



## OFFICE OF THE CITY ATTORNEY

### MEMORANDUM

**FROM:** Wynetta Massey, City Attorney/Chief Legal Officer 

**TO:** Charae McDaniel, Chief Financial Officer  
City Council Budget Committee

**DATE:** December 17, 2019

**RE:** Grant Application, Acceptance, and Appropriation

**QUESTION:** Under the City's Council-Mayor form of government, which branch of government has authority to apply for grants, accept the grant terms and conditions, and appropriate grant funds?

**ANSWER:** The Mayor has executive and administrative authority to apply for grants and to accept grant terms and conditions. The City Council has legislative authority to appropriate grant funds.

**DISCUSSION:** In 2010, the voters approved wholesale amendments to the City Charter changing the City's form of government to a Council-Mayor form of government. Under this form of government, the duties and responsibilities of the legislative and executive/ administrative branches of government are separated and balanced between a nine-member elected City Council (City Charter § 3-10(a)) and an elected Mayor (City Charter §§ 3-10(b) and 4-10). One of the executive/administrative responsibilities of the Mayor is to contract on behalf of the City. City Charter §§ 4-10 and 4-40(g). For the contract to be valid and enforceable, there must be sufficient funds appropriated to discharge the City's liability under the contract. City Charter § 7-60. Appropriation is a legislative duty vested in the City Council. City Charter §§ 7-50 and 3-70(a).

In the context of grants, the Mayor has the authority to apply for and accept grants, and City Council has the authority to appropriate the accepted grant funds. Because the Mayor bears the ultimate "responsibility for the proper and effective administration of the City," the Mayor possesses the discretion to apply for grant funds to further operational, administrative, or executive purposes, and to enter into a grant agreement or contract awarding grant funds subject to certain terms and conditions. Council may appropriate grant funds as part of the annual budget and appropriation ordinance or as a supplemental appropriation during the fiscal year.

With respect to grants issued by the Colorado Department of Transportation ("CDOT"), the grant agreement takes the form of an IGA. C.R.S. § 29-1-203 permits Colorado governments to cooperate and

contract with each other “only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body **or other authority having the power to so approve.**” (Emphasis added.) Because CDOT characterizes its grant agreement contract as an IGA, it is the opinion of the City Attorney’s Office that the Mayor has independent authority to approve CDOT grant agreement IGAs under the statute without additional approval by City Council.

After the first of the year, Finance staff will present a Resolution recognizing the Mayor’s authority to execute CDOT grant agreement IGAs in an effort to comply with the City Charter separation of powers under the Council-Mayor form of government.