improvements" include all improvements within HARP that are owned by the City of Pueblo or contracted by, through or for the City of Pueblo or works of art that the City of Pueblo has accepted. Public improvements exclude those owned by a private person or entity. The City agrees to assign to the Authority any warranties provided by contractors or artists for the public improvements covered by this agreement.

ARTICLE IV – BUDGET

4.1 The HARP Board shall, after consultation with the appropriate officers of each Party, prepare an annual operating plan and line item budget for the promotion, management, supervision, maintenance, development, and operation of HARP specifically identifying all items of anticipated revenues (including funds from each Party except the Board) and expenditures for the next calendar year (the "Annual Plan and Budget"). The Parties acknowledge and agree that because the Board has assumed the expense and responsibility of providing and furnishing water for HARP, the Board shall be excluded from and not be responsible for appropriating any other funds for HARP. For purposes of the Article IV, "appropriate officers of each Party" means and includes the chief executive officer and financial officer of each Party.

4.2 The appropriate officers of each Party shall jointly meet with the HARP Board, or the HARP Executive Director, no later than August 20 of each year to consult in the preparation of the Annual Plan and Budget.

4.3 The Annual Plan and Budget shall be submitted to each Party on or before August 31 of each year, commencing August 31, 2008.

4.4 The appropriate officers of each Party (except the Board) shall cause the annual budget prepared and submitted by such officers to the governing body of such Party to contain a specific line item for an appropriation to the Authority based upon the Annual Plan and Budget submitted by the HARP Board together with written recommendations, if any, of such officers. The governing body of each Party shall, in its sole discretion, approve such budgeted specific line item for appropriation to the Authority in an amount equal to, or greater or lesser than the amount contained in HARP Board's Annual Plan and Budget. The funds budgeted and appropriated by a Party may be disbursed to the Authority on such periodic basis during the calendar year as that Party may determine. If, during any calendar year, Authority revenues are greater than revenues contained in the Approved Annual Plan and Budget for that calendar year, each Party may proportionately reduce its appropriation to the Authority for that calendar year.

4.5 The Parties, (except the Board) hereby declare their present intention and expectation to annually appropriate and budget a pro-rata equitable share of the expenses in excess of revenues

for the promotion, management, supervision, operation, development and maintenance of HARP as follows: Beginning in the 2008 budget year, the Parties' share of expenses in excess of revenues shall be as follows: 50% by City and 40% by County, with the balance to be shared as follows: (i) URA--\$20,000, with the intent to be increased to a maximum of \$50,000 per year, and (ii) District - \$50,000 per year in addition to any maintenance reimbursement. Provided however, that this declaration shall not be construed as contractually obligating or binding on any Party. Provided further, that the obligation of the Pueblo Conservancy District is further conditioned on the Pueblo Conservancy District receiving funding from a proposed Maintenance Fee Assessment levied upon property benefited by the Arkansas River Levy maintained by the Pueblo Conservancy District. It is the further intent of the Parties, that the decision to budget and appropriate funds for the promotion, management, supervision, operation and maintenance of HARP shall be made solely by the respective governing body of each Party, and not by HARP Board or any officer of the Parties. Any obligation of a Party to budget and appropriate funds for the promotion, management, supervision, operation, development, and maintenance of HARP shall be from year to year only and shall not constitute a mandatory payment obligation of the party in any fiscal year beyond a fiscal year during which such funds are budgeted and appropriated. Neither this Agreement nor any provision hereof shall be construed or interpreted as creating a general obligation or debt or indebtedness or multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of any Party within the meaning of any constitutional, statutory or charter debt limitation.

4.6 The HARP Board, after adoption of the budgets of each Party, shall adopt the Authority's Annual Plan and Budget including the amounts, if any, each Party has budgeted and appropriated for the promotion, management, supervision, operation and maintenance of HARP for the next calendar year (the "Approved Annual Plan and Budget").

4.7 The HARP Board shall only commit and expend funds in accordance with the Approved Annual Plan and Budget and shall not make any budgetary appropriation or encumbrance or incur any debt or multiple-fiscal year financial obligation or initiate any purchase or construction of any facility, improvement or equipment which will require an expenditure or payment in any succeeding fiscal year unless the financial obligations of the Authority payable in any succeeding fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

4.8 All revenues derived from (a) the use or lease (but not the sale or other disposition) of the Private Land, and (b) the use of, and activities conducted on the Public Land and facilities located thereon (except facilities, including without limitation, parking areas and parking facilities, constructed or installed on the Public Land by City funds other than the net proceeds of the Bonds; provided, however, that City funds shall constitute a majority of the funds used for such construction or installation and for such purpose "City funds" means and includes all grants and awards to the City by the federal or state government or any agency thereof) shall be paid to, collected and held by the Authority in a separate account and expended by the Authority solely for the maintenance and operation of HARP. Authority will at least quarterly prepare and submit to each Party a financial report showing by line item all such revenues and expenditures during the prior quarter, year-to-date, and prior two years' actual revenues and expenditures.

4.9 The HARP Board may appoint advisory committees consisting of such persons and for such purposes as the HARP Board may determine.

ARTICLE V

5.1 The Land is owned by the City. As included within the Development Plan and Subdivision, portions of land previously owned by the District (the "District Land") and transferred to the City are and will be used in compliance with and meet the flood control and recreational purposes and responsibilities of District. City will hold, use and transfer District Land only in compliance with the Development Plan and Subdivision.

5.2 The HARP Board shall deliver to City Council of City and to the other Parties its written recommendations for the development, use, lease, sale or other disposition of all or any portion of Private Land which shall be consistent and in conformity with the Development Plan and Subdivision (the "Recommendations"). City Council of City will authorize and approve the development, use, lease, sale or other disposition of Private Land in accordance with the Recommendations, unless the City Council of City, for any reason, after public hearing held within sixty (60) days after receipt of complete and detailed Recommendations, rejects, alters or modifies, in whole or in part, the Recommendations (the "City Council Action"). In such event, the City Council of City, in its discretion, may either (a) return the Recommendations with the City Council Action to the HARP Board for reconsideration, or (b) direct that the Private Land be developed, used, leased, sold or otherwise disposed of as the City Council of City may determine, provided such determination is consistent and in conformity with the Development Plan and Subdivision. The provisions of the Article 5.2 shall not prevent nor be construed to prevent the City Council from acting with respect to such Recommendations earlier than said 60-day period, provided, however, that if the Recommendations or City Council Action relate to the sale of the Private Land, the City Council of City may not act with respect thereto earlier than thirty (30) days after receipt of such Recommendations. Notice of any public hearing provided for in the Article 5.2 shall be given to the Authority at least ten (10) calendar days before the date of the public hearing.

5.3 Pursuant to the provisions of Section 7-21 of the Charter of the City, City Council of City shall create a Special Fund and will segregate and hold in the Special Fund and appropriate and expend the net proceeds from the sale or other disposition of Private Land (but not the lease or use of Private Land) for the improvement, maintenance, development, and renovation of HARP; provided however; that prior to the City Council's appropriation of said funds for the stated purposes, the City Council of City may consider any written recommendations of the HARP Board with respect to any such appropriation received by the City Council of City prior to any specific appropriation.

5.4 On written recommendation of the HARP Board, the City Council of City will cause to be placed on its agenda an appropriate resolution or ordinance setting forth needed rules, regulations, fees, rates and charges for or with respect to the use of the Public Land and activities conducted thereon, provided that any such resolution or ordinance and all provisions thereof shall be subject to approval and adoption by the City Council of City in its sole discretion.

5.5 No Disqualified Person shall acquire or hold any interest, direct or indirect, in any contract, development agreement, lease, or permit for the development, lease, use, purchase, sale or other disposition of Private Land (the "Development Project"), nor shall any Disqualified Person have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any Development Project. Every contract, development agreement, lease or permit made in violation of the Article 5.5 shall be voidable by the Authority, unless a majority of the HARP Board determines that, in light of such interest, the participation of the Disqualified Person in such Development Project would not be contrary to the public interest. For purposes thereof "Disqualified Person" means and includes (a) a member of the HARP Board or employee of the Authority, (b) an immediate member of the family (spouse, father, mother, son, daughter, brother or sister) of any member of the HARP Board or employee of the Authority, and (c) any corporation, limited liability company, partnership, sole proprietorship, trust or other person or entity carrying on a business in which a person described in (a) or (b) above has a financial ownership or employment interest, or in which such person is an officer, manager or director.

ARTICLE VI – BOND PROCEEDS

6.1 City will use the net proceeds of the Bonds to construct, acquire and improve HARP.

ARTICLE VII – WATER

7.1 The Board will make available and supply water to the HARP project in the quantities set forth and subject to the conditions set forth below:

7.2 Non-Potable Water

(a) The Board is a party to a Real Property Lease with Utilicorp United, Inc., by its Division, WestPlains Energy, dated September 9, 1996 and recorded September 30, 1996 in Book 2932, Page 991, Instrument No. 1140809 of the records of the Pueblo County Clerk and Recorder (the "Lease") under the provisions of which WestPlains is obligated to continuously divert, transport, and store, through and in the WestPlains water facilities, the amount of water lawfully available and reasonably necessary to accomplish the decreed beneficial uses under the WestPlains Water Rights. The return flow from said water usage will be a portion of the water that the Board will supply to the HARP project.

The Lease also provided for a right of first refusal to the Board to purchase both the WestPlains Water Facilities and the WestPlains Water Rights. The Board is not obligated to exercise said right of first refusal and may not do so.

(b) The Board received a decree in Case No. 93 CW 086 in the District Court, Water Division No. 2 in Colorado, for conditional water rights and a plan of augmentation for the HARP project. In Case No. 04CW014 in the District, Water Division No 2. in Colorado, the Board received a decree making a portion of the HARP water right absolute and continuing the remaining conditional rights in good standing.

The quantities of non-potable water to be furnished by the Board in connection with the HARP project shall be limited to:

- (1) those waters which pursuant to the Lease Agreement are obligated to be diverted by Utilicorp, return flows from which will be utilized in the HARP project;
- (2) the water derived from the rights of Utilicorp, if in fact they are eventually purchased by the Board pursuant to the right of first refusal;
- (3) the water decreed to the Board in Case No. 93 CW 086, District Court, Water Division No. 2,
- (4) such water of the Board from its other supplies not to exceed 90 acre-feet per Annum.

In explanation, the HARP project has been designed so that it can function if necessary with quantities of water smaller than the existing WestPlains diversions. By the closing of certain gates and structures, the quantities of water flowing in the channel can be greatly reduced, while still substantially maintaining the appearance of a flowing stream. The Board will promptly notify the Authority of any changes in water supply available from the Lease Agreement or other sources that will necessitate the closing of gates or structures in order to operate the HARP project.

The Board agrees to furnish from its HARP decree, and other water sources, a quantity of water to the HARP project to augment, supplement or replace the WestPlains return flows as necessary in a quantity not to exceed 90 acre-feet per annum.

7.3 The water to be furnished by the Board in connection with the HARP project shall be limited to the existing boundaries of the project as they are described in the Development Plan. The Board shall not be obligated without a further agreement to supply water to any expanded or increased HARP project.

7.4 Potable Water. Any potable water to be supplied by the Board to the HARP project will be furnished in accordance with the Board's then existing policies concerning potable water furnished to the City of Pueblo, its parks, buildings or facilities, except as set forth below. For the purposes of the Board's existing policies, the irrigated areas of the HARP project shall be construed to be and shall constitute a park 5 acres and larger. Potable water supplied for irrigation under Article 7.4 of this Agreement shall not exceed 7.55 million gallons per annum and shall be supplied by the Board without rates, fees or other charges. Potable water shall be supplied from existing Board mains, and the Board shall not be responsible for extending said mains or service lines at its cost. Any such costs of extended mains or service lines shall be at the expense of the HARP project. Potable water use shall be metered and monitored by the HARP Authority in the same manner as water furnished to City parks.

7.5 If the buildings are city-owned, leased or occupied, the Board will charge for water furnished and the extension of water service in accordance with the Board's then existing policies concerning potable water furnished to the City of Pueblo, its buildings or facilities.

7.6 Small Structures. Small entertainment or refreshment kiosks or structures may be established within HARP, including those which may not be leased to private lessees, on land not designated as building pad sites with the HARP project. The Board will charge for water furnished and the extension of water service to any such structures in accordance with the Board's then existing policies concerning portable water furnished to the City of Pueblo, its buildings or facilities.

7.7 Return Flows. The return flows from all non-potable water furnished by the Board to the HARP project shall not be recycled and shall be allowed to return to the Arkansas River. Any fountains or water features of the HARP project served by potable water shall be recirculated insofar as reasonably possible without the expenditure of excessive monies on engineering and recirculating equipment.

7.8 Board Review of Fountains and Water Features. The design of all fountains or water features to be incorporated in the HARP project shall be submitted in a timely fashion to the Board and the Board shall have the opportunity to examine and approve or disapprove said features in the context of the adequacy of water supplies and the Board's existing water distribution system to serve said fountains or water features. "Water feature" for purposes of this Agreement means a fountain, waterfall or other structure, the use of which would significantly increase the loss of water by evaporation or seepage beyond the loss which would normally occur in the HARP channel or lake areas of the HARP project. If in the Board's opinion, the fountains or water features are not appropriately designed for the use of the supplies of water and system available to the HARP project to be furnished by the Board, the Board may approve or disapprove of such design of fountains or water features. Approval shall not be unreasonably withheld or delayed, but if the Board disapproves, then the Board shall not be obligated to furnish water, either potable or non-potable under this Agreement for such water features or fountains, the plans for which the Board has not approved, provided, however, that if the Board disapproves, any other Party to the Agreement may, upon written notice given to the Board within thirty (30) days after its decision to disapprove, request the Board to reconsider its decision.

ARTICLE VIII – LIABILITY, INDEMNIFICATION AND IMMUNITY

8.1 Neither the individual members of the HARP Board, nor any of the Parties, or their governing bodies, officers, agents or employees, shall be liable or responsible for any act or undertaking of Authority, contractual or otherwise, regardless of the procedure by which such act or undertaking may be entered into, including the approval by any Party.

8.2 The Authority shall, to the extent permitted and within the limitations of the "Act", indemnify and defend each Board member, officer and employee of the Authority in connection with any claim or actual threatened suite, action, proceedings in which he or she may be involved in his or her official capacity by reason of his or her being or having been a Board member, officer or employee of the Authority, or by reason of any action or omission by him or her in any such capacity; provided, however, the Authority shall have no obligation to indemnify and defend any such board member, officer or employee of the Authority for any suit, claim, action or proceedings arising out of criminal offenses, willful and wanton acts or omissions, or gross negligence of such councilmember, officer or employee. The Authority's obligations pursuant to this Section shall be

limited to monies of the Authority available for such purpose, including, but not limited to, insurance proceeds.

8.3 Immunity. The Authority, the County, the City, the District, the URA and the Board, and their respective board members, commissioners, council members, officers and employees shall be entitled to all immunities, protections and limits on liability provided by the Act and all other applicable laws in connection with the organization, operation and activities of the Authority and the activities of the District, the URA, the Board, the County and the City in connection therewith. None of such immunities, protections or limits on liability may be waived.

ARTICLE IX – DEFAULT, WITHDRAWAL AND TERMINATION

9.1 If a Party remains in default in the performance of any of its obligations hereunder for a period of sixty (60) days after receipt of written notice from the HARP Board or any other Party specifying such default, the HARP Board or any other Party may:

(a) remove such defaulting Party as a participating Party under this Agreement (the “Removal”); and/or,

(b) institute appropriate legal action in law or equity, including specific performance, to enforce the defaulting Party’s obligations hereunder.

In the event of litigation under this Agreement, the court shall award the prevailing party its costs and expenses, including reasonable expert witness and attorney fees.

9.2 Any Party may withdraw as a participating Party under this Agreement upon action taken by its governing body delivered to Authority and each of the other Parties at least one hundred eighty (180) days prior to December 31 of the year of withdrawal (the “Withdrawal”).

9.3 The term and position of any member of HARP Board appointed by a Removed or Withdrawn Party shall automatically expire and vacate upon the effective date of such Removal or Withdrawal.

9.4 Except as otherwise provided in Article 9.5, this Agreement shall remain in full force and effect until terminated by the mutual consent of all Parties, except Removed or Withdrawn Parties whose consent shall not be required.

9.5 The Withdrawal or Removal of any Party shall not terminate this Agreement or the Authority. Upon the Withdrawal or Removal of any Party, the remaining Parties shall expeditiously amend and modify this Agreement to continue the Authority upon such terms and conditions as such other parties shall mutually agree; provided, however, that if the other Parties do not so amend or modify this Agreement within ninety (90) days after the effective date of the Removal or Withdrawal of any Party, this Agreement and Authority shall terminate and cancel.

9.6 The provision and obligations of Articles 5.1 and 7 shall survive the Withdrawal or Removal of any Party, the termination of this Agreement, and/or the dissolution of Authority for the benefit of the City and District. Article 5.1 may be enforced by District and Article 7 may be enforced by City.

9.7 In the event of the termination of this Agreement or the dissolution of Authority, all assets of Authority shall be transferred to City to be used for the promotion, management, supervision, operation, and maintenance of HARP. The term "assets of Authority" shall not include the water rights or water leases owned by the Board.

ARTICLE X – MISCELLANEOUS

10.1 This Agreement shall become effective upon the date this Agreement is approved by the governing bodies of all the Parties, and may be amended or modified in writing approved by the governing bodies of all the Parties, except Removed or Withdrawn Parties.

10.2 This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado.

10.3 If any section, clause or provision of this Agreement shall for any reason be determined to be invalid or unenforceable, such determination shall not affect any of the remaining sections, clauses or provisions of the Agreement.

10.4 This Agreement may not be assigned in whole or in part by any Party. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors.

10.5 Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the District, the Board, the County, the URA, and the City any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the District, the Board, the County, the URA, and the City.

10.6 This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same agreement.

10.7 Nothing in this Agreement shall be deemed or construed to limit, impair or restrain any of the powers and authority of the City, the County, the District, the URA, or the Board, conferred by constitution, statute, charter or other laws, including but not limited to, the lawful exercise of their respective legislative powers.

10.8 Nothing in this Agreement shall be deemed to modify, amend or repeal any action duly taken by the HARP Authority under and pursuant to the Original Intergovernmental Agreement.

Executed as of the day and year first above written.

BOARD OF COUNTY COMMISSIONS
OF PUEBLO COUNTY, COLORADO

By: Anthony Ruiz
Chairman of the Board

Attest: Rocky Coy

Title: Office Administrator



PUEBLO, A MUNICIPAL CORPORATION

By: [Signature]
President of the City Council

Attest: [Signature]
City Clerk

Approved as to form:

[Signature]
City Attorney

PUEBLO CONSERVANCY DISTRICT

By: [Signature]

Title: President HARP

Attest: Claudia Robinson

Title: Secretary Treasurer

BOARD OF WATER WORKS OF
PUEBLO, COLORADO

By: [Signature]

Title: Executive Director

Attest: Leslie Martens

Title: Exec. Assistant

URBAN RENEWAL AUTHORITY OF PUEBLO

By: [Signature]

Title: CHAIRMAN

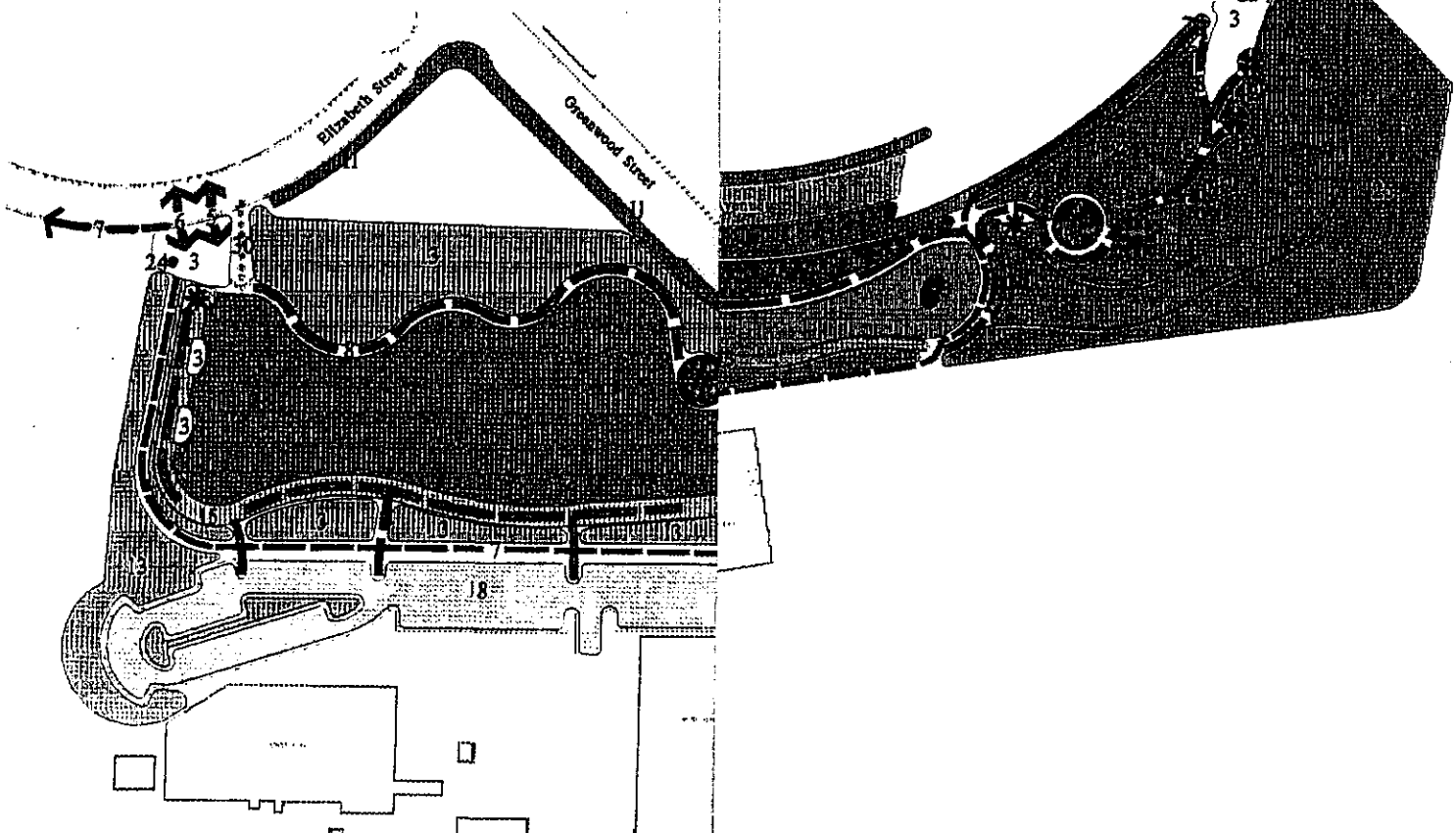
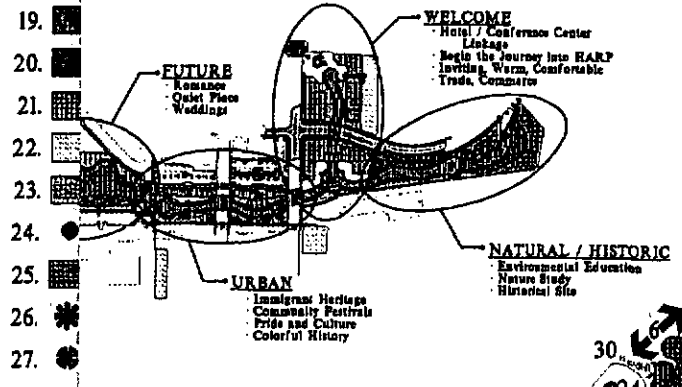
Attest: [Signature]

Title: E.D. CRAP

LEGEND

- | | |
|---|--|
| 1. Building Pad Sites | 10. Service Access |
| 2. Access Tower | 11. Streetscape Improvements |
| 3. Plaza/Event Spaces | 12. Bridge |
| 4. Major Art Node/
Water Feature | 13. Landscape Planting |
| 5. HARP Entry | 14. Navigable Channel |
| 6. HARP Entry
A.D.A. Accessible | 15. Pedestrian Promenade |
| 7. Bike Route, Roller
Blades, Skateboards | 16. Pedestrian Crossing
Warning Signal |
| 8. Pedestrian Paths | 17. Public Elevator |
| 9. Elizabeth Street
Re-Alignment | 18. Joint Use Parking |

ATIC INTENT



HISTORIC HARP PROGRAM



DESIGN STUDIOS WEST, INC.
 1436 Market Street, Suite 100
 Berkeley, California 94704
 415-862-3400 Fax 415-862-0700

Exhibit "A"