

PLANNING AND DEVELOPMENT MEMORANDUM
#10-43

November 11, 2010

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: William Simmons, City Manager *WMS*
James Hayes, Director of Planning and Development *JH*

SUBJECT: CR-148 – Mile High Outdoor Agreement

BACKGROUND

Staff has prepared this memorandum to provide background and technical analysis to the City Council regarding an agreement between the City of Northglenn and Mile High Outdoor. The purpose of the agreement is to clearly define the civic use of an off-premise advertising sign adjacent to I-25. Attached to this memorandum is a resolution, which if approved, shall authorize the Mayor to execute the agreement.

On July 20, 2010, the Planning Commission considered a proposal from Mile High Outdoor to modify their existing billboard adjacent to I-25. Staff outlined the LED technology in a presentation to the Commission and the proponents from Mile High Outdoor explained their proposal in detail. After the discussion, the Planning Commission believed the proposal had merit and recommended the City Council consider the proposal at a future meeting. On August 25, 2010, the City Council considered the proposal and the Commission's recommendation. The City Council directed staff to draft the required changes to the zoning ordinance and follow protocols for consideration of the changes.

In 2009 and 2010 staff attended electronic sign seminar (hosted by the American Planning Association in Northglenn) and has educated themselves about the technology, model sign codes, and CDOT rules and regulations. Staff also met with Planning Department staff from Adams County since they recently updated their sign regulations to allow electronic signs (both on-premise and off-premise). CDOT has adopted new rules for digital billboards and the site appears to meet all of their requirements as an existing, conforming billboard that is eligible for conversion. Formal approval from CDOT will be required prior to redevelopment of the sign.

On September 21, 2010, the Planning Commission considered a formal amendment to the Zoning Ordinance and unanimously recommended approval to the City Council. The changes in the ordinance address the emerging technology of digital billboards and how best to deal with their numerous operational variables. The proposed changes do discuss the increase of the allowable size of a billboard and the allowable height in the area where they are allowed. Based on a series of historic policy adoptions by the federal and state governments with jurisdiction over the interstate highways and the unchanged portion of the existing ordinance, the current location of the existing billboard is the only area in the City that would be eligible for conversion to the electronic technology. Additionally, staff has changed the proposed language to allow for an eight (8) second hold time for messages that is different from the ten (10) second proposed

hold time that commissioners reviewed at the July 20th meeting. This change was deemed to fit well within any proposed or adopted parameters established by CDOT and worked better for Mile High's operational plan.

The Planning Commission also discussed the last section of the amendment (11-35-5(h)(10)(c)(ii) regarding the intensity of the light source. Specifically, they believed the language in the last sentence should read "technical" specifications, not "programmed". There was some concern this may be interpreted that the City had the ability to regulate content, which was not the intent of the ordinance amendment. Mr. Steve Richards from Mile High Outdoor was in attendance and answered some minor questions. No other interested parties spoke at the Planning Commission meeting.

Section 11-37-1 of the Northglenn Zoning Ordinance states that,

"All proposed amendments shall be referred to the Planning Commission for study, consideration, and recommendation prior to final action by Council."

In accordance with the City's ordinance, the Planning Commission advanced a recommendation of approval of the sign code ordinance amendment, as amended at the meeting on September 21, 2010. On October 14, 2010, the City Council approved the ordinance at first reading and is considering the second reading after a public hearing on November 11, 2010.

STAFF ANALYSIS

The City Attorney prepared an agreement between the City of Northglenn and Mile High Outdoor. Staff has reviewed and approved the document and forwarded the draft to Mile High Outdoor for review and comment. The agreement includes sections on the sign specifications, annual permit fee, civic use of the sign, and other legal provisions related to abandonment, indemnification, and remedies. A map of the sign location is included as Exhibit A and the dimensions and detailed sign specifications are included in Exhibit B.

The specifications of the sign shall match the ordinance as amended by the City Council on November 11, 2010. It is important to note that 14 feet by 48 feet (672 square feet) is a standard in the billboard industry and maintaining these dimensions is important to overall use of the sign and ease of advertisers and the City to provide content for the sign in the appropriate format. The sign shall also be adorned with a decorative two-color stucco wrap, which shall match the 112th Avenue flyover bridge. In addition, the pole shall include a brown concrete stamp or metal sign with the City of Northglenn logo.

Mile High Outdoor shall be required to submit an annual permit fee of \$10,000 payable upon the issuance of a building and sign permit and on each anniversary date thereafter in perpetuity. The civic use section of the agreement includes provisions for the City to be allocated one, eight second spot per each 64 second advertising cycle on the sign at no cost. In addition, the agreement enables and expressly permits the City to allow a third party to use the City's spot. The City is also not precluded from charging a third party to use the advertising space. Formal details about the format of the advertising and electronic transmission requirements will be resolved once the City formalizes its program for using the sign for civic events and as an economic development tool for local businesses.

Finally, the agreement includes a section on abandonment of the sign. Specifically, if the sign fails to operate for 180 days in a row or 270 days over a 5 year period, it shall be deemed abandoned. This is also considered a material breach of the agreement between the City and Mile High Outdoor.

STAFF CONTACT

If Council members have any comments or questions they may contact James Hayes at 303-450-8937, jhayes@northglenn.org or Travis Reynolds at 303-450-8836, treynolds@northglenn.org.

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-148
Series of 2010

Series of 2010

A RESOLUTION APPROVING A SIGN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND MILE HIGH OUTDOOR ADVERTISING

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Sign Agreement between the City of Northglenn and Mile High Outdoor Advertising, attached hereto as **Exhibit 1**, is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2010.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

SIGN AGREEMENT

THIS SIGN AGREEMENT (the "Agreement") is made and executed this ____ day of _____, 2010, (the "Effective Date") by and between the CITY OF NORTHGLENN, a Colorado Home Rule Municipality (the "City"), and COLORADO OUTDOOR, INC., a Delaware corporation d/b/a Mile High Outdoor, 9250 E. Costilla Ave; Suite 120, Greenwood Village, CO 80112 ("Mile High") (individually a "Party" or collectively the "Parties").

WITNESSETH

WHEREAS, Mile High is the owner of a billboard sign (the "Existing Sign") in the City of Northglenn which is located as shown on the map attached as **Exhibit A** (the "Location");

WHEREAS, Mile High desires to convert the Existing Sign to an electronic light emitting diode ("LED") format and make other alterations to the Existing Sign structure (the "Proposed Sign"), which is impermissible unless the City amends its Zoning Ordinance to permit the Proposed Sign;

WHEREAS, the City Council plans to consider an amendment to the Zoning Ordinance, which would allow for the placement of the Proposed Sign at the Location and which would establish the Proposed Sign as a legal conforming use (the "Amendment");

WHEREAS, Mile High is working with the Colorado Department of Transportation ("CDOT") to determine what approval, if any, is required for the Proposed Sign;

WHEREAS, the Parties desire to set forth the terms under which the Proposed Sign will be operated if the City Council approves the Amendment; and

WHEREAS, no terms in this Agreement are intended to require the City Council to adopt the Amendment.

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

I. CONTINGENCIES

This Agreement shall become effective upon the effective date of the Amendment, if the Amendment is adopted by the City Council. Nothing in this Agreement shall require the City Council to adopt the Amendment. Failure of the City Council to adopt the Amendment by November 30, 2010, shall render this Agreement void. Further, in the event CDOT fails to provide any approval that may be required for the Proposed Sign, Mile High may terminate this Agreement by notice to the City, in which event Mile High may continue to operate the Existing Sign.

II. PROPOSED SIGN SPECIFICATIONS

The Proposed Sign shall be a monopole sign with decorative two-color stucco wrap, and a small Northglenn logo on the pole no wider than the width of the pole wrap. The pole wrap shall match the 112th Avenue flyover bridge. The logo shall be a brown concrete stamp or metal sign attached to the pole. The Proposed Sign shall also substantially comply with specifications in the attached **Exhibit B**.

In connection with repair and maintenance of the Proposed Sign, Mile High may replace one or both of the LED sign faces on the Proposed Sign with a substantially similar LED sign face to the corresponding face specified on **Exhibit B** or a different LED sign face approved in writing by the City.

III. ANNUAL FEE

Annually, Mile High shall pay to the City a sign fee of Ten Thousand Dollars (\$10,000.00) for so long as Mile High operates the Proposed Sign on the Location (the "Sign Fee"). The first annual payment shall be due within thirty (30) days after the completion of construction of the Proposed Sign and, in any event, before the Proposed Sign is put into regular operation (that is, operation other than testing).

IV. CIVIC USE OF SIGN

For so long as Mile High operates LED sign faces on the Proposed Sign, Mile High shall provide the City with one eight-second advertising spot per each 64-second advertising cycle on the LED face or faces of the Proposed Sign, at no cost. The City may place any messages it desires in this advertising spot; provided the messages do not violate applicable laws. The City may allow third-parties to use the City's advertising spot, and the City may charge a fee to the third-parties. Mile High shall not charge the City or the third-party for third-party use of the City's advertising spot.

V. ABANDONMENT AND REDUCTION

Except as otherwise provided in this Article V, If Mile High ceases to operate the Proposed Sign for any reason, including without limitation, failure of the Proposed Sign to function, for more than one hundred eighty (180) continuous days, or 270 days in the aggregate during any five (5) year period, Mile High shall be in breach of this Agreement.

In the event that one or both LED sign faces is indefinitely obstructed from public view from Interstate Highway 25, the volume of traffic on Interstate Highway 25 in the viewing area of the sign is substantially and indefinitely diminished, Mile High's lease of the property on which the sign is located expires or is terminated, any governmental authority determines that the Proposed Sign or elements of the Proposed Sign are unlawful, or in Mile High's reasonable

determination it is otherwise no longer economical for Mile High to operate the Proposed Sign as it then exists, Mile High may at its option take any of the following actions to the extent consistent with applicable law: (i) replace one or both of the LED sign faces of the Proposed Sign with a traditional static sign face; (ii) remove an LED sign face without replacing it; or (iii) remove the Proposed Sign in its entirety.

VI. INDEMNIFICATION

Mile High agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Mile High, any subcontractor of Mile High, or any officer, employee, representative, or agent of Mile High, or which arise out of any worker's compensation claim of any employee of Mile High or of any employee of any subcontractor of Mile High.

VII. REMEDIES

In the event Mile High breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof, then the City may have recourse to any of the following remedies that may apply:

1. The City may terminate this Agreement by written notice to Mile High unless the breach is first cured. If this Agreement is terminated in accordance with this paragraph, Mile High shall cease operation of the LED faces of the Proposed Sign and shall, within _____ after receipt of such notice, at its option, replace the LED faces from the Proposed Sign with static sign faces or remove the Proposed Sign in its entirety.

2. If the breach consists of failure to pay Sign Fee when and as required by this Agreement, the City may, with or without terminating this Agreement, pursue claims to recover the amount due and unpaid.

3. If the breach consists of failure to provide the City the advertising spot on LED sign faces as required by Article IV above, the City shall be entitled to an order for specific performance compelling Mile High to provide such advertising time.

4. The City may pursue any other remedies to which it may be entitled by law for Mile High's breach of contract.

If Mile High's right to operate the Proposed Sign is terminated pursuant to Paragraph VII.1. above and Mile High fails to remove the Proposed Sign within thirty (30) days after receipt of notice of termination, the City shall be entitled to remove the LED sign faces and dispose of them at a public or private sale (conducted in a commercially reasonable manner) and remit the net proceeds of sale to Mile High; provided, however, that Mile High shall be liable to reimburse all the City's costs of removal, storage and sale, and such costs shall be deducted from any proceeds remitted to Mile High.

VIII. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Adams County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Contractor and the City, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the following addresses set forth on the first page of this Agreement.

If to the City: _____

If to Mile High: Mile High Outdoor
Attn: President
9250 E. Costilla Avenue Suite 120
Greenwood Village, CO 80112

Either party may change such notice address upon prior written notice to the other party.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. The City may withhold its consent to an assignment of this Agreement in its sole discretion; provided that Mile High may assign this agreement if Mile High conveys ownership of the Proposed Sign to a third-party and if the third-party executes an agreement with the City acknowledging that upon conveyance of ownership of the Proposed Sign, the third-party assumes all obligations of Mile High under this Agreement. Provided that the third-party executes such an agreement, Mile High shall have no liability for obligations accruing under this Agreement from and after the effective date of the third-party's assumption of Mile High's obligations.

I. Governmental Immunity. the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers or employees.

J. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of the City not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

L. Attorneys' Fees. In the event of any litigation hereunder, the party prevailing on the more substantial portion of its claims and defenses, if any, shall be entitled to an award of its reasonable attorneys' fees and related costs.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

PROPERTY OWNER CONSENT

As owner of the property upon which the Proposed Signage shall be located, _____ ("Owner") hereby consents to the terms of this Agreement, including, without limitation, the right of the City to enter onto the property where the Proposed Sign is located to carry out the rights provided to the City under this Agreement. This consent shall run with the land and be binding on all assigns and successors-in-interests of Owner.

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by _____ as the _____ of _____.

My commission expires: _____

(S E A L)

EXHIBIT A
Map of Sign Location

Exhibit A

**Sign
Location**



Interstate 25

Community Center Drive

0 20 40 80 120
Feet

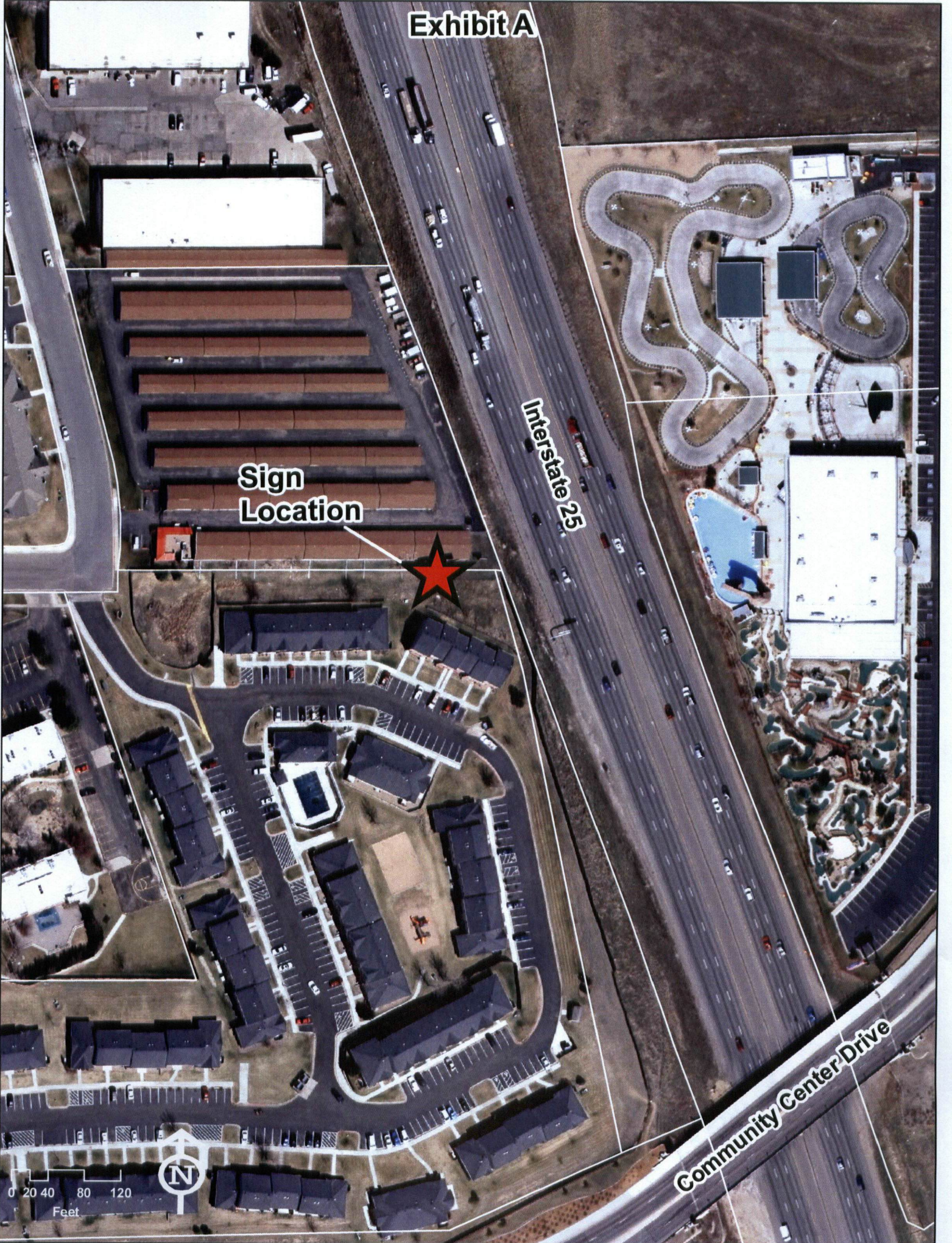
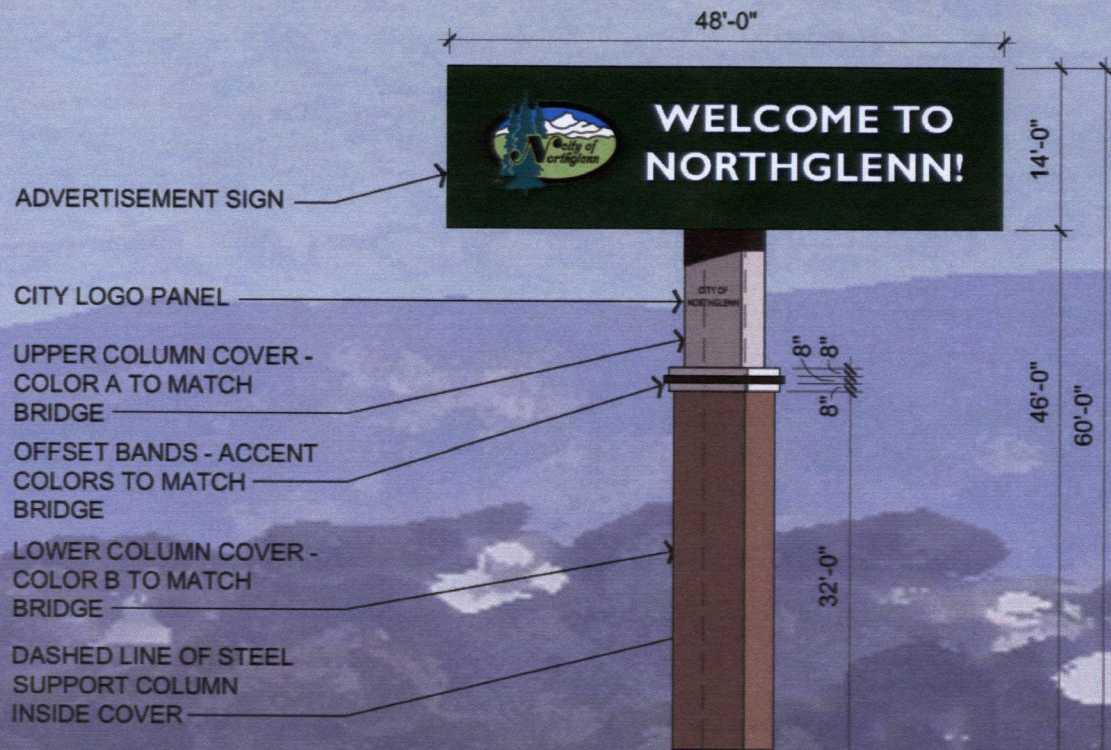


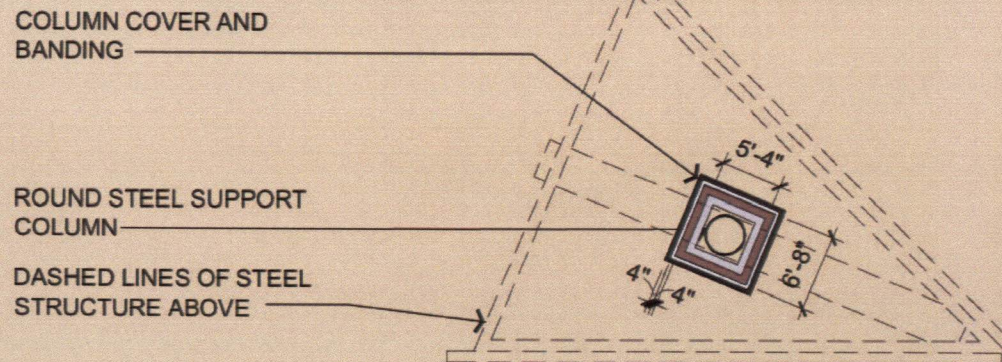
EXHIBIT B
Proposed Sign Specifications



TODD LAWRENCE
ARCHITECT
703 E. AUBURN DR.
TEMPE, AZ. 85283
(602) 769-5069



ELEVATION



PLAN

MILE HIGH
OUTDOOR

NORTHGLENN
CONCEPT 1

SCALE 1/16" = 1'-0"

11/04/10