

FIRST AMENDMENT TO
STATEMENT OF PURPOSES OF THE CHERRY HILLS HEIGHTS WATER
AND SANITATION DISTRICT

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August 25, 2004

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FIRST AMENDMENT TO
STATEMENT OF PURPOSES OF THE CHERRY HILLS HEIGHTS
WATER AND SANITATION DISTRICT

A. Introduction

This First Amendment to Restated Statement of Purposes of the Cherry Hills Heights Water and Sanitation District (“Amended SOP”) is submitted in accordance with C.R.S. § 32-1-208(3), which states that “any statement of purposes filed by a special district . . . may be modified in the manner provided in section 32-1-207.”

As pertains to the Cherry Hills Heights Water and Sanitation District (the “District”), section 32-1-207, C.R.S., requires that material modifications to the District’s Statement of Purposes, as originally submitted to the Board of County Commissioners of Arapahoe County, Colorado (“BOCC”), be approved by the BOCC. The BOCC’s approval of modifications to the District’s Statement of Purposes is required with regard to changes of a basic or essential nature, including but not limited to: (1) any addition to the types of services provided by the District; (2) a decrease in the level of services; (3) a decrease in the financial ability of the District to discharge the existing or proposed indebtedness; or (4) a decrease in the existing or projected need for organized service in the area.

As set forth below, the District seeks the BOCC’s approval concerning certain additional District powers, including the District’s ability to provide parks and recreation improvements and services, and street improvements and services.

B. Justification for Modification of Statement of Purposes

The District is located at the northeast corner of East Hampden Avenue and South University Boulevard, directly across from the former Denver Seminary site, an 11-acre parcel located in Englewood, which site is to be redeveloped into a townhome, condominium and retail center by JVF, LLC, a Colorado limited liability company (“JVF”). JVF has an application pending before the Englewood City Council for approval of a PUD for the Denver Seminary Redevelopment Project. Preliminary plans for the Denver Seminary site call for the development of 45 two- and three-story townhomes (to be located around the perimeter of the site), approximately 305 condominiums, a 20,000-square-foot clubhouse with an indoor/outdoor swimming pool, and an approximate 60,000-square-foot, European-style gourmet retail center.

The District plans to construct a wall around the perimeter of the District (approximately 2,450' lineal feet), and undertake other internal street and roadway improvements, including but not limited to installing landscaping, sidewalks, and an entrance feature and/or traffic calming devices on Floyd Avenue (“Improvements”). An existing wooden fence around the perimeter of the District is in a state of disrepair. In order to construct and finance the Improvements, the District must amend its Statement of Purposes

to include park and recreation powers, and street powers.

The Denver Seminary Redevelopment Project may increase traffic in the general vicinity of the District, and have other indirect impacts on the homeowners located within the boundaries of the District, which indirect impacts the District seeks to mitigate through the construction and financing of the Improvements.

By Agreement dated August 16, 2004, by and between JVF and the District (“Agreement”), JVF agreed to fund, construct, and/or install certain of the Improvements, including but not limited to a brick or other mutually acceptable masonry wall on the east side of University Boulevard, to extend from Hampden Avenue north to the northern corner of University Boulevard and Floyd Avenue (a distance of approximately 1,000 lineal feet), with a height of 8 feet (the “Wall”). Per the terms of the Agreement, the District’s maximum contribution for the Wall is \$90,000.00, unless the District requests more costly materials or a height in excess of 8 feet.

The Agreement contemplates the District coordinating the construction of the Wall with the extension of a wall along Hampden Avenue (the “Hampden Wall Segment”). Such an extension along Hampden Avenue shall be the sole responsibility of the District, and JVF shall have no construction or financial obligation with respect to the Hampden Wall Segment.

The Improvements, including but not limited to the District’s contribution for the Wall and the Hampden Wall Segment, will be financed by the issuance of general obligation bonds, revenue bonds, or other debt instruments supported by revenue generated by the imposition of a mill levy and fees in accordance with Colorado law.

The District also intends to create a subdistrict pursuant to C.R.S. § 32-1-1101(1)(f), which subdistrict will consist of those property owners within the District who own exterior lots (those lots backing to South University Boulevard and/or East Hampden Avenue) (hereinafter, the “Subdistrict”). The Subdistrict shall be an independent quasi-municipal corporation, and shall possess all of the rights, privileges, and immunities of the District. In addition, the Subdistrict shall be subject to all provisions of this Amended SOP, when approved by the BOCC.

Some portion of the Improvements will be financed by the issuance of general obligation bonds, revenue bonds, or other debt instruments supported by revenue generated by the imposition of a separate Subdistrict mill levy. Details concerning the proposed financing are discussed in Section F, below.

C. Modification of Statement of Purposes

The District filed its original Statement of Purposes with the BOCC on August 25, 2004 (the “Original SOP”). Section 2 of the Original SOP, titled “Services and Facilities

Provided or to be Provided,” is hereby amended to include the following two subsections:

(c) **Parks and Recreation.**

The design, acquisition, installation, construction, operation and maintenance of public park and recreation facilities or programs including but not limited to fencing, grading, soil preparation, sprinkler systems, playgrounds, playfields, pedestrian trails, picnic areas, common area landscaping and weed control, outdoor lighting of all types, community events, and other facilities, together with all necessary, incidental and appurtenant facilities, land and easements, and all necessary extensions of and improvements to said facilities or systems.

(d) **Street Improvements.**

The construction and installation of curbs, gutters, culverts and other drainage facilities and sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping and other street improvements.

D. **Description of Proposed Facilities**

As stated above, the District intends to construct and finance a portion of the Improvements, including but not limited to the District’s contribution for the Wall and the Hampden Wall Segment. Upon completion of the Wall, the Hampden Wall Segment, and other Improvements, the District will undertake all responsibility for ongoing maintenance of the Improvements and will obtain insurance through the Colorado Special Districts Property and Liability Pool, in an amount to be decided in the sole and absolute discretion of the District’s Board of Directors.

The District has prepared a preliminary construction estimate for the Improvements. The construction estimate is attached hereto as Exhibit A, and is incorporated herein by reference. The total estimated cost of construction is \$650,000.00, which figure includes administrative costs and a contingency of approximately twenty percent (20%). Arapahoe County (“County”) shall not be responsible for assuming any costs related to the Improvements.

E. **Arapahoe County Construction Standards**

The District will ensure that the Improvements are designed and constructed in accordance with the standards and specifications of the County and any other governmental entities having jurisdiction over the District, and will comply with all applicable warranty periods.

F. Financing Plan

This section describes the nature, basis, method of funding and debt and mill levy limitations associated with the construction, operation and maintenance of the Improvements by the District and Subdistrict. The Financing plan is summarized on the financial pro forma attached hereto as Exhibit B.

1. Debt Limitation

The total general obligation debt authorization of the District for construction and maintenance of the Improvements shall not exceed Six Hundred and Fifty Thousand Dollars (\$650,000.00) (the "Debt Limit"). The Subdistrict is not expected to issue debt, per se, but rather will agree to supplement the District's tax revenues through the imposition of an additional mill levy or fees. This obligation shall be treated separately from the debt of the District, and shall not be treated as debt of the District. The debt of the District shall not exceed the Debt Limit set forth herein, unless the District and Subdistrict receive the prior approval of the BOCC. The Improvements will be financed by the issuance of general obligation bonds, revenue bonds, or other debt instruments supported by revenue generated by the imposition of a mill levy and/or fees in accordance with Colorado law.

The terms of such indebtedness will depend upon market conditions at the time of the borrowing. The proposed maximum voted interest rate for such issue is ten percent (10%), and the proposed maximum underwriting discount will be three percent (3%). The general obligation bonds, when issued, will mature not more than forty (40) years from date of issuance.

All bonds issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all taxable property within the District. The mill levy the District may initially impose for the payment of general obligation debt and for operations and maintenance is expected to be approximately eighteen (18) mills. An additional six (6) mills will be certified for the payment of general obligation debt and for operations and maintenance, but will only be imposed upon those property owners included within the Subdistrict. The initial total mill levy for eligible electors within the Subdistrict is therefore expected to be twenty four (24) mills. The financial pro forma attached as Exhibit B shows the District's assessed value (the District is built-out), anticipated debt service payments assuming a thirty (30) year repayment term, anticipated operation and maintenance costs, and assumes an interest rate of five percent (5%).

2. Identification of District Revenue

The District anticipates that the mill levy needed to support the debt, operations and maintenance expenses, and administrative costs is eighteen (18) mills through the year 2034.

The District intends to rely on ad valorem property taxes, but may supplement such revenues with other sources. The District has an approximate current assessed value of \$2,480,000 and is fully built out.

The Subdistrict anticipates that the mill levy needed to support the debt, operations and maintenance expenses, and administrative costs is six (6) mills through the year 2034. The Subdistrict intends to rely on ad valorem property taxes, but may supplement such revenues with other sources. The Subdistrict has an approximate current assessed value of \$555,000 and is fully built out.

3. Security for Debt

The District will not pledge any County funds or assets for security for the indebtedness set forth in the financial plan of the District.

4. Public Improvement Schedule

The District anticipates completion of the Improvements by 2006.

G. Modification of First Amendment to Statement of Purposes

The District and/or Subdistrict shall obtain the prior written approval of the BOCC before making any material modifications to this Amended SOP. Material modifications shall include modifications of a basic or essential nature including any additions to the types of services provided by the District, change in dissolution date, or change in debt limit. The County's approval shall not be required for mechanical modifications to this Amended SOP necessary for the execution of the Financing Plan outlined in Section F of this Amended SOP.

H. Failure to Comply with First Amendment to Statement of Purposes

In the event that the District and/or Subdistrict take any action which constitutes a material modification from the Amended SOP without approval from the County, the County may utilize the remedies set forth in applicable law to seek to enjoin the actions of the District and/or Subdistrict.

I. Statutory Requirements

It is submitted that this First Amendment to Statement of Purposes for the Cherry Hills Heights Water and Sanitation meets the requirements of the Special District Control Act, meets applicable requirements of the Colorado Constitution, and those of the County. A draft resolution approving the Amended SOP is attached hereto as Exhibit C.

CONSTRUCTION ESTIMATE

Construction Costs		
	Wall (estimated maximum contribution per JV Agreement)	\$90,000
	Hampden Wall Segment (1,450 lineal feet @ \$300/lf)	\$435,000
Administrative Costs		\$20,000
	Subtotal	\$545,000
	Contingency	\$100,000
	Total	\$645,000

EXHIBIT A

FINANCIAL PRO FORMA - Cherry Hills Heights
 Development Projection @ 18 mills for Debt Service and Operations and Maintenance
 (with additional 6 mills for D.S. and O&M paid by subdistrict / exterior lot owners)

Year	Total Res. Units	Actual Value (assumes avg val 580K, 2% biennial increase)		Total Ass'd Value (7.96%)	Total Mill Levy	Total Prop Tax Collections @ 98%		Subdistrict Prop Tax Collections @ 98%	Less District Operations @ \$5,000 Inflation @ 1%	Net Available for Debt Svc	Less Series 2005 \$650,000 Par Net Debt Svc (i=5%)		Annual Surplus	Cumulative Surplus
		Res. Units	biennial increase			Cumulative Mkt value	Total Tax Collections @ 98%				Additional Mill Levy (subdistrict)	Total Available Revenue		
2005	53	\$580,000	\$30,740,000	\$2,446,904	18.000	\$43,163	6.000	\$2,986	\$46,150	\$5,000	\$41,150	\$0	41,149.53	\$41,150
2006	53	\$580,000	\$30,740,000	\$2,446,904	18.000	\$43,163	6.000	\$2,986	\$46,150	\$5,050	\$41,100	\$41,900	(800.47)	\$40,349
2007	53	\$591,600	\$31,354,800	\$2,495,842	18.000	\$44,027	6.000	\$3,046	\$47,073	\$5,101	\$41,972	\$41,900	72.02	\$40,421
2008	53	\$591,600	\$31,354,800	\$2,495,842	18.000	\$44,027	6.000	\$3,046	\$47,073	\$5,152	\$41,921	\$41,900	21.02	\$40,442
2009	53	\$603,432	\$31,981,896	\$2,545,759	18.000	\$44,907	6.000	\$3,107	\$48,014	\$5,203	\$42,811	\$41,900	910.95	\$41,353
2010	53	\$603,432	\$31,981,896	\$2,545,759	18.000	\$44,907	6.000	\$3,107	\$48,014	\$5,255	\$42,759	\$41,900	858.92	\$42,212
2011	53	\$615,501	\$32,621,534	\$2,596,674	18.000	\$45,805	6.000	\$3,169	\$48,974	\$5,308	\$43,667	\$41,900	1,766.65	\$43,979
2012	53	\$615,501	\$32,621,534	\$2,596,674	18.000	\$45,805	6.000	\$3,169	\$48,974	\$5,361	\$43,614	\$41,900	1,713.58	\$45,692
2013	53	\$627,811	\$33,273,965	\$2,648,608	18.000	\$46,721	6.000	\$3,232	\$49,954	\$5,414	\$44,539	\$41,900	2,639.45	\$48,332
2014	53	\$627,811	\$33,273,965	\$2,648,608	18.000	\$46,721	6.000	\$3,232	\$49,954	\$5,468	\$44,485	\$41,900	2,585.31	\$50,917
2015	53	\$640,367	\$33,939,444	\$2,701,580	18.000	\$47,656	6.000	\$3,297	\$50,953	\$5,523	\$45,430	\$41,900	3,529.70	\$54,447
2016	53	\$640,367	\$33,939,444	\$2,701,580	18.000	\$47,656	6.000	\$3,297	\$50,953	\$5,578	\$45,374	\$41,900	3,474.47	\$57,921
2017	53	\$653,174	\$34,618,233	\$2,755,611	18.000	\$48,609	6.000	\$3,363	\$51,972	\$5,634	\$46,338	\$41,900	4,437.74	\$62,359
2018	53	\$653,174	\$34,618,233	\$2,755,611	18.000	\$48,609	6.000	\$3,363	\$51,972	\$5,690	\$46,281	\$41,900	4,381.40	\$66,740
2019	53	\$666,238	\$35,310,597	\$2,810,724	18.000	\$49,581	6.000	\$3,430	\$53,011	\$5,747	\$47,264	\$41,900	5,363.94	\$72,104
2020	53	\$666,238	\$35,310,597	\$2,810,724	18.000	\$49,581	6.000	\$3,430	\$53,011	\$5,805	\$47,206	\$41,900	5,306.46	\$77,411
2021	53	\$679,562	\$36,016,809	\$2,866,938	18.000	\$50,573	6.000	\$3,499	\$54,072	\$5,863	\$48,209	\$41,900	6,308.64	\$83,719
2022	53	\$679,562	\$36,016,809	\$2,866,938	18.000	\$50,573	6.000	\$3,499	\$54,072	\$5,922	\$48,150	\$41,900	6,250.01	\$89,969
2023	53	\$693,154	\$36,737,146	\$2,924,277	18.000	\$51,584	6.000	\$3,569	\$55,153	\$5,981	\$49,172	\$41,900	7,272.23	\$97,242
2024	53	\$693,154	\$36,737,146	\$2,924,277	18.000	\$51,584	6.000	\$3,569	\$55,153	\$6,041	\$49,112	\$41,900	7,212.42	\$104,454
2025	53	\$707,017	\$37,471,888	\$2,982,762	18.000	\$52,616	6.000	\$3,640	\$56,256	\$6,101	\$50,155	\$41,900	8,255.07	\$112,709
2026	53	\$707,017	\$37,471,888	\$2,982,762	18.000	\$52,616	6.000	\$3,640	\$56,256	\$6,162	\$50,094	\$41,900	8,194.06	\$120,903
2027	53	\$721,157	\$38,221,326	\$3,042,418	18.000	\$53,668	6.000	\$3,713	\$57,381	\$6,224	\$51,158	\$41,900	9,257.56	\$130,161
2028	53	\$721,157	\$38,221,326	\$3,042,418	18.000	\$53,668	6.000	\$3,713	\$57,381	\$6,286	\$51,095	\$41,900	9,195.33	\$139,356
2029	53	\$735,580	\$38,985,753	\$3,103,266	18.000	\$54,742	6.000	\$3,787	\$58,529	\$6,349	\$52,180	\$41,900	10,280.09	\$149,636
2030	53	\$735,580	\$38,985,753	\$3,103,266	18.000	\$54,742	6.000	\$3,787	\$58,529	\$6,412	\$52,117	\$41,900	10,216.61	\$159,853
2031	53	\$750,292	\$39,765,468	\$3,165,331	18.000	\$55,836	6.000	\$3,863	\$59,699	\$6,476	\$53,223	\$41,900	11,323.06	\$171,176
2032	53	\$750,292	\$39,765,468	\$3,165,331	18.000	\$55,836	6.000	\$3,863	\$59,699	\$6,541	\$53,158	\$41,900	11,258.30	\$182,434
2033	53	\$765,298	\$40,560,777	\$3,228,638	18.000	\$56,953	6.000	\$3,940	\$60,893	\$6,606	\$54,287	\$41,900	12,386.87	\$194,821
2034	53	\$765,298	\$40,560,777	\$3,228,638	18.000	\$56,953	6.000	\$3,940	\$60,893	\$6,673	\$54,221	\$41,900	12,320.81	\$207,142
2035	53	\$780,604	\$41,371,993	\$3,293,211	18.000	\$58,092	6.000	\$4,019	\$62,111	\$6,739	\$55,372	\$41,900	13,471.95	\$220,614
2036	53	\$780,604	\$41,371,993	\$3,293,211	18.000	\$58,092	6.000	\$4,019	\$62,111	\$6,807	\$55,305	\$0	55,304.56	\$275,918
2037	53	\$796,216	\$42,199,433	\$3,359,075	18.000	\$59,254	6.000	\$4,099	\$63,353	\$6,875	\$56,479	\$0	56,478.72	\$332,397
2038	53	\$796,216	\$42,199,433	\$3,359,075	18.000	\$59,254	6.000	\$4,099	\$63,353	\$6,943	\$56,410	\$0	56,409.97	\$388,807

No. _____

Series of 2004

TITLE: A RESOLUTION TO APPROVE THE FIRST AMENDMENT TO STATEMENT OF PURPOSES OF THE CHERRY HILLS HEIGHTS WATER AND SANITATION DISTRICT

WHEREAS, BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY, COLORADO, FINDS:

A. That a First Amendment to Statement of Purposes of the Cherry Hills Water and Sanitation District ("Amended SOP") was filed in the office of the Arapahoe County Clerk and Recorder; and

B. That pursuant to C.R.S. §§ 32-1-207(2) and 32-1-203(1), and the Arapahoe County Development Code, the Board of County Commissioners (the "Board") has authority to review the Amended SOP; and

C. That the Board has reviewed the Amended SOP, the evidence and related exhibits, and has determined that the same meets the county approval criteria under the Special District Act, and therefore has determined to adopt a resolution of approval of the Amended SOP.

Upon consideration of the Amended SOP, the Board does find, determine and declare, as required by C.R.S. §§ 32-1-207(2) and 32-1-203(1), as follows:

A. That there is sufficient existing and projected need for organized service in the area to merit a change in the services to be provided by the Cherry Hills Heights Water and Sanitation District (the "District");

B. That the existing service in the area to be served by the District is inadequate for present and projected needs;

C. That the District is capable of providing economical and sufficient service to the area within its proposed boundaries;

D. That the area included in the District has the financial ability to discharge the proposed indebtedness on a reasonable basis;

E. That adequate service is not or will not be available to the area through Arapahoe County (the "County") or other existing quasi-municipal corporations, including existing Districts, within a reasonable time and on a comparable basis;

EXHIBIT C

F. That the facility and service standards of the proposed District are compatible with the facility and service standards of the County;

G. That the proposal is in substantial compliance with the County's master plan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY, COLORADO, AS FOLLOWS:

Section 1. The Board hereby determines that upon consideration of the Amended SOP, the First Amendment to Statement of Purposes of the Cherry Hills Heights Water and Sanitation District shall be and hereby is approved.

RESOLVED AND PASSED this _____ day of _____, 2004.

COUNTY OF ARAPAHOE, COLORADO

Susan Beckman, Board Chair

ATTEST:

Nancy A. Doty, County Clerk

EXHIBIT C