

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT entered into as of December 1, 1997 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"); 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, §29-1-201 et. seq. C.R.S., authorize political subdivisions to cooperate and contract with one another, including the establishment of a separate legal 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 §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.

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 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 therefor.

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 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 1, Block 1; Lot 1, Block 2; Lots 2 and 3, Block 3; 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 the Subdivision except the Private Land and Lot 1, Block 3.

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 this Agreement, shall not be subject to administrative direction by the Parties nor their respective officers or employees.

2.2 The governing body of the Authority shall be known as the Historic Arkansas Riverwalk Project Council (the "HARP Council") consisting of five members, two appointed by the City Council of City, and one appointed by the governing body of each of the other Parties. The members of the HARP Council may be persons other than members of the governing bodies of the parties. The members of the HARP Council 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. Any member of the HARP Council may be removed at any time by a majority vote of the members of the governing body of the Party who appointed such member. In the event of the death, resignation or removal of a member, the Party who appointed such member shall promptly appoint a successor member to fill the unexpired

term of such member.

2.3 Three members of the HARP Council shall constitute a quorum. An affirmative vote of at least three members is necessary to approve or authorize any action by the HARP Council. The HARP Council 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 this Agreement.

2.4 The Director of City's Parks and Recreation Department shall be an ex-officio member of the HARP Council without vote.

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

2.6 All meetings of the HARP Council 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 Council shall serve without compensation for acting as members of the HARP Council.

ARTICLE III - POWERS OF THE AUTHORITY

3.1 The Authority may exercise any and all powers in 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 furtherance of the function, purpose and obligation of the Authority with the Parties to this 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, and (ii) contracts for improvements be awarded to the lowest and best bidder by competitive sealed bidding after ample advertising.

(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 for 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.

ARTICLE IV - BUDGET

4.1 HARP Council 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 this 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 Council no

later than August 1 of each year to consult with the HARP Council 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, 1998.

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 Council 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 Council'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: City - 50%, County - 40%, and District - 10%, provided however, that this declaration shall not be construed as contractually obligating or binding on the Parties. 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 governing body of each Party (except the Board) and not by HARP Council or any officer of such Party. 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 a 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 HARP Council 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 HARP Council 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 HARP Council may appoint advisory committees consisting of such persons and for such purposes as the HARP Council may determine.

ARTICLE V - LAND

5.1 The Land is owned by either City or District. As included within the Development Plan and Subdivision, the portions of the land owned by the District (the "District Land") are and will be used in compliance with and meet the flood control and recreational purposes and responsibilities of District. Therefore, upon completion of construction of the HARP river channel, District will convey to City by appropriate deed all its right, title and interest in and to District Land (subject to a reservation for specific and described easement for the flow of water for Conservancy District purposes), and City will hold, use and transfer District Land only in compliance with the Development Plan and Subdivision.

5.2 HARP Council 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 Council 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 this 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 this 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 the Private Land) for the improvement, maintenance, development, and renovation of HARP.

5.4 On written recommendation of the HARP Council, the City Council of City will cause to be placed on its agenda an appropriate resolution or ordinance setting forth needful 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 this Article 5.5 shall be voidable by the Authority, unless a majority of the HARP Council 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 hereof "Disqualified Person" means and includes (a) a member of the HARP Council 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 Council 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 provides 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 has filed Case No. 93 CW 086 in the District Court, Water Division No. 2 in Colorado, an application for new junior water rights and a plan of augmentation for the HARP project. Said case is pending and it is contemplated that a decree favorable to Board will be entered in said case within a reasonable time period.

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, when said application and plan for augmentation is in fact decreed to the Board.
- (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 HARP Program Diagram dated November 26, 1996, attached hereto as Exhibit "A". 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 4.5 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 City in the same manner as water furnished to City parks.

7.5 Water Furnished to Building Pad Sites. Certain real property within the HARP project has been designated as building pad sites in anticipation of the construction of the buildings in the future. Other or additional areas within the HARP project in the future may be so designated or so used. If the buildings constructed on said sites are privately-owned, leased or occupied, or if they are owned, leased or occupied by public entities other than the City of Pueblo, the Board will charge for water furnished and the extension of water service to said buildings under its then existing water policies and then existing water rates. An example of such extension charges would be those associated with the Board's plant water investment fees and meter set fees.

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 be leased to private lessees, on land not designated as building pad sites within the HARP project. These may be served by potable water from the City's service lines within 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 potable 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 this 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 HARP Council, 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 councilmember, officer and employee of the Authority in connection with any claim or actual or threatened suit, 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 councilmember, 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 councilmember, 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 and the Board, and their respective board members, commissioners, councilmembers, 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 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 Council or any other Party specifying such default, the HARP Council 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 Council 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 this 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 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 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 or the Board, conferred by constitution, statute, charter or other laws, including but not limited to, the lawful exercise of their respective legislative powers.

Executed as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF PUEBLO COUNTY, COLORADO

PUEBLO, A MUNICIPAL CORPORATION

By Kathy Farley
Chairman of the Board
Attest: Chris C. Munnay
Title: _____

By Cotley A. Garcia
President of the City Council
Attest: Jim Dutcher
City Clerk

Approved as to form:

[Signature]
City Attorney

PUEBLO CONSERVANCY DISTRICT

By [Signature]
Title: President
Attest: Patricia Kelly
Title: _____

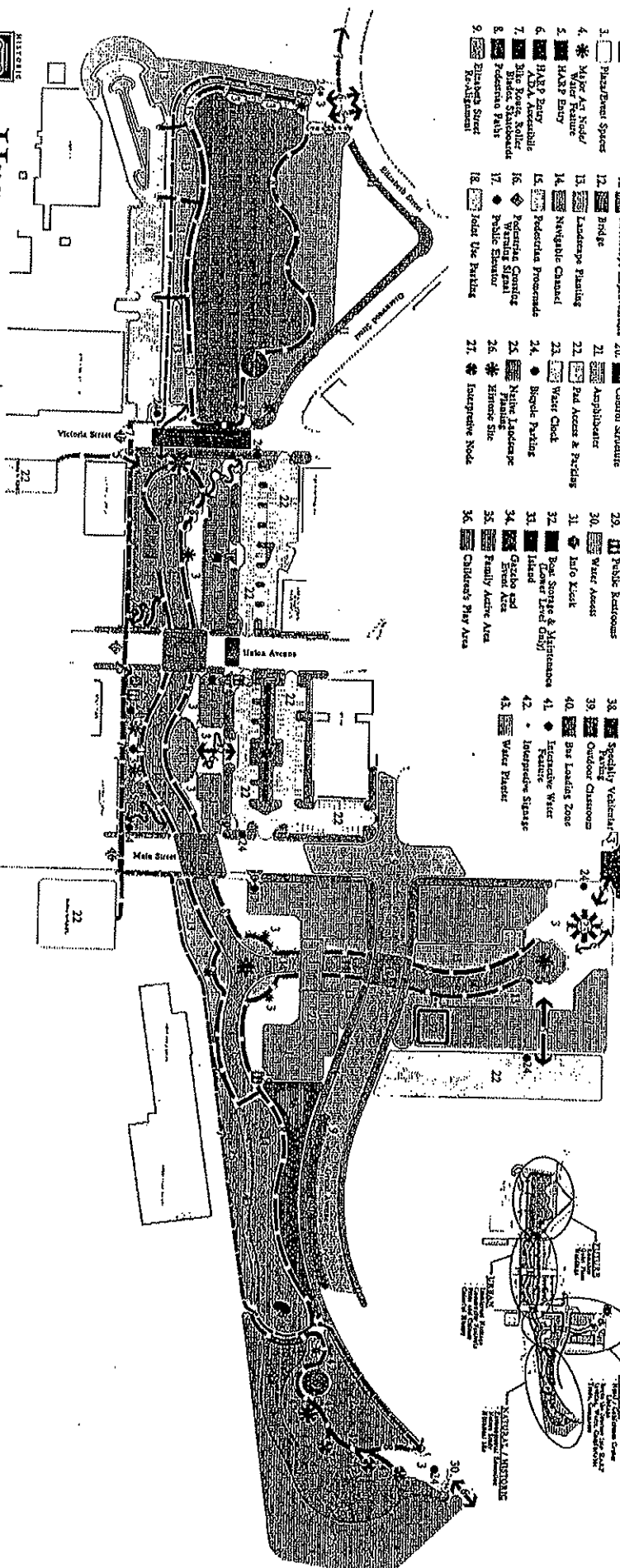
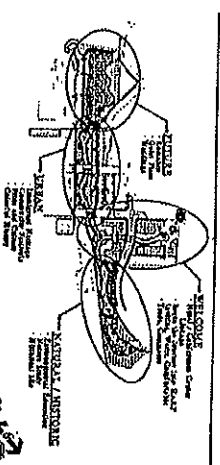
BOARD OF WATER WORKS OF
PUEBLO, COLORADO

By Board President
Title: [Signature]
Attest: Verdon Johnson
Title: Secretary-Treasurer

LEGEND

- 1. [Symbol] Building Pad Sites
- 2. [Symbol] Access Tower
- 3. [Symbol] Plaza/Event Space
- 4. * [Symbol] Major Art Node/ HARP Entry
- 5. [Symbol] HARP Entry
- 6. [Symbol] HARP Entry
- 7. [Symbol] HARP Entry
- 8. [Symbol] Pedestrian Path
- 9. [Symbol] Bicycling Street
- 10. [Symbol] Service Access
- 11. [Symbol] Streetscape Improvement
- 12. [Symbol] Bridge
- 13. [Symbol] Landscape Planting
- 14. [Symbol] Navigable Channel
- 15. [Symbol] Pedestrian Promenade
- 16. [Symbol] Pedestrian Crossing
- 17. [Symbol] Public Station
- 18. [Symbol] Node Use Pattern
- 19. [Symbol] Victoria Street Wid
- 20. [Symbol] Canal Structure
- 21. [Symbol] Amphitheater
- 22. [Symbol] Pad Access & Parking
- 23. [Symbol] Water Check
- 24. [Symbol] Bicycle Parking
- 25. [Symbol] Native Landscape
- 26. [Symbol] Ximene Site
- 27. [Symbol] Interpretive Node
- 28. [Symbol] Non-Navigable Water
- 29. [Symbol] Public Restrooms
- 30. [Symbol] Water Access
- 31. [Symbol] Info Kiosk
- 32. [Symbol] Boat Storage & Maintenance (Owner Level Only)
- 33. [Symbol] Island
- 34. [Symbol] Gazebos and Green Area
- 35. [Symbol] Family Active Area
- 36. [Symbol] Children's Play Area
- 37. [Symbol] Parkway
- 38. [Symbol] Specialty Vehicular Parking
- 39. [Symbol] Outdoor Classroom
- 40. [Symbol] Bar Loading Zone
- 41. [Symbol] Interpretive Water Feature
- 42. [Symbol] Interpretive Stairs
- 43. [Symbol] Water Puncter

THEMATIC INTENT



HISTORIC ARKANSAS RIVERWALK PROJECT HARP PROGRAM DIAGRAM

26 NOVEMBER 1996

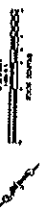


Exhibit 'A'

ORDINANCE NO. 6282

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT CREATING THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY AND AUTHORIZING THE PRESIDENT OF THE CITY COUNCIL TO EXECUTE SAME

WHEREAS, Section 18(2)(a) and (b) of Article XIV of the constitution of the state of Colorado and the Colorado Intergovernmental Relations Act, §29-1-201 et seq. C.R.S. authorizes political subdivisions to cooperate and contract with one another, including the establishment of a separate legal entity, to provide any function, service or facility lawfully authorized to each of the contracting units, and

WHEREAS, the creation of a separate legal entity to promote, manage, supervise, operate, develop and maintain the public project known as the Historic Arkansas Riverwalk of Pueblo will promote the public health, safety, convenience and welfare of the City and its citizens, and

WHEREAS, the creation of such separate legal entity by intergovernmental agreement between and among the City of Pueblo, a municipal corporation, Pueblo County, Colorado, Pueblo Conservancy District, and the Board of Water Works of Pueblo would be in furtherance of the purposes of, and within the power and authority of each of said contracting units. NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Intergovernmental Agreement dated as of December 1, 1997 between and among the City of Pueblo, Pueblo County, Colorado, Pueblo Conservancy District, and the Board of Water Works of Pueblo, Colorado, organizing and creating the Historic Arkansas Riverwalk of Pueblo Authority, a copy of which is attached hereto and incorporated herein, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The President of the City Council is authorized to execute and deliver the Intergovernmental Agreement in the name of the City, and the City Clerk is directed and authorized to affix the seal

of the City thereto and attest same.

SECTION 3.


This Ordinance shall become effective upon final passage.

INTRODUCED: December 8, 1997

By Samuel Corsentino
Councilperson

ATTEST:

APPROVED:


City Clerk


President of the City Council

DISTRICT COURT, COUNTY OF PUEBLO, STATE OF COLORADO

COPY

Case No. 17664

Division B

MOTION FOR COURT APPROVAL

IN THE MATTER OF THE
PUEBLO CONSERVANCY DISTRICT

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT

DEC 31 1987

PUEBLO COUNTY, COLORADO

COMES NOW the undersigned as attorney for the Pueblo Conservancy District and hereby moves this Court as follows:

1. For an Order approving the action of the Directors of the Pueblo Conservancy District to enter into an Intergovernmental Agreement in the form attached hereto; and
2. Approving the conveyance of certain land owned by the District and located within the HARP Subdivision boundaries as provided in paragraph 5.1 of the Intergovernmental Agreement attached hereto.

AS GROUNDS THEREFORE, the undersigned state to the Court the following:

A. The HARP Project is a major recreational project located within the boundaries of the City of Pueblo.

B. The organizational statute of the Pueblo Conservancy District provides in Section 37-2-101 (1) (g) that one of the purposes of such a District is:

Participating in the development of parks and recreational facilities within the boundaries of the conservancy district.

Utilization for the land owned by the District located within the HARP Subdivision falls within the District's recreational purpose provisions.

C. The Board of Directors has been advised by the District Engineer that the land owned by it within the HARP Subdivision boundaries is not needed by the District to maintain the flood control levy constructed by the District and utilized by the District for flood control purposes. The District Engineer has advised the Directors of the District that the primary use that the District makes of any portion of the land owned by the District within the HARP Subdivision is to allow water to flow from the Utilicorp United, Inc., Power Plant through the HARP river channel. The Intergovernmental Agreement provides that the District will

convey its lands located within the HARP Subdivision subject to a reservation that will be specific and described in detail to allow the flow of water for Conservancy District purposes.

D. The Directors believe that it is in the best interest of the District and fulfillment of its purposes to enter into the Intergovernmental Agreement and to convey the land as set forth in paragraph 5.1 thereof.

WHEREFORE, the Directors pray that this Court would enter its Order approving these actions on behalf of the Directors.

RESPECTFULLY SUBMITTED this 30th day of December, 1997.

BANNER, BUXMAN, ENCK, & OHLSEN, P.C.



Donald J. Banner, #3026
Attorneys for Pueblo Conservancy
District
601 N. Main Street, Suite 200
Pueblo, Colorado 81003
Telephone: (719) 544-5081

DISTRICT COURT, COUNTY OF PUEBLO, STATE OF COLORADO

Case No. 17664

Division B

ORDER APPROVING ACTION OF DIRECTORS

IN THE MATTER OF THE
PUEBLO CONSERVANCY DISTRICT

FILED IN THE OFFICE OF THE CLERK,
OF THE DISTRICT/COUNTY COURT

DEC 31 1997

PUEBLO COUNTY, COLORADO

THIS MATTER having come before the Court on the Director's Motion of the Pueblo Conservancy District and the Court having considered the Motion, does hereby enter its Order as follows:

1. The Court approves the action of the Directors in entering into the Intergovernmental Agreement of December 1, 1997, a copy of which is attached to the Director's Motion.

2. The Court approves the Directors conveying the land owned by the District to the City of Pueblo as set forth in paragraph 5.1 of said Intergovernmental Agreement with the reservation described therein.

DONE this 31st day of December, 1998. 1997

BY THE COURT:

Dennis Mac

JUDGE

cc: Donald J. Banner, Esq.

12/31/97
R

cc: 2nd copy Amended
RN
1/5/98

CK

RESOLUTION NO. 97-9

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT CREATING THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY AND AUTHORIZING THE PRESIDENT OF THE BOARD OF WATER WORKS TO EXECUTE SAME.

WHEREAS, Sections 18(2)(a) and (b) of Article XIV of the constitution of the state of Colorado and the Colorado Intergovernmental Relations Act 29-1-201 et. seq. C.R.S., authorizes political subdivisions to cooperate and contract with one another, including the establishment of a separate legal entity, to provide any function, service or facility lawfully authorized to each of the contracting units, and

WHEREAS, the creation of a separate legal entity to promote, manage, supervise, operate, develop, and maintain the public project known as the Historic Arkansas Riverwalk of Pueblo will promote the public health, safety, convenience and welfare of the City and its citizens, and

WHEREAS, the creation of such separate legal entity by Intergovernmental Agreement between and among the City of Pueblo, a municipal corporation, Pueblo County, Colorado, Pueblo Conservancy District, and the Board of Water Works of Pueblo would be in the furtherance of the purposes of, and within the power and authority of each of said contracting units,


NOW, THEREFORE, BE IT RESOLVED, the Intergovernmental Agreement dated as of December 1, 1997, between and among the City of Pueblo, Pueblo County, Colorado, Pueblo Conservancy District, and the Board of Water Works of Pueblo, Colorado, organizing and creating the Historic Arkansas Riverwalk of Pueblo Authority, a copy of which is attached hereto and incorporated herein, having been approved as to form by the Board Attorney, is hereby approved.

BE IT FURTHER RESOLVED, that the President of the Board is authorized to execute and deliver the Intergovernmental Agreement in the name of the Board.

Adopted this 16th day of December, 1997.


BOARD OF WATER WORKS
OF PUEBLO, COLORADO

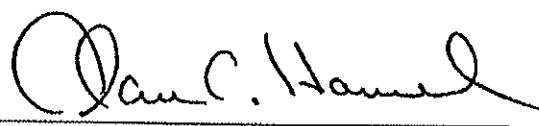

Kevin F. McCarthy, President


Verdon L. Johnson, Secretary-Treasurer


Vera Ortega, Vice President

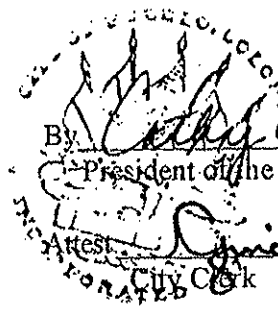

Michael W. Stillman, Vice President


David F. Trujillo, Vice President


Alan C. Hamel, Executive Director


William F. Mattoon, Board Attorney

By Kathy Farley
Chairman of the Board
Attest: Chris C. Munoz
Title: _____


By: Carlos A. Garcia
President of the City Council
Attest: Angela Dutcher
City Clerk

Approved as to form:
Thomas J. De...
City Attorney

PUEBLO CONSERVANCY DISTRICT

By: [Signature]
Title: President
Attest: Patricia Kelly
Title: _____

BOARD OF WATER WORKS OF
PUEBLO, COLORADO

By: _____
Title: _____
Attest: _____
Title: _____



STATE OF COLORADO, }
County of Pueblo, } ss.

The Board of County Commissioners met in regular session in its office in Pueblo County, Colorado, on Tuesday the 19th day of December A. D. 19 95, at 10:00 o'clock.

Present: Richard A. Martinez Chairman.
" Kathy Farley County Commissioner.
" James M. Brewer (excused) County Commissioner.
" Terry A. Hart County Attorney.
" Lucille Wilson Deputy County Clerk or Deputy.

When the following proceedings, among others, were had and done, to-wit:

RESOLUTION NO. 95-420 APPROVING THE HISTORIC ARKANSAS RIVER PROJECT INTERGOVERNMENTAL AGREEMENT BETWEEN THE PUEBLO CONSERVANCY DISTRICT, THE CITY OF PUEBLO, BOARD OF WATER WORKS AND PUEBLO COUNTY

WHEREAS, the Historic Arkansas River Project (HARP) consists of a joint effort among various governmental entities and private enterprises for the purpose of re-establishing the Arkansas River as it originally flowed before the 1921 flood; and

WHEREAS, it is the overall intent of the HARP project to create within the City of Pueblo a recreational and commercial area for the enhancement of the downtown/Union Avenue area, the promotion of its recreational use, and the development of potential commercial utilization of the area; and

WHEREAS, the Pueblo Conservancy District, the City of Pueblo, Board of Water Works and Pueblo County recognize that the HARP project will be accomplished only with the mutual cooperation and support of these governmental entities, as well as others in the community, and, therefore, said governmental entities desire to enter into an Intergovernmental Agreement to express their support and cooperation in the development of the HARP project.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Pueblo County, Colorado, that the Historic Arkansas River Project Intergovernmental Agreement between the Pueblo Conservancy District, the City of Pueblo, Board of Water Works and Pueblo County, the terms and conditions of which are incorporated herein by this reference, be, and hereby is, approved.

BE IT FURTHER RESOLVED that the Chair of the Board of County Commissioners of Pueblo County, Colorado, be, and hereby is, authorized to execute said Intergovernmental Agreement on behalf of Pueblo County.

By the following vote on roll call:

FARLEY-Aye,

MARTINEZ-Aye.

STATE OF COLORADO, }
County of Pueblo, } ss.

The Board of County Commissioners met in Regular session in its office in Pueblo County, Colorado, on Tuesday the 6th day of January A. D. 19 98, at 10:00 A.M. o'clock.

Present: Kathy Farley Chairman.
" Richard A. Martinez County Commissioner.
" John L. Klomp County Commissioner.
" Terry A. Hart County Attorney.
" Sue M. Kovacich, Dep. Clerk County Clerk or Deputy.

When the following proceedings, among others, were had and done, to-wit:

RESOLUTION NO. 98-19 APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, THE PUEBLO CONSERVANCY DISTRICT, THE PUEBLO BOARD OF WATER WORKS, AND PUEBLO COUNTY TO CREATE THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO COUNCIL

WHEREAS, Sections 18(2)(a) and (b) of Article XIV of the Constitution of the State of Colorado and the Colorado Intergovernmental Relationships statute, Section 29-1-201, *et seq.*, CRS, authorize political subdivisions to cooperate and contract with one another, including the establishment of a separate legal 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; and

WHEREAS, the City of Pueblo, the Pueblo Conservancy District, the Pueblo Board of Water Works, and Pueblo County are political subdivisions as defined in Section 29-1-202(2), CRS, and desire to cooperate and contract among themselves to create a separate legal entity to promote, manage, supervise, operate, develop, and maintain the Historic Arkansas Riverwalk of Pueblo ("HARP") project within the jurisdictional boundaries of each of the above-listed political subdivisions; and

WHEREAS, 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; and

WHEREAS, the City of Pueblo, the Pueblo Conservancy District, the Pueblo Board of Water Works, and Pueblo County desire to enter into an Intergovernmental Agreement creating said separate legal entity, calling it the Historic Arkansas Riverwalk of Pueblo Council, and setting forth the rights and duties of each of the parties.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Pueblo County, Colorado, that the Intergovernmental Agreement between the City of Pueblo, the Pueblo Conservancy District, the Pueblo Board of Water Works, and Pueblo County, dated December 22, 1997, be, and hereby is, approved.

BE IT FURTHER RESOLVED that the Chair of the Board be, and hereby is, authorized to execute said Agreement on behalf of Pueblo County.

By the following vote on roll-call:

MARTINEZ - AYE

KLOMP - AYE

FARLEY - AYE