

CITY COUNCIL AGENDA
May 23, 2011
5:00 P.M.

- I. Call to Order**
- II. Roll Call**
- III. Scheduled Public Appearances**
 - a) Historic Preservation Awards
- IV. Citizens Comments & Petitions** (*Time for any citizen to address Council on issues NOT on the agenda. Please limit your comments to 3 minutes*)
- V. Special Orders of the Day**
 - a) Councilmembers' and Mayor's Comments
 - b) Agenda Deletions and Additions
 - c) City Manager's Comments
 - d) Board Reports
- VI. Consent Calendar** (*These matters may be adopted together by a single motion*)
 - a) Minutes – April 26, May 9, 2011
 - b) Resolution #33, 2011 – Contract for 2011 Street Improvement Project
 - c) Resolution #34, 2011 – Smuggler Mountain Open Space Water Rights
 - d) Resolution #35, 2011 – Valley Fine Arts Lease
 - e) Resolution #36, 2011 – Wheeler Restaurant Lease
 - f) Resolution #38, 2011 – Vehicle Replacement Contract
- VII. First Reading of Ordinances**
- VIII. Public Hearings**
 - a) Ordinance #14, 2011 - Code Amendment – Affordable Housing Unit Criteria
 - b) Ordinance #17, 2011 - Code Amendment Solid Waste
 - c) Ordinance #18, 2011 - Supplemental Appropriations
- IX. Action Items**
 - a) Resolution #37, 2011 – Contract Ice Garden Compressor
 - b) Reducing Bottled Water in Aspen
 - c) Resolution #31, 2011 – Appeal Floor Area Ratio
 - d) Appeal Fees – Given Institute
- X. Executive Session**
- XI. Adjournment**

Next Regular Meeting June 13, 2011

COUNCIL'S ADOPTED GUIDELINES

- | |
|---|
| <ul style="list-style-type: none">✓ Stick to top priorities✓ Foster a safe, supportive, innovative environment that encourages creativity and acceptable risk-taking✓ Create structure and allow adequate time & resources for citizen processes. Demonstrate and invite active listening |
|---|

COUNCIL SCHEDULES A 15 MINUTE DINNER BREAK APPROXIMATELY 7 P.M.

V1 b

MEMORANDUM

TO: Mayor and City Council

FROM: Jerry Nye, Superintendent of Streets

THRU: Randy Ready, Asst. City Manager

DATE: May 4, 2011

RE: Asphalt Improvement Project 2011 - 020

SUMMARY: Staff recommends approval of a contract with Grand River Construction in the amount of \$368,221.48 to accomplish the 2011 Street Improvement Project.

PREVIOUS COUNCIL ACTION: The Asset Management Plan includes this project for 2011 construction. City Council approved the 2011 Asset Management plan and appropriated \$389,780.00 for this project as part of the 2011 Budget.

BACKGROUND: The street improvement work to be done in 2011 is the result of rolling last year's scope of work and budget with this year's work. Grand River was unable to complete last year's work due to time and weather constraints at the end of the fall season. Last year's work will be done according to the 2010 contract terms. Grand River has agreed to extend those terms to the 2011 scope of work, with a slight increase in asphalt binder costs for this year's portion, but there will be cost savings and only one mobilization cost by combining the two projects into one. Staff recommends proceeding with both years' work this year, then going back to the competitive bid process for the 2012 work.

DISCUSSION: This contract is to do the 2011 Street Improvement Project as budgeted for this year. The work to be completed this year involves asphalt overlays to sections of the following residential streets: Maroon Creek Road from Roundabout to the county line; Puppy Smith Street from North Mill Street to the parking lot entrance;; Roaring Fork Drive from HWY 82 to West View Drive, Eastwood Drive from West view Drive to Roaring Fork Drive; South Aspen Street from Main Street to Durant Avenue; Northway Drive from Roaring Fork Drive to end of street; Human Service Center Road from Hospital Road to Doolittle Drive; Park Circle from Spruce Street to Brown Lane.

Work to be performed under the contract primarily consists of 1.5 inch pavement overlays. This will give the streets a greater structural stability for longevity and provide a longer wear factor. Full width and edge roto-milling will take 1 inch off the top layer of the existing street surface. A new 1.5 inch asphalt mat will be added back to complete the work. The funds remaining in the budget will be used to do asphalt patch work prior to the paving project to keep cracks from

reflecting up through the new asphalt mat. Some of the remaining funds will also be used to do crack sealing on other streets in the city to prevent moisture from penetrating into the sub base and causing pothole conditions.

The work in the 2010 contract to be accomplished this year with funds carried forward includes the following: South Avenue from Gibson Street to Spruce Street; Gibson Avenue from Red Mountain Road to South Avenue; West View Drive from Northway Drive to Roaring Fork Drive; Alice lane from McSkimming Road to the end; Durant Avenue from Aspen Street to South Mill Street; E. Hyman Avenue from Spring Street to Original Street; N. Mill Street from Main Street to the south side of the North Mill Street Bridge; S. Hunter Street from Main Street to Durant Avenue; S. Spring Street from Main Street to Durant Avenue.

FINANCIAL IMPLICATIONS: The 2011 Asset Management Plan approved \$389,780.00 for this work. The proposed scope of work to be awarded under the contract is below the budgeted amount. The funds remaining in the budget will be used to do pre-paving patching and crack sealing work.

RECOMMENDATION: Staff recommends Council approval of this contract with Grand River Construction to accomplish the 2011 Street Improvement Project to keep the structural integrity of the City Streets intact.

PROPOSED MOTION: I move to approve Resolution # 33 of 2011 on the consent calendar of May 23, 2011.

CITY MANAGER COMMENTS: Recommend approval of this
Contract.

RESOLUTION NO. 33
Series of 2011

A RESOLUTION OF THE CITY OF ASPEN, COLORADO, APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN, COLORADO, AND Grand River Construction., AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID DOCUMENT(S) ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a CONTRACT between the City of Aspen, Colorado and Grand River Construction a copy of which contract is annexed hereto and made a part thereof.

NOW, WHEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

Section One

That the City Council of the City of Aspen hereby approves that CONTRACT between the City of Aspen, Colorado, and Grand River Construction a copy of which is annexed hereto and incorporated herein, and does hereby authorize the City Manager of the City of Aspen to execute said contract on behalf of the City of Aspen.

Dated: _____, 2011

Michael C. Ireland
Mayor

I, Kathryn S. Koch, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held _____, 2011

Kathryn S. Koch, City Clerk

PROCUREMENT CONTRACT ROUTING SLIP AND CHECK LIST

Instructions: This form should be completed at each step of the procurement process and should follow each request for review or approval. Contracts under \$2,000 require only Department Head approval. Contracts over \$2,000 require City Manager approval. They do not require competitive bids but require documentation of source selection process. Contracts over \$10,000 require City Attorney and City Manager approval. Competitive bidding process is required. Contracts over \$25,000 require City Council approval.

ALL CONTRACTS

Procurement Description: <u>2011 Street Improvements Project</u>		Project #: <u>2011-020</u>
Budget estimate: <u>\$389,780.00</u>		
Is proposed expenditure approved in the Department's budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Explain process for vendor selection: <u>The contract is a result of an agreement with the City of Aspen and the 2010 awarded Contractor that will be performing the 2010 asphalt improvement project in the fall of this year because of scheduling delays postponed the project last year. The 2010 awarded contractor is agreeing to perform the 2011 asphalt work for the same cost as they quoted for the 2010 work. There will be a 1.2% overall increase in the contract cost due to bid tab items that are out of the control of the awarded 2010 contractor, because of sub contractor cost increases. By having this contractor performing this year's work along with the 2010 work, the City of Aspen will have No increase in oil costs or have No additional Mobilization costs, and the impact to the residents will be reduced with the one contractor performing the work.</u>		
<u>4 / 19 / 11 /</u>	Dept. Head approval of proposal:	<u>[Signature]</u>

CONTRACTS OVER \$2,000 AND UNDER \$10,000

Contractor/Vendor Selected: _____	
<u> / / /</u> Dept. Head approval: _____	
<u> / / /</u> City Attorney review: _____	<u> / / /</u> City Manager Approval: _____
Original signed contract documents to City Clerk, Department and to Vendor/Contractor	

CONTRACTS OVER \$10,000

<u>4/11/11</u> RFP or ITB Completed: <u>[Signature]</u>	<u> / / /</u> Eng. Dept. Review: _____
<u> / / /</u> RFP or ITB Reviewed by City Attorney: _____	
<u> / / /</u> 1 st Advertisement	<u> / / /</u> 2 nd Advertisement (Attach Advertisement)
<u> / / /</u> Bid Opening: <u>N/A</u>	
Contractor/Vendor Selected: <u>GRAND RIVER CONSTRUCTION</u>	
<u>5/4/2011</u> Dept. Head approval: <u>[Signature]</u>	
<u>5/17/2011</u> Award letter sent: <u>Hand Delivered</u>	
<u>5/11/2011</u> Signed contracts returned by vendor/contractor.	
<u> / / /</u> Performance and Payment Bonds received	
<u> / / /</u> Certificate of insurance received	<u>N/A</u>
<u> / / /</u> Finance Department Review: _____	
If Over \$25,000, <u> / / /</u> Prepare cover memo and resolution for City Council Approval. _____	
<u> / / /</u> City Attorney Review: _____	<u> / / /</u> City Manager Approval: _____
<u> / / /</u> City Council Approval	<u> / / /</u> Notice to Proceed _____
Original signed contract documents to City Clerk, Department and Contractor/Vendor	

Instructions for Procurement Contract Routing Slip and Check List



CONTRACT FOR CONSTRUCTION

THIS AGREEMENT, made and entered into on , by and between the **CITY OF ASPEN**, Colorado, hereinafter called the "City", and Grand River Construction, hereinafter called the "Contractor".

WHEREAS, the City has caused to be prepared, in accordance with the law, specifications and other Contract Documents for the work herein described, and has approved and adopted said documents, and has caused to be published, in the manner and for the time required by law, an advertisement, for the project: 2011 Street Improvements Project (Project # 2011-020).

WHEREAS, the Contractor, in response to such advertisement, or in response to direct invitation, has submitted to the City, in the manner and at the time specified, a sealed Bid in accordance with the terms of said Invitation for Bids; and,

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the Bids submitted in response to the published Invitation for Bids therefore, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible and responsive bidder for the said Work and has duly awarded to the Contractor a Contract For Construction therefore, for the sum or sums set forth herein;

NOW, THEREFORE, in consideration of the payments and Contract for Construction herein mentioned:

1. The Contractor shall commence and complete the construction of the Work as fully described in the Contract Documents.
2. The Contractor shall furnish all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Work described herein.
3. The Contractor shall commence the work required by the Contract Documents within seven (7) consecutive calendar days after the date of "Notice To Proceed" and will complete the same by the date and time indicated in the Special Conditions unless the time is extended in accordance with appropriate provisions in the Contract Documents.
4. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for a sum not to exceed Three Hundred Sixty Eight Thousand Two Hundred Twenty One Dollars and Forty Eight Cents(**\$368,221.48**) **DOLLARS** or as shown on the BID proposal.

5. The term "Contract Documents" means and includes the documents listed in the City of Aspen General Conditions to Contracts for Construction (version GC97-2) and in the Special Conditions. The Contract Documents are included herein by this reference and made a part hereof as if fully set forth here.
6. The City shall pay to the Contractor in the manner and at such time as set forth in the General Conditions, unless modified by the Special Conditions, such amounts as required by the Documents.
7. This Contract For Construction shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Notwithstanding anything to the contrary contained herein or in the Contract Documents, this Contract For Construction shall be subject to the City of Aspen Procurement Code, Title 4 of the Municipal Code, including the approval requirements of Section 4-08-040. This agreement shall not be binding upon the City unless duly executed by the City Manager or the Mayor of the City of Aspen (or a duly authorized official in his/her absence) following a resolution of the Council of the City of Aspen authorizing the Mayor or City Manager (or a duly authorized official in his/her absence) to execute the same.
8. This agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the City and the Contractor respectively and their agents, representatives, employees, successors, assigns, and legal representatives. Neither the City nor the Contractor shall have the right to assign, transfer or sublet his or her interest or obligations hereunder without the written consent of the other party.
9. This agreement does not and shall not be deemed or construed to confer upon or grant to any third party or parties, except to parties to whom the Contractor or the City may assign this Contract For Construction in accordance with the specific written consent, any rights to claim damages or to bring suit, action or other proceeding against either the City or the Contractor because of any breach hereof or because of any of the terms, covenants, agreements or conditions herein contained.
10. No waiver of default by either party of any terms, covenants or conditions hereof to be performed, kept and observed by the other party shall be construed, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.
11. The parties agree that this Contract For Construction was made in accordance with the laws of the State of Colorado and shall be so construed. Venue is agreed to be kept exclusively in the courts of Pitkin County, Colorado.
12. In the event that legal action is necessary to enforce any of the provisions of this Contract for Construction, the prevailing party shall be entitled to its costs and reasonable attorney's fees.
13. This Contract For Construction was reviewed and accepted through the mutual efforts of the parties hereto, and the parties agree that no construction shall be made or presumption shall arise for or against either party based on any alleged unequal status of the parties in the negotiation, review or drafting of this Contract For Construction.

14. The undersigned representative of the Contractor, as an inducement to the City to execute this Contract For Construction, represents that he/she is an authorized representative of the Contractor for the purposes of executing this Contract For Construction and that he/she has full and complete authority to enter into this Contract For Construction for the terms and conditions specified herein.

IN WITNESS WHEREOF, the parties agree hereto have executed this Contract For Construction on the date first above written.

ATTESTED BY:

CITY OF ASPEN, COLORADO

By: _____

Title: _____

RECOMMENDED FOR APPROVAL:

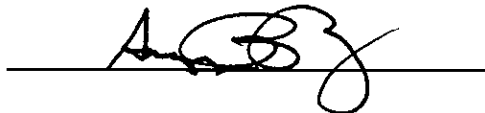

City Street Department

APPROVED AS TO FORM:

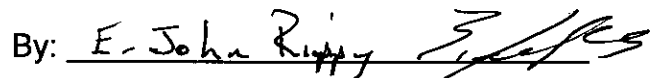
By: _____

City Attorney

ATTESTED BY:



CONTRACTOR: Grand River Const.

By: 

Title: V.P.

Note: Certification of Incorporation shall be executed if Contractor is a Corporation. If a partnership, the Contract shall be signed by a Principal and indicate title.

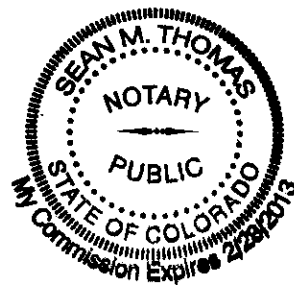
CERTIFICATE OF INCORPORATION

(To be completed if Contractor is a Corporation)

STATE OF Colorado)
COUNTY OF Garfield) SS.

On this 26th day of April, 2011, before me appeared E. John Rippy, to me personally known, who, being by me first duly sworn, did say that s/he is Vice President of Grand River Const. and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said deponent acknowledged said instrument to be the free act and deed of said corporation.

WITNESS MY HAND AND NOTARIAL SEAL the day and year in this certificate first above written.



Sean M. Thomas
Notary Public

1305 BONNETT AVE GLENWOOD Spgs CO 81601
Address

My commission expires: 2-28-2013

Certification and Supplemental Conditions to Contract for Services - Conformance with §8-17.5.101, et seq.

Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bill 06-1343 that added a new article 17.5 to Title 8 of the Colorado Revised Statutes entitled “Illegal Aliens – Public Contracts for Services.” This new law prohibits all state agencies and political subdivisions, including the City of Aspen, from knowingly employing or contracting with an illegal alien to perform work under a contract, or to knowingly contract with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. The new law also requires that all contracts for services include certain specific language as set forth in the statutes. This Certification and Supplemental Conditions has been designed to comply with the requirements of this new law.

Applicability. The certification and supplemental conditions set forth herein shall be required to be executed by all persons having a public contract for services with the City of Aspen.

Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City of Aspen.

“Basic Pilot Program” means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

“Contractor” means a person having a public contract for services with the City of Aspen.

“Public Contract for Services” means any type of agreement, regardless of what the agreement may be called, between the City of Aspen and a Contractor for the procurement of services. It specifically means the contract or agreement referenced below.

“Services” means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

PURSUANT TO SECTION 8-17.5-101, C.R.S., et. seq.:

By signing this document, Contractor certifies and represents that at this time:


- (i) Contractor does not knowingly employ or contract with an illegal alien; and
- (ii) Contractor has participated or attempted to participate in the Basic Pilot Program in order to verify that it does not employ illegal aliens.

The Public Contract for Services referenced below is hereby amended to include the following terms and conditions:

1. Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.
2. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.
3. Contractor has verified or has attempted to verify through participation in the Federal Basic Pilot Program that Contractor does not employ any illegal aliens; and if Contractor has not been accepted into the Federal Basic Pilot Program prior to entering into the Public Contract for Services, Contractor shall forthwith apply to participate in the Federal Basic Pilot Program and shall in writing verify such application within five (5) days of the date of the Public Contract. Contractor shall continue to apply to participate in the Federal Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.
4. Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.
5. If Contractor obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with an illegal alien, Contractor shall:
 - (i) Notify such subcontractor and the City of Aspen within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Contractor shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.
7. If Contractor violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City of Aspen may terminate the Public Contract for Services. If the Public Contract for Services is so terminated, Contractor shall be liable for actual and consequential damages to the City of Aspen arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

Public Contract for Services: Asphalt Paving

Contractor: Grand River Const.

By:  E. John Rippey

Title: V.P.

APPENDIX A

Required mixture design requirements
Grading SX

Sieve Size	Target Gradation (Percent Passing)	Specification
1/2"	100	
3/8"	84	78-90
#4	55	50-60
#8	42	37-47
#16	32	
#30	23	19-27
#50	14	
#100	9	
#200	5.9	3.9-7.9

Grading F

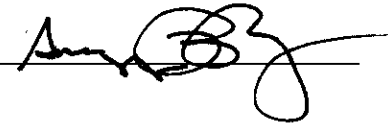
Sieve Size	Target Gradation (Percent Passing)	Specification
1/2"	100	
3/8"	98	92-100
#4	73	• 68-78
#8	57	52-62
#16	40	
#30	27	23-31
#50	16	
#100	8	
#200	4.6	2.6-6.6

BRANCH		SECTION #	SIZE
NAME	STREET	FROM: - TO:	SQ. YD
*	*	*	*
MRC	Marron Cr.RD.	Roundabout to Lower school RD.	1.5"
MRC	Marron Cr.RD.	Thru lower school rd. To Moore DR.	1.5"
MRC	Marron Cr.RD.	Moore DR. To City Limit Sign.	1.5"
PS	PUPPY SMITH ST.	1- N. MILL ST. - CLARK MARKET DR.	1.5"
PS	PUPPY SMITH ST.	3 - BACK POST OFFICE DR. - ACES Parking	1.5"
RFD	ROARING FORK DR	HWY 82 TO NORTHWAY DR	1.5"
RFD	ROARING FORK DR	NORTHWAY DR To West View DR.	1.5"
EWD	East Wood DR.	West View DR. To Roaring Fork Dr.	1.5"
S-AP	S. ASPEN ST.	1 - MAIN ST. - DURANT AVE.	1.5"
NWA	North Way Drive	Roaring Fork Dr. To End	1.5"
HSD	Human Service Dr.	Hospital RD, To Doolittle DR.	1.5"
PC	Park Circle.	Spruce St. To Browns LN,	1.5"
Private	Marolt Road	Castle Creek RD, To Parking Lot entrance	2"

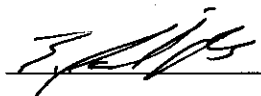
AFFIDAVIT OF COMPLIANCE
PROJECT NUMBER: 2011-020

The undersigned contractor has read a copy of the Contract Documents including the construction plans, for this project and understands and hereby affirms that he/she does not now, nor will he/she in the future, violate the provisions of said Contract Documents, so long as he/she is under the Contract to the City of Aspen for the performance of a Contract. The undersigned further acknowledges he/she understands and agrees to all terms and conditions of the Aspen Municipal Code and its being part of the Contract with the City of Aspen.

Attest:

Corporate Seal 

Grand River Const.
Contractor

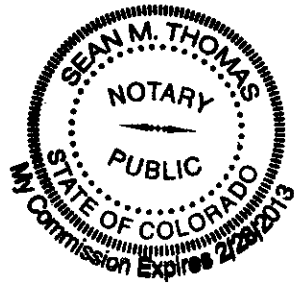
By:  E. John Rippey

STATE OF COLORADO)
) SS.
COUNTY GARFIELD)

Before me SEAN M THOMAS, a notary public and for GARFIELD County, Colorado personally appeared E. JOHN RIPPY known to me personally to be the person(s) whose signature(s) in my presence this 26th day of APRIL, A.D. 2011.

My commission expires: 2-28-2013

(Seal)




Notary Public

VIC

ALPERSTEIN & COVELL, P.C.

ATTORNEYS AT LAW

DONALD W. ALPERSTEIN
CYNTHIA F. COVELL
NEIL E. AYERVAIS
ANDREA L. BENSON

1600 BROADWAY, SUITE 2350
DENVER, COLORADO 80202-4921

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nea@alpersteincovell.com
alb@alpersteincovell.com

GILBERT Y. MARCHAND, JR.
Of Counsel

TELEPHONE (303) 894-8191
FAX (303) 861-0420

MEMORANDUM

TO: Mayor Ireland and Members of City Council
FROM: Cynthia F. Covell, water counsel
RE: Smuggler Mountain Open Space - Water Rights
DATE: May 10, 2011

Background

Last year, Pitkin County unilaterally filed Case No. 10CW196, an application for finding of reasonable diligence in the development of certain conditional rights associated with the Smuggler Mountain open space. When City staff learned of the application, we discussed with the County either (1) joining the application as a co-applicant, since Aspen is co-owner of these rights; or (2) appointing the County as Aspen's agent for purposes of pursuing this diligence case. However, the County's case encountered opposition, and the County now wishes to dismiss the application. Dismissal of the application will result in cancellation of the conditional water rights, and the County has asked for the City's concurrence in this course of action.

The City and County jointly acquired the Smuggler Mountain Open Space property several years ago, and the acquisition included some water rights. Kerry Sundeen and I reviewed these rights in 2002 in connection with the City's appraisal, and found a lack of evidence of historic use, and inconsistencies and incomplete information about the use, ownership and purported value of these rights. The appraisers concluded that "these water rights would have no added contributory value over and above the value of the underlying land." (Chase & Company appraisal at 63.)

Among the water rights acquired are several conditional water rights, the Boulder-Park Ditch & Pipeline, Boulder-Park Reservoir, Park-Snowstorm No. 2 Ditch and Pipeline, and Park - Snowstorm No. 2 Reservoir ("Conditional Rights"). The Conditional Rights are decreed for irrigation of six acres of pasture and six acres of gardens and orchards. The Conditional Rights had not actually been developed and put to use when they were applied for in 1988, and for that reason they were given a conditional decree. Conditional decrees must be extended every six

years until they are fully developed. To extend a conditional water right, the owner must show that he has proceeded with reasonable diligence to develop the right and put the water to beneficial use, and that he can and will develop the right within a reasonable time.

Cancellation of Conditional Rights. The Conditional Rights are fairly junior, having a 1988 priority date. They are decreed for irrigation of pasture, gardens, and orchards. They have not yet been developed and put to use. Development of these rights would require infrastructure construction. Importantly, the City and County do not intend to irrigate pasture, gardens or orchards on the Smuggler Mountain Open Space. Therefore, it will be difficult for the County, in the face of opposition, to obtain a water court decree continuing diligence on the Conditional Rights for another six years.

Section 13.4 of the City Charter prohibits sale, exchange or disposal of real property in use for public purposes, without a vote of the electorate. Water rights are considered “real property” rights. However, the Conditional Rights are not in use for public purposes. In fact, they have not been developed. It is unlikely they will be developed for the decreed purposes, because irrigation of gardens, pasture and orchards is inconsistent with the open space use of the Smuggler Mountain property. The Conditional Rights are fairly junior water rights, so changing them to some other use would not be cost effective; it would be preferable to simply appropriate new junior rights for the desired use. Moreover, as noted in the appraisal, the Conditional Rights (as well as the other water rights acquired in the Smuggler Mountain open space acquisition) do not have independent value, and we do not believe they could be sold to a third party.

For these reasons, we believe that allowing these rights to be cancelled, as Pitkin County has requested, would not violate the charter prohibition against “disposal” of real property in use for a public purpose in violation of the Charter. We believe that the County is unlikely to prevail in its opposed diligence action, and that public resources should not be used to continue this water court proceeding.

Recommendation. We recommend that City Council approve the attached resolution, providing that the City of Aspen does not object to Pitkin County’s request to cancel the Conditional Rights.

RESOLUTION NO. 34
Series of 2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING PITKIN COUNTY'S REQUEST TO VOLUNTARILY DISMISS ITS WATER COURT APPLICATION SEEKING DILIGENCE IN THE DEVELOPMENT OF CERTAIN CONDITIONAL WATER RIGHTS.

WHEREAS, the City, together with Pitkin County, owns the Smuggler Mountain Open Space property; and

WHEREAS, some water rights were included with the Smuggler Mountain Open Space property; and

WHEREAS, the water rights acquired with the Smuggler Mountain Open Space property were not independently valued, due to inconsistencies and incomplete information surrounding the ownership and use of the water rights; and

WHEREAS, the water rights acquired with the Smuggler Open Space property include conditional water rights for the Boulder-Park Ditch and Pipeline, Boulder-Park Reservoir, Park-Snowstorm No. 2 Ditch and Pipeline, and Park-Snowstorm No. 2 Reservoir (the "Conditional Rights"); and

WHEREAS, the Conditional Rights are decreed for irrigation of pasture, gardens and orchards; and

WHEREAS, Pitkin County filed water court Case No. 2010CW196 in order to maintain said conditional water rights; and

WHEREAS, since filing the water court application, Pitkin County has determined that it should withdraw the application, which will result in cancellation of the Conditional Rights, and has asked that the City, as co-owner of the water rights, approve this withdrawal; and

WHEREAS, the City agrees with the County that the Conditional Rights will not be

developed for their decreed purposes, as there will not be irrigated gardens, pastures or orchards on the Smuggler Mountain Open Space

THEREFORE, BE IT RESOLVED, by the City Council of the City of Aspen, that the City approves Pitkin County's request to withdraw the application for finding of reasonable diligence in the development of the Conditional Rights in Case No. 2010CW196, and that the City water counsel is authorized to so advise Pitkin County, and to execute a pleading or other document demonstrating concurrence in the withdrawal if reasonably necessary to effectuate Pitkin County's withdrawal of the application in Case No. 2010CW196.

Dated: _____

APPROVED by the City Council of the City of Aspen on the _____ day of _____, 2011.

Mayor

Attest:

City Clerk

VID

MEMORANDUM

TO: Mayor and Council
FROM: Scott Miller, Capital Asset Director
THRU: Randy Ready, Assistant City Manager
DATE: May 16, 2011
MEETING DATE: May 23, 2011
RE: Wheeler Opera House/ Valley Fine Art Lease

SUMMARY: At the conclusion of the RFP process for selection of a restaurant operator for the Wheeler restaurant space, Council directed staff to negotiate a lease with Valley Fine Art for smaller space than they currently lease from the City. Those negotiations are completed and the attached lease for 213 South Mill Street is submitted for your approval.

PREVIOUS COUNCIL ACTION: From January through March of this year staff conducted an RFP process to select tenants for the Wheeler Opera House restaurant and retail spaces. At the conclusion of that process Council directed staff to offer Valley Fine Art a reduced (497 square feet) space for five year lease, with an option to renew for an additional five years.

BACKGROUND: On May 1, 2004 the City executed a lease with Aspen International Art for 1,025 square feet at 213 South Mill Street. In 2006, Valley Fine Art assumed that lease. During the just completed RFP process for the Wheeler restaurant and retail spaces, Council directed staff to reduce the size of the retail space, giving more space to the restaurant space to allow for a more useable kitchen. As a result, the retail space is now reduced to 497 square feet, with the storefront and entry remaining essentially unchanged. Valley Fine Art was the only applicant which proposed leasing this space, so a lease was negotiated for the reduced space.

DISCUSSION: A lease agreement has been negotiated with Valley Fine Art for 497 square feet net leasable space at the rate of \$80 per square foot annually or \$39,760 per year (\$3,313.33 per month). The initial term of this lease shall be five years, extended for an additional five years at the option of the tenant. After the first year of the lease, the rate will be adjusted for inflation each year thereafter.

FINANCIAL IMPLICATIONS: All revenue from this lease will go through the Wheeler Opera House Fund, primarily benefiting the Wheeler Arts Grants.

RESOURCE IMPLICATIONS: The use of this space as retail art gallery is consistent with past use of this space and is complimentary to the restaurant space and the overall use of the Wheeler Opera House.

RECOMMENDATION: Staff recommends approval of the lease for 213 South Mill Street.

ALTERNATIVES: Council may choose not to approve this lease and conduct another RFP to select another tenant.

PROPOSED MOTION: I move to approve the proposed lease agreement with Valley Fine Art, LTD.

CITY MANAGER COMMENTS: Recommend approval of this lease

Attachments:

- Copy of signed lease

RESOLUTION NO. 35
Series of 2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A LEASE AGREEMENT, BETWEEN THE CITY OF ASPEN AND VALLEY FINE ART, LTD, AND AUTHORIZING THE MAYOR OR CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a lease agreement for the 497 square feet of space on the first floor of the Wheeler Opera House currently occupied by Valley Fine Art, LTD with a street address of 213 S. Mill Street, between the City of Aspen and Valley Fine Art, LTD, a true and accurate copy of which is attached hereto as Exhibit "A";

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

That the City Council of the City of Aspen hereby approves that lease agreement, between the City of Aspen and Valley Fine Art, LTD, a copy of which is annexed hereto and incorporated herein, and does hereby authorize the Mayor or City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the ____ day of _____, 2011.

Michael C. Ireland, Mayor

I, Kathryn S. Koch, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held on the day hereinabove stated.

Kathryn S. Koch, City Clerk

LEASE AGREEMENT
WHEELER OPERA HOUSE
VALLEY FINE ART

THIS LEASE AGREEMENT is made and entered into this 12 day of May, 2011 by and between the City of Aspen, 130 South Galena Street, Aspen, Colorado 81611 ("Landlord") and Valley Fine Art LTD, whose address is 213 S. Mill Street, Aspen, CO 81611 ("Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of the real property and all of the improvements thereon, known as the Wheeler Opera House, 328 East Hyman Avenue, Aspen, Colorado 81611; and,

WHEREAS, the parties hereto desire to enter into a Lease Agreement for a certain portion of the Wheeler Opera House as more fully described herein.

NOW, THEREFORE, for and in consideration of the payments to be made hereunder, and in further consideration of the terms, conditions, covenants and mutual promises contained herein, the parties hereto agree as follows:

1. Lease of Premises. Landlord does hereby rent to Tenant the following described premises ("Leased Premises") subject to the covenants and conditions hereinafter contained, to wit:

That portion of the first floor of the Wheeler Opera House currently occupied by Valley Fine Art, LTD with a street address of 213 S. Mill Street consisting of 497 square feet, as more fully described and depicted in the attached **Exhibit A**.

for the term, at the rents, and upon the conditions and covenants hereinafter set forth. Taking possession of the lease premises by Tenant shall constitute acknowledgment that such premises are in good condition and neither the Tenant nor Landlord shall be required to make any alterations thereto, unless agreed to in advance and in writing by Landlord.

2. Term. Unless sooner terminated, as provided herein, the initial term of this Lease Agreement shall be for a period of five (5) years (the "Initial Term"), extended for an additional period of five (5) years at the option of the Tenant. The Tenant shall have the right to extend the lease for an additional five years by giving notice to the Landlord sixty days prior to the end of the initial term. The Initial Term shall commence at 12:00 noon on December 1, 2011, and shall expire at 12:00 noon on November 30, 2016. A Lease Year shall be a calendar year starting on the commencement date of the Initial Term through 12:00 noon of the following calendar year and each calendar year thereafter. Tenant's occupancy of the Leased Premises shall be limited as set forth below.