

# Grimshaw & Harring

Wells Fargo Center  
1700 Lincoln Street, Suite 3800  
Denver, Colorado 80203-4538  
303.839.3800 | 303.839.3838 (FAX)



Mary L. Carter  
303-839-3871

mcarter@grimshawnharring.com

September 29, 2010

Stephanie O'Malley, City Clerk  
City and County of Denver  
201 W. Colfax, Dept. 101  
Denver, Colorado

HAND DELIVERED

Re: **Cherry Creek Subarea Business Improvement District**

92-228-T

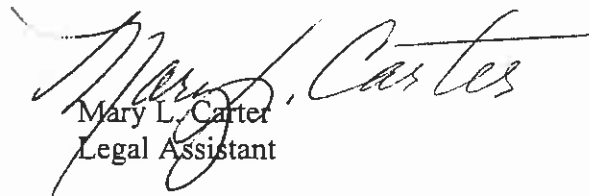
Dear Madam:

Enclosed for formal filing with the City Clerk as provided in Section 31-25-1211, C.R.S. is the proposed 2011 Operating Plan and Budget for the Cherry Creek Subarea Business Improvement District.

If you have any questions regarding this filing, kindly advise the undersigned

Sincerely,

GRIMSHAW & HARRING, P.C.



Mary L. Carter  
Legal Assistant

Enclosure

Cc: Bill V. Vidal, Manager of Public Works (w/encl.)  
Brendan Kelly, P.E., District Management Office (w/encl.)

CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT

2011

OPERATING PLAN AND BUDGET

Submitted  
September 30, 2010

2011  
OPERATING PLAN AND BUDGET FOR THE  
CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT

PURPOSE AND SCOPE OF THIS DOCUMENT

A. Why Approve the 2011 Operating Plan Now? The Business Improvement District Act, specifically Section 31-25-1211, C.R.S., requires that the Cherry Creek Subarea Business Improvement District file an operating plan and budget with the City Clerk no later than September 30 of each year.

Under the statute, the City is to approve the operating plan and budget within 30 days of the submittal of all required information.

B. What Must Be Included in the Operating Plan? Pursuant to the provisions of the Business Improvement District Act, Section 31-25-1201, et seq., C.R.S, as amended, this Operating Plan specifically identifies (1) the composition of the Board of Directors, (2) the services and improvements to be provided by the District, (3) the taxes, fees, and assessments to be imposed by the District, (4) the estimated principal amount of the bonds of the District, and (5) such other information as the City may require.

COMPOSITION OF THE BOARD OF DIRECTORS

The members of the Board of Directors are appointed by the City. The current members of the Board are identified in the attached Exhibit A.

SERVICES TO BE PROVIDED

Activities of the District in 2011 will include the following:

1. Maintenance.

a. The District, through its contract with the Central Platte Valley Metropolitan District ("CPVMD"), will continue to water flower and tree landscaping along the 15th Street corridor within the District.

b. A copy of the District/CPVMD Contract that describes the services is attached to this Operating Plan as Exhibit B.

2. Landscaping. The District, through its contract with CPVMD, intends to monitor and correct tree problems as resources are available.

TAXES, FEES, ETC.

The District imposes no fees and has no debt. It is authorized to levy property taxes in an amount not to exceed \$15,000 per year. The 2011 budget is as follows:

**GENERAL OPERATING FUND**

	2009 Actual	2010 Budget	2010 Year to Date	2010 Projected	2011 Budget
Balance at Beginning of Year	16,405.00	19,309.52	19,309.52	19,309.52	29,059.52
<b>Projected Revenues:</b>					
Ad Valorem Taxes	18,342.42	15,000.00	22,078.31	22,600.00	15,000.00
Abatement Levy	Incl. above	1,578.00	Incl. above	Incl. above	2,652.00
TIF Rebate			Incl. above	Incl. above	Incl. above*
<b>TOTAL REVENUE</b>	<b>18,342.42</b>	<b>16,578.00</b>	<b>22,078.31</b>	<b>22,600.00</b>	<b>17,652.00</b>
<b>Projected Expenditures:</b>					
Operations, Maintenance	10,500.00	10,500.00	10,500.00	10,500.00	10,500.00
Administration	800.00	1,000.00	562.50	600.00	600.00
Legal	1,437.90	1,000.00	1,344.63	1,750.00	1,500.00
<b>Capital Improvements:</b>					
Trees	2,700.00	0.00	0.00	0.00	10,000.00
Tree Grates	0.00	0.00	0.00	0.00	5,000.00
Irrigation System Imprv.	0.00	0.00	0.00	0.00	10,000.00
Misc. Addl. Landscaping	0.00	5,000.00	0.00	0.00	2,400.00
Contingency	-0-	1,578.00	0.00	0.00	1,578.00
<b>Total Expenditures</b>	<b>15,437.90</b>	<b>19,078.00</b>	<b>12,407.13</b>	<b>12,850.00</b>	<b>41,578.00</b>
<b>RESERVE FUND**</b>					
<b>Avail. Bal. at Year End</b>	<b>19,309.52</b>	<b>16,809.52</b>	<b>28,980.70</b>	<b>29,059.52</b>	<b>5,133.52</b>

\*The TIF revenue is intended to allow the District to collect its allowed property tax revenue, and therefore does not increase revenues over the \$15,000 allowed by the District's voted authorization.

\*\*emergency reserves = at least 3% of fiscal year spending, here \$600 of the Balance at End of Year is designated as the emergency reserve.

**DOWNTOWN DENVER DEVELOPMENT AUTHORITY AGREEMENT:**

In 2008 the Downtown Denver Development Authority ("DDA") and the District entered into the Agreement to set forth their intent to cooperate to assure that the Cherry Creek Subarea BID Incremental Property Tax Revenues are made available to the Cherry Creek Subarea BID for purposes of operating the Cherry Creek Subarea BID in accordance with its Organizational Ordinance and Operating Plan. Said Agreement states in part as follows:

“In consideration of the Cherry Creek Subarea BID providing future services within its boundaries, subject to annual budget and appropriations, the DDA agrees to remit or cause to be remitted to the Cherry Creek Subarea BID the Cherry Creek Subarea BID Incremental Property Tax Revenues on a monthly basis. The parties anticipate that, in accordance with a Resolution of the DDA instructing the City Treasurer to do so, the remittance to the Cherry Creek Subarea BID of the Cherry Creek Subarea BID Incremental Property Tax Revenues will be made directly to the Cherry Creek Subarea BID by the City Treasurer and that there will be no material change from the procedure by which the Cherry Creek Subarea BID has historically received Property Tax revenues. The DDA will use its best efforts to ensure that the DUS Plan and City/DDA Cooperation Agreement are not modified to affect or change, and the DDA shall not take any action which affects or changes, the payment of the Cherry Creek Subarea BID Incremental Property Tax Revenues directly to the Cherry Creek Subarea BID by the City Treasurer, or the amount thereof.

Every year in which the DDA collects the Cherry Creek BID Incremental Property Tax Revenues, the DDA shall cause its staff or consultants to include sufficient revenues to pay the Cherry Creek Subarea BID Incremental Property Tax Revenues to the Cherry Creek Subarea BID to be included in the proposed annual budget and appropriations resolutions or measures of the DDA for presentation to the DDA governing body. Nothing herein shall impair the power of the DDA governing body to modify or eliminate such budget and appropriations for any given year by resolution. Any amounts of the Cherry Creek Subarea BID Incremental Property Tax Revenues that are unpaid in any year shall be included in the DDA’s proposed annual budget and appropriations for possible payment in the subsequent fiscal year.”

A copy of the Agreement is attached hereto as Exhibit C. Payments have been made as provided in the Agreement.

## REPORT

A letter dated August 24, 2010 from Brendan Kelley of the City’s Department of Public Works requested eight specific items. The District’s responses are reported below:

1. 2010 budget and “budget to actual” financial reports. See above.
2. Any material departures from the 2010 Operating Plan. None
3. The status of any planned or outstanding indebtedness. None.
4. The results of any audits conducted during the year. None.
5. A copy of the By-laws, if any, in effect in 2010/2011. None.
6. A list of official board actions (motions) in the past year. The Board meeting minutes for all 2010 meetings are attached.
7. Current list of all Board members including name, address, phone, fax and email as well as term appointment and expiration date. See Exhibit A.

8. Board members attendance records for the past year. See attendance lists in the meeting minutes.

## CONCLUSION

The District Board appreciates the opportunity to continue to work with the City and the Central Platte Valley District to help maintain our little part of Denver.

EXHIBIT A

*Revised September 23, 2010*

**CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT**

City and County of Denver, Colorado

**Date Formed:** April 27, 1992 (by ordinance)  
**G&H File No.:** 11574  
**Statute:** 31-25-1201 (BID)  
**Employer Identification No.:**  
**Sales Tax Identification No.:**

**REGULAR MEETINGS:** None

**DESIGNATED POSTING PLACE:** Telephone pole at 15th Street and Delgany Street,  
Denver, CO

**BOARD OF DIRECTORS:**

Paul Stann, President (w) 303-575-9130  
1444 Wazee Street (f) 303-575-9175  
Denver, CO 80202 (c) 303-888-0196  
Term expires: 12/31/2010 [s2stann@aol.com](mailto:s2stann@aol.com)

Robert E. Rhodes, Secretary/Treasurer (h) 303-377-7504  
1800 Lawrence #507 [bobrhodes1800@cs.com](mailto:bobrhodes1800@cs.com)  
Denver, CO 80202  
Term expires: 12/31/2010

Dan Reagan (w) 303-592-7672  
1800 15th Street, Suite 203 (f) 303-592-7855  
Denver, CO 80202 (c) 303-588-3819  
(general partner of Delgany Depot Development [dsreagan@reaganpartnership.com](mailto:dsreagan@reaganpartnership.com)  
LLLP)  
Term expires: 12/31/2010

David P. Veldman (w) 970-223-5555 x 4  
760 Whaler's Way #A-200 (f) 970-225-1100  
Fort Collins, CO 80525 (c) 970-567-8130  
Term expires: 12/31/2010 [dave@veldmanmorgan.com](mailto:dave@veldmanmorgan.com)

Vacant Board Position  
Term expired: 12/31/08

**MANAGER:**

Mary L. Carter, Board Secretary  
Grimshaw & Haring, P.C.  
1700 Lincoln Street, Suite 3800  
Denver, CO 80203-4538

(w) 303-839-3871  
(f) 303-839-3838

**CONSULTANT:**

Lloyd Goff  
1573 South Jamaica Street  
Aurora, CO 80012

(w) 303-671-5340  
(f) 303-671-7718  
(c) 303-598-2379  
[lloydgoff@hotmail.com](mailto:lloydgoff@hotmail.com)

**INTERGOVERNMENTAL ASSISTANCE:**

(Central Platte Valley Metropolitan District)  
Bob Blodgett  
R.S. Wells, LLC  
8390 East Crescent Parkway, Suite 500  
Greenwood Village, CO 80111-2811

(w) 303-779-4525  
(f) 303-773-2050  
[bob.blodgett@cliftoncpa.com](mailto:bob.blodgett@cliftoncpa.com)

**PUBLICATION:**

The Daily Journal  
Attn: Virginia Warner, Legal Notices  
2000 South Colorado Blvd  
Denver, CO 80222

303-756-9995  
(f) 303-756-4465  
[Virginia\\_warner@mcgraw-hill.com](mailto:Virginia_warner@mcgraw-hill.com)

PUBLISHES DAILY, MONDAY-FRIDAY; DEADLINE IS THE DAY BEFORE  
PUBLICATION AT 10:30 A.M.



EXHIBIT B

Central Platte Valley Metropolitan District  
Contract with  
Cherry Creek Subarea Business Improvement District

CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT  
CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT

INTERGOVERNMENTAL AGREEMENT FOR  
MAINTENANCE AND LANDSCAPING

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this \_\_\_\_ day of May, 2002, by and between CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT (the "DISTRICT"), a Colorado business improvement district, whose address is c/o Grimsshaw and Haring, P.C., 1700 Lincoln Street, Suite 3800, Denver, Colorado 80203, and CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT (the "CONTRACTOR"), a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is R.S. Walls, LLC: Attention, Bob Blodgett, 6399 South Fiddler's Green Circle, Suite 102, Greenwood Village, Colorado 80111 (individually referred to as "Party" and collectively referred to as "Parties").

RECITALS

WHEREAS, both Parties are governmental entities and may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such agreement may provide for sharing of costs; and

WHEREAS, the DISTRICT was formed in 1992 under the Business Improvement District Act, C.R.S. §§ 31-25-1201 - 1228, for the purpose of assisting in the maintenance of trees and landscaping along 15th Street and elsewhere within the boundaries of the DISTRICT; and

WHEREAS, the CONTRACTOR's territory is adjacent to the DISTRICT's territory, and the CONTRACTOR voluntarily agrees to enter into this Agreement to assist with the DISTRICT's maintenance responsibilities because the close proximity makes such Agreement cost-effective and CONTRACTOR desires to maintain uniform, high quality maintenance in the area; and

WHEREAS, the cost of the maintenance to be paid by the CONTRACTOR may exceed the amount paid to the CONTRACTOR by the DISTRICT in this Agreement, but the additional expenditures benefit both Parties; and

WHEREAS, the Parties desire to enter into this Agreement to establish the terms and conditions under which the DISTRICT will pay toward the 15th Street maintenance costs and the CONTRACTOR will provide such maintenance.

NOW, THEREFORE, in consideration of the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## TERMS AND CONDITIONS

1. **PAYMENTS.** For and in consideration of Ten Thousand Five Hundred Dollars (\$10,500.00) to be paid in twelve (12) equal monthly installments of Eight Hundred Seventy-Five Dollars (\$875.00) on or before the 15th day of each month, the CONTRACTOR shall maintain the existing landscaping, flower beds and public improvements normally maintained by the DISTRICT (excluding the east side of Delgany Street), as described in Exhibit A, attached hereto and incorporated herein (hereinafter referred to as the "Property"). However, there is no obligation of the CONTRACTOR to provide funding over and above the amount received from the DISTRICT.

2. **UTILITIES.** The CONTRACTOR agrees to pay all charges incurred by the DISTRICT with respect to CONTRACTOR'S activities for water, electric power and other utilities assessed, levied or incurred for operation, repair and maintenance of the Property during the term of this Agreement or any renewal thereof. Any such bills received by the DISTRICT will be transmitted to CONTRACTOR for payment promptly after their receipt.

3. **MAINTENANCE, REPAIR AND ALTERATIONS.** The CONTRACTOR covenants and agrees: (1) not to make or permit to be made any alterations in, or additions to, the Property without the prior written permission of the DISTRICT's Manager or Board; (2) to keep the Property, and all improvements thereon, including plumbing, wiring, fencing, and signage, if appropriate, in good repair at the expense of the CONTRACTOR; (3) to properly irrigate and care for all trees, shrubbery, flower beds and the lawn upon the Property; however, the CONTRACTOR does not warrant the landscaping, its life or its continued existence; (4) to keep the Property free from litter, dirt, debris and obstruction; (5) to remove or appropriately cover graffiti within twenty-four (24) hours of the discovery by the CONTRACTOR or receipt of a report of its existence by the CONTRACTOR; (6) to identify defective, vandalized or damaged street and pedestrian lighting or other public improvements in the District, report the same to the appropriate authorities and coordinate with them to have them make the repairs; and (7) to surrender and deliver the Property in good order and condition upon the termination of this Agreement, unless the Property is damaged by fire, flood or Act of God. All work shall be done in a good and workmanlike manner to conform with any applicable standards of the City and County of Denver.

4. **USE.** The CONTRACTOR covenants and agrees that it shall utilize the Property solely for the planting, replanting, installation, reinstallation, construction, reconstruction, creation, recreation, operation and maintenance of the Landscaping and public improvements and for no other purpose. CONTRACTOR agrees that it shall not to use the Property or knowingly permit it to be used for purposes prohibited by the laws of the applicable United States, State of Colorado, or any political subdivision thereof.

5. **SNOW REMOVAL.** CONTRACTOR shall be responsible for all snow and ice removal from all sidewalks, as well as sanding, if necessary, serving the Property.

6. **NOTICE.** Any notice required under this Agreement shall be in writing and mailed by certified mail to the respective Parties. The DISTRICT Manager shall be the representative of the DISTRICT to accept or give any approval, notice or the like provided for hereunder. In the event either Party should change the address herein given during the term of this Agreement, that Party shall notify the other, in writing, of such change of address in the manner provided in this paragraph.

Notice to the DISTRICT: Lloyd Goff, District Manager  
10694 B. Asbury Ave., Suite 104  
Aurora, Colorado 80014

With a copy to: Rick Kron  
Grimshaw and Harring, P.C.  
1700 Lincoln Street, Suite 3800  
Denver, Colorado 80203

Notice to the CONTRACTOR: Bob Blodgett  
R.S. Wells, LLC  
6399 South Fiddler's Green Circle, Suite 102  
Greenwood Village, Colorado 80111.

With a copy to: David H. Booth, CPM  
1228 15th Street, Suite 403  
Denver, Colorado 80202

Dianne Miller  
Icenogle, Norton, Smith, Blieszner & Miller, PC  
821 17th Street, Suite 600  
Denver, Colorado 80202

7. **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of, and be binding upon, the respective legal representatives, heirs, successors and permitted assigns of the Parties.

8. **ASSIGNMENT.** The CONTRACTOR covenants and agrees not to assign or subcontract work to be performed under this Agreement without first obtaining the written consent of the DISTRICT Manager, which consent shall not be unreasonably withheld.

9. **INSURANCE.** Each Party and subcontractors of the Parties who perform services in connection with this Agreement shall maintain, at their respective sole cost, insurance.

10. **TERMINATION.** The term of this Agreement shall be for a period of one (1) year from the date listed above. This Agreement shall renew automatically for each successive

year, unless written notice to terminate is given by either Party thirty (30) days prior to the termination date.

11. **VENUE.** For the resolution of any dispute arising hereunder, venue shall be in the District Court in the City and County of Denver, State of Colorado.

12. **APPROPRIATION.** Each Party expressly understands and agrees that the other Party's obligations hereunder shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the other Party or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of or imposing a debt limitation on either Party. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of either Party's funds, nor shall any provision of this Agreement restrict the future issuance of bonds or obligations payable from any class or source of either Party's funds.

13. **INDEPENDENT CONTRACTOR.**

The CONTRACTOR, for all purposes arising out of this Agreement, is an independent contractor.

The CONTRACTOR shall be responsible for the payment of all federal, state and local taxes that are payable by the CONTRACTOR arising from payments made hereunder.

The CONTRACTOR and the DISTRICT agree that the CONTRACTOR shall have a fiduciary duty to the DISTRICT in the performance of this Agreement. This fiduciary duty accepted by the CONTRACTOR shall include, but not be limited to, the highest duties of good faith, fair dealing, disclosure of all information to the DISTRICT, confidentiality on behalf of the DISTRICT, avoidance of conflicts of interest, and avoidance of the appearance of conflicts of interest in carrying out the goals and objectives of the DISTRICT under this Agreement.

The DISTRICT shall not be responsible for (a) any employment decision, act, or omission of the CONTRACTOR, and (b) the conduct of any employee of CONTRACTOR as it relates to fellow employees or third parties.

14. **GOVERNMENTAL IMMUNITY.** Nothing herein shall be construed as a waiver of the rights and privileges of either Party pursuant to the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S.

The Parties hereto mutually agree to all the terms and provisions contained herein.

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
*Manzoni Orzetta*

CHERRY CREEK SUBAREA BUSINESS  
IMPROVEMENT DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
*sex.*

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
*[Signature]*

CENTRAL PLATTE VALLEY  
METROPOLITAN DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
*President*

EXHIBIT A  
The Property

South Platte River

GOMPELL CIRCLE 2200

What's Left of 16th Street Viaduct

EXHIBIT A  
Cherry Creek  
Subarea  
Business  
Improvement  
District

Public Service  
Substation

1166  
15th

GOMPELL  
Loop  
2175  
2157

Little Raven (2150)

2128 15th

2125 15th  
(building  
calling in)

turned  
block train shed

2101 15th St  
+ "Manche Bldg."

16th Street Viaduct

Cherry Creek

Gravel  
from  
area

long concrete block  
structure

PIET  
DIP  
concrete  
structure  
proposed  
modification

Parking Lot

DELBANY

Parking Lot

1400  
1420  
1440  
1460

1800  
1820  
1840  
1860

Wewatta Street

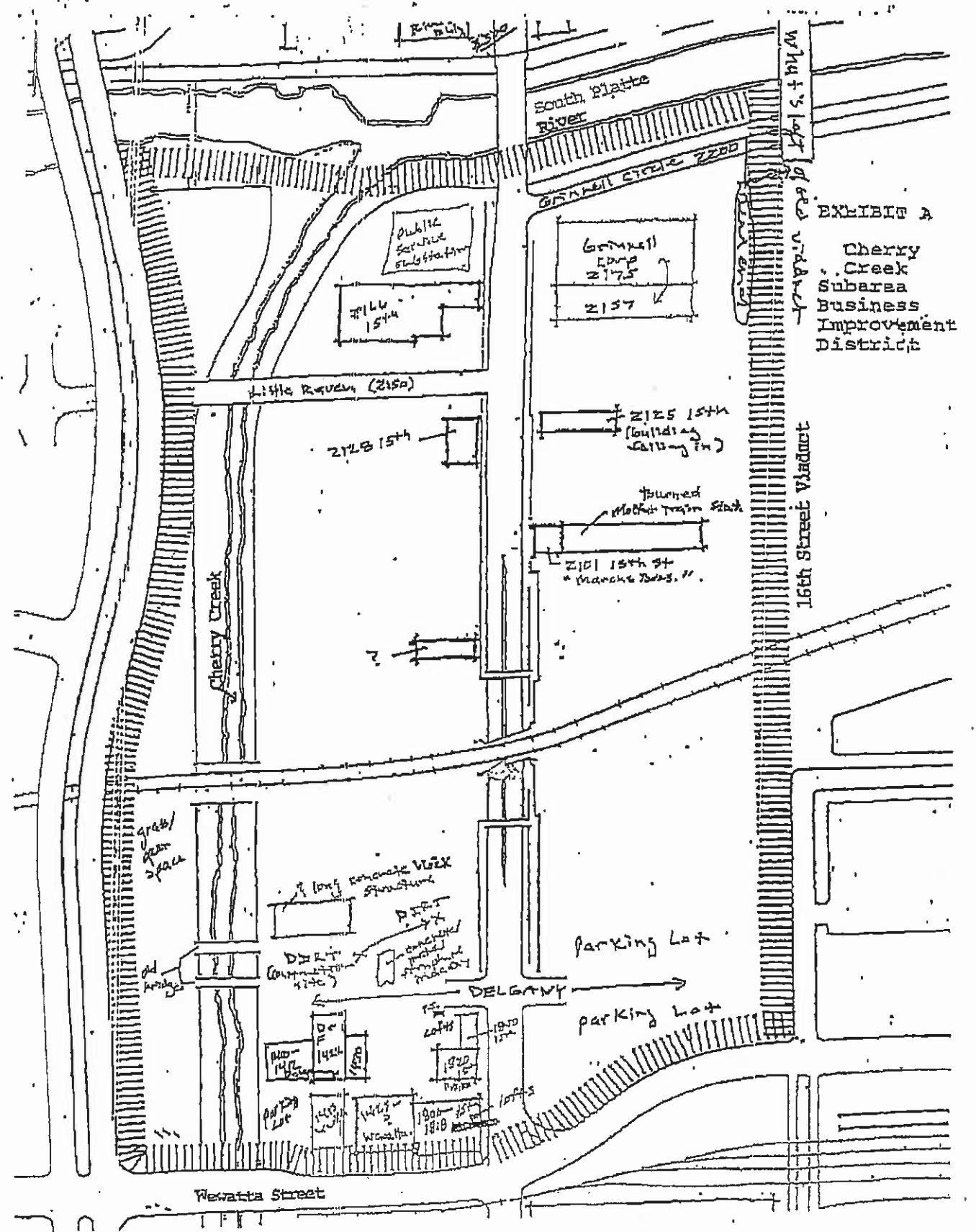




EXHIBIT C

Cherry Creek Subarea Business Improvement District  
Cooperation Agreement  
(DUS)

**CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT  
COOPERATION AGREEMENT  
(DUS)**

This Cherry Creek Subarea Business Improvement District Cooperation Agreement (the "Agreement"), is approved as of \_\_\_\_\_, 2010, to be effective as of January 1, 2010, by and among the DENVER DOWNTOWN DEVELOPMENT AUTHORITY ("DDA"), a body corporate duly organized and existing as a downtown development authority under the laws of the State of Colorado and the CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT ("Cherry Creek Subarea BID"), a quasi-municipal corporation and political subdivision of the State of Colorado.

WITNESSETH:

A. The City and County of Denver ("City") created the DDA pursuant to City Ordinance No. 400, Series of 2008 ("DDA Creation Ordinance"), which creation was approved by qualified electors of the DDA at the November 4, 2008 election ("DDA Creation Election"). The DDA submitted to the City and the City approved the Denver Union Station Plan of Development ("DUS Plan"), as hereinafter defined, under and pursuant to the Downtown Development Authority Act, Section 31-25-801, et. seq., C.R.S., as amended from time to time (the "DDA Act") by Ordinance No. 723, Series of 2008 ("DUS Plan Ordinance"); and

B. In accordance with the DUS Plan and the DDA Act, the DDA is authorized to undertake certain development and redevelopment projects and activities described in the DUS Plan ("Approved DDA Undertaking", as defined herein) and to utilize Incremental Property Tax Revenue and Incremental Sales Tax Revenue pursuant to the DUS Plan, the DDA Act and the City/DDA Cooperation Agreement, as the same may be amended or supplemented from time to time, to be executed by the City and the DDA ("City/DDA Cooperation Agreement"); and

C. The Cherry Creek Subarea BID has been organized for the purpose of and is authorized to levy ad valorem taxes on real and personal taxable property within the Cherry Creek Subarea BID in order to finance the design, acquisition, construction and installation of certain public improvements and to provide services and conduct its operations, as more fully set forth in City Ordinance No. 227, Series of 1992 ("Organizational Ordinance") and its Operating Plan as defined herein; and

D. A portion of the property currently within the Cherry Creek Subarea BID's boundaries is also included within the DUS Plan Area. A depiction of the Cherry Creek Subarea BID boundaries, and the DUS Plan Area showing the overlap is attached hereto as Exhibit A and incorporated herein by this reference; and

E. The Cherry Creek Subarea BID imposes an operating mill levy on taxable property within the Cherry Creek Subarea BID boundaries to fund its operations and maintenance functions; and

F. The DDA intends that its obligation to remit the Cherry Creek Subarea BID Incremental Property Tax Revenues, as hereinafter defined, to the Cherry Creek Subarea BID will be subject to annual budget and appropriations of the DDA as provided herein; and

G. The DDA and the Cherry Creek Subarea BID are authorized by the constitution and laws of the State of Colorado to enter into cooperative agreements with respect to projects and activities; and

H. The DDA and the Cherry Creek Subarea BID desire to enter into this Agreement to set forth their intent to cooperate to assure that the Cherry Creek Subarea BID Incremental Property Tax Revenues are made available to the Cherry Creek Subarea BID for purposes of operating the Cherry Creek Subarea BID in accordance with its Organizational Ordinance and Operating Plan.

NOW, THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the DDA and the Cherry Creek Subarea BID hereby agree as follows:

1. **Definitions.** For all purposes of this Agreement, unless the context expressly indicates differently, the terms defined in this Section shall have the following meanings. Any capitalized term defined in the Recitals to this Agreement shall have the meaning given to such term in the Recitals and, if also defined in this Section, in this Section. If any term is capitalized in this Agreement (including in the Recitals) but not defined herein, it shall have the meaning given to such term as set forth in the Operating Plan or the City/DDA Cooperation Agreement.

(a) "*Board*" means the Board of Directors of the Cherry Creek Subarea BID.

(b) "*City*" means the City and County of Denver, Colorado, a Colorado municipal corporation and home rule city.

(c) "*Cherry Creek Subarea BID*" means Cherry Creek Subarea Business Improvement District, a quasi-municipal corporation and political subdivision of the State of Colorado.

(d) "*Cherry Creek Subarea BID Incremental Property Tax Revenues*" means the Incremental Property Tax Revenues produced by the Property Tax imposed by the Cherry Creek Subarea BID.

(e) "*DDA*" means the Denver Downtown Development Authority, a body corporate duly organized and existing as a downtown development authority under the laws of the State of Colorado.

(f) "*DUSPA*" means the Denver Union Station Project Authority, a Colorado non-profit corporation and instrumentality of the City created as a constituted authority for the purposes of financing, acquiring, owning, equipping, designing, constructing, renovating, operating, maintaining and taking such other action as necessary with respect to the DUS Project.

(g) "*DUS Plan*" means the Denver Union Station Plan of Development dated November 25, 2008, and approved by the Denver City Council on December 22, 2008, by the DUS Plan Ordinance, as such DUS Plan may be amended from time to time.

(h) "*DUS Plan Area*" means the area described in Exhibit A to the DUS Plan.

(i) *"DUS Project"* means acquisition, construction, renovation, rehabilitation, improvement or equipping of DUS Project Improvements and DUS Project Equipment, including property whether real or personal, tangible or intangible, whether now owned or hereafter acquired by DUSPA that are necessitated by and/or associated with the improvement of the DUS Plan Area in accordance with the DUS Plan.

(j) *"Incremental Property Tax Revenues"* means, for each year subsequent to the inclusion of the property into the DDA Property Tax Increment Area, all property Tax Revenues with respect to such property in excess of Property Tax Revenues produced by the levy of Property Tax on the Property Tax Base Valuation for such property; provided that in the event of a general reassessment of taxable property in the Property Tax Increment Area, Incremental Property Tax Revenues shall be proportionately adjusted in the manner required by the DDA Act.

(k) *"Operating Plan"* means the annual Operating Plan of the Cherry Creek Subarea Business Improvement District as approved by the Cherry Creek Subarea BID and the City, as the same may be supplemented, amended or restated from time to time.

(l) *"Party"* means either the District or the DDA, as applicable, and *"Parties"* means both the District and the DDA.

(m) *"Property Tax"* means the levy on real and personal property at the rate fixed each year by the governing body of a taxing jurisdiction.

(n) *"Property Tax Base Valuation"* means the total valuation for assessment as certified by the County Assessor for the City of all property taxable by the applicable jurisdiction; provided that in the event of a general reassessment of taxable property in the Property Tax Increment Area, Property Tax Base Revenues shall be proportionately adjusted in the manner required by the DDA Act.

(o) *"Property Tax Revenues"* means revenues produced by the levy of any Property Tax, provided that the amount paid to the taxing jurisdiction shall be reduced by any lawful collection fee charged by the City.

2. **Cooperation.** The Cherry Creek Subarea BID and DDA hereby state their intention to cooperate in effectuating the remittance of the Cherry Creek Subarea BID Incremental Property Tax Revenues to the Cherry Creek Subarea BID.

3. **Cherry Creek Subarea BID Incremental Property Tax Revenues.** In consideration of the Cherry Creek Subarea BID providing future services within its boundaries, subject to annual budget and appropriations, the DDA agrees to remit or cause to be remitted to the Cherry Creek Subarea BID the Cherry Creek Subarea BID Incremental Property Tax Revenues on a monthly basis. The parties anticipate that, in accordance with a Resolution of the DDA instructing the City Treasurer to do so, the remittance to the Cherry Creek Subarea BID of the Cherry Creek Subarea BID Incremental Property Tax Revenues will be made directly to the Cherry Creek Subarea BID by the City Treasurer and that there will be no material change from the procedure by which the Cherry Creek Subarea BID has historically received Property Tax revenues. The DDA will use its best efforts to ensure that the DUS Plan and City/DDA

Cooperation Agreement are not modified to affect or change, and the DDA shall not take any action which affects or changes, the payment of the Cherry Creek Subarea BID Incremental Property Tax Revenues directly to the Cherry Creek Subarea BID by the City Treasurer, or the amount thereof.

Every year in which the DDA collects the Cherry Creek BID Incremental Property Tax Revenues, the DDA shall cause its staff or consultants to include sufficient revenues to pay the Cherry Creek Subarea BID Incremental Property Tax Revenues to the Cherry Creek Subarea BID to be included in the proposed annual budget and appropriations resolutions or measures of the DDA for presentation to the DDA governing body. Nothing herein shall impair the power of the DDA governing body to modify or eliminate such budget and appropriations for any given year by resolution. Any amounts of the Cherry Creek Subarea BID Incremental Property Tax Revenues that are unpaid in any year shall be included in the DDA's proposed annual budget and appropriations for possible payment in the subsequent fiscal year.

4. **Use of Cherry Creek Subarea BID Incremental Property Tax Revenues.** The Cherry Creek Subarea BID agrees that all revenues provided pursuant to this Agreement shall be used in accordance with the terms its Operating Plan.

5. **No Recourse Against Officers and Agents.** If a member of the governing body or any officer or agent of any of the Cherry Creek Subarea BID, DDA or the City acts in good faith, no civil recourse shall be available against such member, officer, or agent.

6. **DDA Covenant Relating to Pledge of Cherry Creek Subarea BID Incremental Property Tax Revenues.** The DDA hereby covenants that so long as this Agreement is in effect, it will not pledge, encumber or otherwise transfer the Cherry Creek Subarea BID Incremental Property Tax Revenues or any right to the Cherry Creek Subarea BID Incremental Property Tax Revenues, but, if for any reason the Cherry Creek Subarea BID Incremental Property Tax Revenues are not paid directly to the Cherry Creek Subarea BID by the City Treasurer pursuant to a Resolution with instructions from the DDA to do so, but are instead remitted to the DDA, the DDA shall maintain the same for the use and benefit of the Cherry Creek Subarea BID until paid to the Cherry Creek Subarea BID.

7. **Effective Date; Term.** This Agreement shall be effective as of January 1, 2010. Unless sooner terminated by mutual consent of the Parties. This Agreement shall remain in full force and effect until the expiration of the tax increment authorization under the DUS Plan and the City/DDA Cooperation Agreement pursuant to the Act. If on or after the expiration of this Agreement, the DDA has or receives any Cherry Creek Subarea BID Incremental Property Tax Revenues as provided for in the City/DDA Cooperation Agreement which would have been due to the Cherry Creek Subarea BID under this Agreement, subject to annual budget and appropriations, it shall remit or cause to be remitted such Cherry Creek Subarea BID Incremental Property Tax Revenues to the Cherry Creek Subarea BID notwithstanding such expiration.

8. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

10. **Headings.** Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

11. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

12. **Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To CCSBID:           Cherry Creek Subarea BID  
                          c/o Rick Kron, Mary Carter  
                          Grimshaw & Haring, P.C.  
                          1700 Lincoln St., Suite 3800  
                          Denver, CO 80203-4538

To DDA:               Denver Downtown Development Authority  
                          Chair  
                          Board of Directors  
                          c/o Manager of Finance  
                          201 W. Colfax Ave., Dept. 1010  
                          Denver, CO 80202

With a Copy to:     Denver City Attorney  
                          201 W. Colfax Ave., Dept. 1207  
                          Denver, CO 80202

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service, upon electronic confirmation of facsimile transmission, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

ATTEST

DENVER DOWNTOWN  
DEVELOPMENT AUTHORITY

By: Jeanne Robb  
Name: Jeanne Robb  
Title: NICE- CHAIR

By: Frank Cannon  
Name: FRANK CANNON  
Title: CHAIR

CHERRY CREEK SUBAREA BUSINESS  
IMPROVEMENT DISTRICT

By: [Signature]  
HP, President

Attest:

[Signature]  
Secretary

**EXHIBIT A**

**Depiction of Cherry Creek Subarea BID Boundaries and DUS Plan Area**



## **RECORD OF PROCEEDINGS**

### **MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF CHERRY CREEK SUBAREA BUSINESS IMPROVEMENT DISTRICT**

Held: Tuesday, the 8th day December, 2009, at 2:00 p.m. at the offices of Grimshaw & Haring, P.C., 1700 Lincoln St., Suite 3800, Denver, Colorado.

#### **ATTENDANCE:**

A special meeting of the Board of Directors of Cherry Creek Subarea Business Improvement District, City and County of Denver, Colorado was called as shown above and in accordance with the applicable statutes of the State of Colorado, with the following directors present and acting:

David P. Veldman, Director  
Dan Reagan, Director  
Paul Stann, Director

Absent was: Robert E. Rhodes. There is one vacancy on the Board at this time.

Also present were: Chuck Reid of R.S. Wells on behalf of the Central Platte Valley Metropolitan District; and Norman F. Kron, Jr. and Mary L. Carter of Grimshaw & Haring, P.C.

#### **CALL TO ORDER:**

On behalf of the Board, Mr. Kron noted that a quorum was present and called the meeting to order.

#### **DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST:**

On behalf of the Board, Mr. Kron reported that disclosure statements of potential conflicts of interest had been placed on file. There were no suggested additions or changes to the previous disclosures and no public comments

#### **APPROVAL OF PRIOR MEETING MINUTES:**

Following discussion, on motion duly made, seconded, and unanimously approved, the Board approved the minutes of December 15, 2008 as presented.

**2010 BUDGET HEARING:**

On behalf of the Board, Mr. Kron opened the public hearing on the District's 2010 budget. There being no comments from the members of the public present, the public hearing was closed.

**DISCUSSION AND APPROVAL OF 2010 BUDGET:**

Mr. Kron advised the Board that the City and County of Denver had advised him that it was considering refunding the TIF District Increment which had been deleted from the District's Certification of Valuation as noted on the December 3, 2009 recertification from the Assessor. He will keep the Board advised of any developments in this regard during 2010.

Mr. Kron explained the collection of refunds/abatements in 2009 with the additional mill levy in 2010. Following further discussion, upon motion duly made by Director Regan, seconded by Director Stann, and unanimously approved, the 2010 budget and appropriations were approved, and a total mill levy of 1.577 was certified for 2010.

**DISCUSSION OF ANNUAL ADMINISTRATIVE MATTERS:**

Ms. Carter presented a Resolution to the Board concerning annual administrative matters.

Following discussion, the following officers were elected for 2010:

President:	Paul Stann
Secretary/Treasurer	Robert E. Rhodes

Upon motion duly made, seconded, and unanimously approved, the Resolution Concerning Annual Administrative Matters was approved as presented.

**ADJOURNMENT:**

There being no further matters to come before the Board, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above referenced meeting.

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Secretary of the District