

FAQs

Lowry Assumption LLC and City & County of Denver
Contract, December 2005

(Answers in blue were provided by the Denver City Attorney's Office)

- 1) Why did the City require LAC to pay it one million dollars?
 - Under the Oversight Agreement between the City and LAC requiring LAC to oversee excavation of soils and manage environmental contamination for ten years on property owned or to be owned by the City on the former Lowry Air Force Base, the City negotiated a payment from LAC to secure funding to address future potential environmental issues that may arise after the expiration of the ten-year period LAC is responsible for known and unknown contamination. The City owns property used for streets and parks that may have environmental contamination that may need to be addressed after LAC ceases to be responsible.
- 2) Is the money being held by the City in a separate fund?
 - Yes, it is held in the Lowry Air Force Base Remediation Fund.
- 3) A. How was the sum of \$1,000,000 arrived at?
 - Based on information available at that time the Oversight Agreement was negotiated, the City estimated the cost of dealing with asbestos contaminated soils for work in the right-of-way and negotiated a figure based on that estimate and the risk involved. At the time, there was much uncertainty as to what the Colorado Department of Public Health and Environment would require at sites with asbestos contaminated soils and, other than the Northwest Neighborhood, the extent of asbestos contamination was unknown.
- B. What if the costs turn out to be more, or less?
 - During the term on the Oversight Agreement, LAC bears the cost of dealing with the contaminated soils. After the ten-year period of the agreement, if the costs are less, the City will deal with contamination using the money held in the Lowry Air Force Base Remediation Fund. If the costs turn out to be more, the City would look to the Air Force to pay for the needed remediation costs.
- 4) Why is the second payment structured so that the City is paid \$100,000 after zoning parcel 667 for "residential uses acceptable to the contractor"?
 - All the payments by LAC to the City under the Oversight Agreement were negotiated. Because LAC received periodic payments from the Air Force for their remediation work, they requested that payment of the amount owed the City be delayed and be aligned with their receipt of Air Force payments. Rezoning of parcel 667 would improve LAC's cash flow situation and allow an earlier payment.
- 5) Why is the third payment similarly structured, so that the City is paid \$250,000 upon the "zoning of the landfill parcel for commercial or mixed use acceptable to the contractor"?

- As discussed in the answer to question 4, above, based on the periodic payments received from the Air Force and for cash flow reasons, LAC needed to delay some of the City's payments. Rezoning the landfill parcel would improve LAC's cash flow situation and allow an earlier payment.
- 6) A. Will the City still receive payments from the LAC if zoning is not approved?
 - Yes.
 B. When?
 - 2015.
 - 7) This contract is greater than \$500,000 and was signed by Environmental Health, the City Attorney, Mayor Hickenlooper and Auditor Gallagher; why didn't this contract go through the City Council Process for approval?
 - This is a contract for the receipt of revenue in excess of \$500,000. Not until a 2005 Charter amendment was implemented did City Council approve such revenue contracts.
 - 8) When LAC's 10-year contract for the landfill expires (November 2015), who will be responsible for "Known and Unknown soils contamination issues"?
 - The owner of the landfill or the Air Force.
 - 9) What is foreseen as "Cleanup responsibilities in right-of-ways"?
 - The City is required by state and federal law to properly manage and dispose of environmental contamination in its property or that it encounters in doing work in the right-of-ways. The investigation, workers health plans and protection, monitoring, proper handling and proper disposal all cost money. The City may well encounter contamination in its rights-of-way in the Lowry redevelopment.
 - 10) If IRG (an affiliate of LAC) owns the property, why is the City at any risk of covering costs on the landfill after 2015?
 - It is not, which is why the City was anxious for IRG to own the property instead of LERA.
 - 11) Since LERA/LAC is maintaining insurance through November 29, 2015, and has named the City as an additional insured, why would the City have any exposure at all?
 - It doesn't in the first ten years. The \$1,000,000 was designed to address potential city costs after that.
 - 12) Has the City signed similar contracts for environmental cleanup anywhere besides Lowry?
 - The City has not entered into any other privatization agreements except at Lowry Air Force Base.