



REVISED CITY COUNCIL AGENDA

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Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 7) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. 2005 Colorado Association of Libraries Award for Best Summer Reading Program
7. Citizen Communication (5 minutes or less)

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. Consent Agenda
 - A. Colorado Municipal League Annual Dues Authorization
 - B. Dell Server and Computer Replacement Purchases
 - C. Purchase of Excess Workers' Compensation Insurance
 - D. Option to Purchase the Second Parcel of the Family in Christ Church Property as Open Space
 - E. Payment of City Participation in the Umatilla Court Construction
 - F. 2006 Extended Reclaimed Water Master Plan Contract with HDR Engineering, Inc.
 - G. IGA with Jefferson County School District's Risk Management Dept. for Third Party Administration Services
 - H. Second Reading CB No. 72 re Activant Solutions, Inc. Business Assistance Package

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Public Hearing re TMUND Land Use Category CLUP Amendment
- B. Councillor's Bill No. 1 re TMUND Land Use Category CLUP Amendment
- C. Public Hearing re "Westminster Center District Center" CLUP Amendment
- D. Councillor's Bill No. 2 re "Westminster Center District Center" CLUP Amendment
- E. Public Hearing re Three Parcels at 7309-7319 Orchard Court CLUP Amendment and Rezoning
- F. Councillor's Bill No. 3 re Three Parcels at 7309-7319 Orchard Court CLUP Amendment
- G. Councillor's Bill No. 4 re Three Parcels at 7309-7319 Orchard Court Rezoning
- H. Public Hearing re Camalick Property Annexation, CLUP Amendment and Zoning
- I. Resolution No. 1 re Findings concerning Camalick Property Annexation
- J. Councillor's Bill No. 5 re Annexation of the Camalick Property
- K. Councillor's Bill No. 6 re CLUP Amendment for the Camalick Property
- L. Councillor's Bill No. 7 re Zoning the Camalick Property
- M. Resolution No. 2 re IGA with CDOT – Big Dry Creek Trail at Wadsworth Boulevard Project

11. Old Business and Passage of Ordinances on Second Reading

- A. TABLED Second Reading CB No. 46 re Cellular Tower Leases for Countryside Recreation Center and the Hydropillar

12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business

- A. City Council
- B. Executive Session – Obtain direction from Council re negotiations with Shoenberg Ventures re: proposed redevelopment agreement

13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.
- B.** Any person wishing to speak other than the applicant will be required to fill out a "Request to Speak or Request to have Name Entered into the Record" form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.
- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.
- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.
- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.
- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;
- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);
- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;
- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.
- J.** Final comments/rebuttal received from property owner;
- K.** Final comments from City Staff and Staff recommendation.
- L.** Public hearing is closed.
- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.



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 - A. TABLED Second Reading CB No. 46 re Cellular Tower Leases for Countryside Recreation Center and the Hydropillar
12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business
 - A. City Council
 - B. Executive Session – Development Briefing
13. Adjournment

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CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JANUARY 9, 2006 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor McNally led the Council, staff, and audience in the Pledge of Allegiance.

ROLL CALL

Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major and Price were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Dittman moved, seconded by Price, to approve the minutes of the regular meeting of December 19, 2005. The motion passed unanimously.

CITY MANAGER COMMENTS

Mr. McFall reported there would be no study session on January 16, 2006, and City Hall would be closed in observance of Martin Luther King Day. Council would conduct a post-meeting at the conclusion of this regular meeting. Following the post-meeting, staff suggested that the Westminster Economic Development Authority meet in executive session to obtain direction from the Board of Directors concerning negotiations with Shoenberg Ventures relative to a proposed redevelopment agreement.

CITY COUNCIL COMMENTS

Councillor Price reported having attended a Rocky Flats Council of Governments meeting earlier in the day.

PRESENTATIONS

Councillor Price and Michael Crawford of Perma-Bound Books presented the 2005 Colorado Association of Libraries Award for Best Summer Reading Program to Vicky Sisto, Library Services Coordinator, staff of the City's Library Services Division, and members of the Library Friends Group.

CITIZEN COMMUNICATION

Jane Fancher, 7260 Lamar Court, objected to use of utility funds for purchase of servers and computer replacements, as proposed on the consent agenda. Further, she opposed granting any taxpayer-generated financial assistance for redevelopment of the Shoenberg Ventures property.

Gary Scofield, 7130 Canosa Court, reported a growing problem with graffiti in south Westminster and requested that a vacant position be funded and filled to promptly address the situation.

Kaaren Hardy, 5133 West 73rd Avenue, commented on business assistance packages and requested standards of measurement be established to ensure that recipients were complying with provisions of each agreement. Accountability would demonstrate whether or not business assistance packages were viable.

Karen Sawicki, 6768 Zenobia Loop, Unit 4; Faith Winter, 3394 West 94th Avenue; Sharon Mayes, 5960 West 72nd Avenue; and Glen Train, 5640 West 71st Avenue and representing South Westminster Organized for Responsible Development, commented about the proposed redevelopment agreement with Shoenberg Ventures to be discussed in executive session of the Westminster Economic Development Authority. They opposed any business assistance package for the property in question, for Jordon Perlmutter, or for Wal-Mart.

Clerk's Note: Karen Sawicki submitted written remarks to be entered into the public record. They are attached hereto and incorporated herein as a part of the record.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authority to pay \$54,051 for Colorado Municipal League 2006 membership dues; finding that the Western States Contracting Alliance pricing met City Charter bidding

requirements, authority to proceed with 2006 calendar year purchases of hardware, servers, replacement computers, printers and software through Dell Computer Corporation in an amount not to exceed \$320,000; authority to purchase Workers' compensation excess insurance for \$74,741 from Midwest Employers Casualty Company and to charge the expense to the 2006 Workers' Compensation Self Insurance Fund; authority for the City Manager to exercise the option to purchase the second parcel of the Family in Christ Church property located on West 99th Avenue at Wadsworth Boulevard as open space under the March 22, 2005 Option Agreement and authority for the City Manager to expend an amount not to exceed \$257,000 of City Open Space Funds to purchase the property and to execute all necessary closing documents; authority to pay \$72,273.57 to Neumann Homes of Colorado, LLC for the construction of the Umatilla Court connection between Harmony Park and Amherst Subdivisions at approximately the 132nd Avenue alignment; based on the City Manager's report and recommendation, find the public interest would best be served by authorizing the City Manager to execute a professional services agreement with HDR Engineering, Inc. as the sole source for work in preparing an Extended Reclaimed Water Master Plan for a cost not to exceed \$166,478; authority for the City Manager to sign an Intergovernmental Agreement with the Jefferson County School District for Third Party Claims Administration services for the City's workers' compensation program; and final passage of Councillor's Bill No. 72 authorizing the City Manager to execute and implement at move-in a \$16,000 business assistance package with Activant Solutions.

Mayor McNally asked if any member of Council wished to remove an item from the consent agenda for discussion purposes or separate vote. There was no request.

It was moved by Councillor Major and seconded by Councillor Price to approve the consent agenda as presented. The motion passed unanimously.

HEARING ON CLUP AMENDMENT TO REMOVE MINIMUM SIZE FROM TMUND LAND USE CATEGORY

At 7:36 p.m., the Mayor opened a hearing to consider a Comprehensive Land Use Plan (CLUP) Amendment to remove the minimum size restriction of 50 acres from the text describing the Traditional Mixed Use Neighborhood Development (TMUND) category. Dave Shinneman, Planning Manager, provided background information. The category allowed a wide range of uses and densities, including single-family and multiple-family residential, offices, and retail and service commercial. Those uses could be mixed in a single building, and the TMUND Design Guidelines incorporated a number of features to permit variety. The current description of the TMUND category under Policy B 1b stated that such developments were appropriate in undeveloped areas of at least 50 acres in size. Staff proposed removal of the 50-acre limitation to make certain it was clear that the TMUND designation could be applied to areas of less than 50 acres and in redevelopment areas currently within a mixed use neighborhood. Mr. Shinneman entered the agenda memorandum and attached documents into the record; advised that notice of this public hearing had been published in the *Westminster Window*; and summarized how this proposal satisfied applicable criteria in the Westminster Municipal Code for a CLUP Amendment.

Gary Scofield, 7130 Canosa Court, addressed Council, stating that he had studied staff's proposal since the time of the Planning Commission's hearing on the matter, and was comfortable with it. Several people testifying before the Planning Commission had asked that consideration of the proposal be tabled to allow time for more in-depth study by the public.

During discussion, Mr. Shinneman indicated that continuing this hearing to the next City Council meeting would not jeopardize any pending review projects or be problematic.

In conclusion, Mr. Shinneman advised that this proposal had been advanced from the Planning Commission with a recommendation of approval. The hearing was closed at 8:05 p.m.

It was moved by Councillor Kaiser, seconded by Councillor Lindsey, to continue this hearing to the January 23, 2006 Council meeting to allow more time for citizen comment. The motion passed unanimously.

COUNCILLOR'S BILL NO. 1 AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

Councillor Kaiser moved to table consideration of Councillor's Bill No. 1 to the January 23, 2006 Council meeting. Councillor Lindsey seconded the motion, which passed unanimously.

HEARING ON CLUP AMENDMENT RE DISTRICT CENTER BOUNDARIES AND LAND USE CATEGORY

At 8:15 p.m., the Mayor opened a hearing to consider a Comprehensive Land Use Plan Amendment to expand the boundaries of the "Westminster Center District Center" and add language to allow medium to high density residential uses. Dave Shinneman presented background information. The proposed amendment would expand the Westminster District Center west to Wadsworth

Parkway and east to U.S. 36 due to the Regional Transportation District's (RTD) plans for a commuter rail station and the need to encourage redevelopment in the area. The change would expand development and/or redevelopment opportunities in the area. Secondly, the amendment would add medium to high density residential uses to the list of allowed uses within the Westminster District Center, thereby allowing for residential and mixed use projects. The affected area included the entire area between West 88th and 92nd Avenues westward to Wadsworth Parkway and east to U.S. 36, including the existing RTD Park-n-Ride and the former City Police building. After recapping this proposal's ability to satisfy applicable criteria for a CLUP amendment, as contained in the Westminster Municipal Code, Mr. Shinneman entered the agenda memorandum and associated documents in the record. Further, he stated that notice of this public hearing had been properly published in the *Westminster Window* and property owners within 300 feet of the area in interest also had been sent notice of the hearing date and time.

Mark Alder, owner of property at 9085 Marshall Court, asked if the existing manufacturing use on his parcel would change if he were to sell the property after it was included within the boundaries of the Westminster Center District Center. Mr. Shinneman answered no. James Major, 7044 Yates Street, spoke in favor of the proposal and the welcome development/redevelopment that would be possible.

Mr. Shinneman added that the Planning Commission had reviewed this matter on December 13 and had voted to recommend approval. The hearing was closed at 8:31 p.m.

COUNCILLOR'S BILL NO. 2 RE CLUP AMENDMENT TO BOUNDARIES OF/USES IN DISTRICT CENTER

Upon a motion by Councillor Dittman, seconded by Councillor Major, the Council voted unanimously at roll call to pass Councillor's Bill No. 2 on first reading amending the Comprehensive Land Use Plan to extend the "District Center" land use designation westward to Wadsworth Parkway, between West 88th and 92nd Avenues, and eastward to U.S. 36 to include the existing Regional Transportation District Park-n-Ride and former Police Building and to amend the language in the Comprehensive Land Use Plan to allow medium to high density residential uses. This action was based on a finding that the proposed amendment was in the public good and that there was justification for the proposed change and the Plan was in need of revision as proposed; the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan; the proposed amendment was compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.

HEARING RE CLUP AMENDMENT AND REZONE OF THREE PARCELS AT 7309-7319 ORCHARD COURT

At 8:35 p.m., a hearing was opened to consider a City-initiated Comprehensive Land Use Plan Amendment and rezone of three parcels at 7309-7319 Orchard Court. The parcels were generally located north of 73rd Avenue, west of Orchard Court, and east of Bradburn Boulevard. Known as the House residence, the residential structure and detached garage at 7319 Orchard Court had been designated as historic landmarks by City Council in the spring of 2005. Parcel D and Lot 2A were City owned and were intended for use as a public park. The proposed CLUP amendment for Parcel D and Lot 2A, in conjunction with the rezone of Lot 2A would appropriately reclassify the use for the properties. Dave Shinneman entered the agenda memorandum and associated documents into the record and stated that notice of this hearing had been properly published in the *Westminster Window*, the properties had been posted, and property owners within 300 feet of the parcels under consideration had been given written notification of this hearing and its purpose.

Mayor McNally opened the hearing to public testimony. No one wished to speak. Mr. Shinneman added that the Planning Commission had reviewed this application on December 13, 2005, and had voted to recommend Council's approval. The hearing was closed at 8:50 p.m.

COUNCILLOR'S BILL NO. 3 AMENDING THE CLUP FOR PROPERTIES AT 7309-7319 ORCHARD COURT

It was moved by Councillor Lindsey and seconded by Councillor Price to pass Councillor's Bill No. 3 on first reading to amend the Comprehensive Land Use Plan (CLUP) for a portion of Block 35 of Harris Park Subdivision (Parcel D) and Lot 2A of the First Replat of House's Resubdivision changing the designation from Retail Commercial to Public Parks; and the CLUP amendment for Lot 1A of the First Replat of House's Resubdivision changing the designation from Retail Commercial to R-3.5 Residential. This action was based on a finding that the proposed amendment would be in the public good and that: (a) there was justification for the proposed change and the Plan was in need of revision as proposed; (b) the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan; (c) the proposed amendment was compatible with existing and planned surrounding land uses; and (d) the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. On roll call vote, the motion passed unanimously.

COUNCILLOR'S BILL NO. 4 TO REZONE 7309-7319 ORCHARD COURT

Based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code had been met, Councillor Lindsey moved to pass Councillor's Bill No. 4 on first reading to rezone Lots 1A and 2A of the First Replat of House's Resubdivision from C-1 (Commercial District) to R-A (One-Family Residential District). Councillor Dittman seconded the motion, and it passed unanimously on roll call vote.

HEARING ON CAMALICK PROPERTY ANNEXATION, CLUP AMENDMENT, AND ZONING

At 8:53 p.m., Mayor McNally opened a public hearing to consider the annexation, a Comprehensive Land Use Plan Amendment, and the zoning of approximately 9.7 acres located at the northwest corner of Barber Drive and Zephyr Street that was situated adjacent to the west of the Chambers Preserve/Walnut Creek Open Space. The parcel was known as the Camalick Property and had been purchased by the City in 2005 with open space funds. Included in the annexation were adjacent portions of the Burlington Northern Santa Fe Railroad property. Dave Shinneman provided background information and admitted into the record the agenda memorandum and associated documents. For the record, he noted that notice of this hearing had been published in the local newspaper, posted on the property, and mailed to affected property owners within 300 feet of the parcel.

Mayor McNally invited public comment. No one wished to speak, and in his concluding remarks, Mr. Shinneman advised that the Planning Commission had conducted a December 13, 2005 public hearing on this proposal and had voted to recommend approval. The hearing was closed at 8:56 p.m.

RESOLUTION NO. 1 MAKING FINDINGS RE THE CAMALICK PROPERTY ANNEXATION

Councillor Dittman moved to adopt Resolution No. 1 making certain findings of fact concerning the Camalick property as required under Section 31-12-110 C.R.S. Councillor Price seconded the motion, and it passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 5 ANNEXING THE CAMALICK PROPERTY OPEN SPACE

It was moved by Councillor Dittman, seconded by Councillor Price, to pass Councillor's Bill No. 5 on first reading annexing the Camalick property open space to the City. At roll call, the motion passed with all Council members voting in favor.

COUNCILLOR'S BILL NO. 6 RE CLUP AMENDMENT FOR CAMALICK PROPERTY

Councillor Dittman moved to pass Councillor's Bill No. 6 on first reading amending the Comprehensive Land Use Plan for the Camalick property to change the land use designation from Northeast Comprehensive Development Plan to City Owned Open Space. This action was based on a finding that the proposed amendment would be in the public good and that there was justification for the proposed change and the Plan was in need of revision as proposed; the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan; the proposed amendment was compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. Councillor Price seconded the motion. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 7 ZONING THE CAMALICK PROPERTY

Upon a motion by Councillor Dittman, seconded by Councillor Price, the Council voted unanimously on roll call vote to pass Councillor's Bill No. 7 on first reading to rezone the Camalick property from A-1 (Jefferson County) to O-1 based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code had been met.

RESOLUTION NO. 2 RE IGA WITH CDOT FOR BIG DRY CREEK TRAIL AT WADSWORTH BOULEVARD

Mayor Pro Tem Kauffman moved to adopt Resolution No. 2 authorizing the City Manager to execute an Intergovernmental Agreement (IGA) with the Colorado Department of Transportation (CDOT) for the design and construction of the Big Dry Creek Trail at Wadsworth Boulevard Project. Councillor Price seconded the motion, and at roll call, the motion passed unanimously.

CITIZEN PRESENTATION

Larry Dean Valente, 3755 West 81st Avenue, conveyed his concerns to Council about statutory and City Code provisions governing executive sessions. His specific focus was public notice of the proposed executive session of the Westminster Economic Development Authority (WEDA) Board of Directors to be held after this meeting.

City Attorney McCullough read the purpose of the proposed executive session. WEDA was governed by state statutes, not the Westminster Municipal Code.

ADJOURNMENT:

There was no further business to come before City Council, and the meeting adjourned at 9:12 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006

SUBJECT: Presentation of the 2005 Colorado Association of Libraries Award for Best Summer Reading Program

Prepared By: Mary Grace Barrick, Library Services Manager

Recommended City Council Action

Presentation of the 2005 Colorado Association of Libraries Award for Best Summer Reading Program to the City of Westminster's Library Services Division and the Library Friends Group.

Summary Statement

- The Colorado Association of Libraries Award is sponsored each year by both the Colorado Association of Libraries and Perma-Bound Books.
- The awards are presented to libraries throughout Colorado in three different categories: Large Library Division, Intermediate Division, and Small Division.
- The City of Westminster competed in the Large Library Division.
- The Library Services Division submitted its Summer Reading Program and was awarded first place.
- The award will be presented by Councillor Price and by Perma-Bound Books representative Michael Crawford.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The City of Westminster's Library Services Division received the 2005 Colorado Association of Library's Award for the best summer reading program in the state for large libraries. Thanks to the support from the Friends, the Youth Services Department had a wonderful year featuring over 25 programs for children and teens. The highlight of the year was our summer reading program, Dragon's Dreams and Daring Deeds.

Children received a prize for every 6 hours or 12 books read. The prizes included little toys or coupons donated from area merchants. The main prize was a free book that was given to each child or teen after they had done 24 hours of reading or 48 books. Over 2,700 children actually reached this level and received their free book.

Other winners in the Large Library Division were the Pueblo Library District that tied for first place with the City of Westminster's Library Services Division, the Arapahoe Library District that took second place, and the Bemis Public Library that took third place.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Colorado Municipal League Annual Dues Authorization

Prepared By: Barbara Opie, Assistant to the City Manager

Recommended City Council Action

Authorize the payment of \$54,051 for the City's 2006 Colorado Municipal League dues.

Summary Statement

City Council is requested to authorize the payment of \$54,051 for the City's 2006 membership and dues to the Colorado Municipal League (CML). Funds for this membership have been appropriated in the Central Charges portion of the 2006 City Budget.

CML provides services to 265 cities and towns throughout the state. The annual membership dues to CML include subscriptions to the bimonthly magazine, *Colorado Municipalities*, and the biweekly CML Newsletter for community officials. Other League services include municipal information services, municipal conferences and workshops, legislative and legal services, administrative agency services, sample ordinances, research and publications. CML is the main voice of municipalities at the State Legislature and has been important to cities and towns in advocating and protecting municipal interests.

The City of Westminster's 2006 dues, which are based on a formula that factors population, assessed valuation, and sales tax collections, total \$54,051, an increase of \$2,574 (or 5%) over the 2005 dues. These funds have been included in the 2006 budget that was previously approved and adopted by City Council in October 2004. Since these annual membership dues exceed \$50,000, City Council authorization is required, per Section 15-1-2 of the Municipal Code.

Expenditure Required: \$54,051

Source of Funds: General Fund - Central Charges budget

Policy Issue

Does City Council wish to continue the City's membership in the Colorado Municipal League?

Alternative

Discontinue City membership with the CML, reallocate the funds budgeted for the City membership with CML and utilize the funds for other City priorities. This is not recommended by Staff as CML provides important services, as outlined in this memorandum, that assist the City in many ways.

Background Information

The City of Westminster actively participates in CML meetings and workshops, and extensively utilizes the various services offered by the League. CML lobbies legislation on behalf of municipalities throughout the State, distributes numerous publications that provide information on timely topics and trends, hosts workshops and meetings on important municipal issues, and performs research as requested by member jurisdictions.

265 cities and towns are members of CML (out of 271 total cities and towns in the state) and pay dues on an annual basis. CML's formula for arriving at a municipality's dues payment is based on a per capita charge using Department of Local Affairs population estimates, a fraction of the assessed valuation figures from the State Division of Property Taxation, and a fraction of state sales tax collections for the previous calendar year.

As in previous years, the annual CML dues are included in the City Budget. City Council action is required because the expense is over \$50,000 in accordance with 15-1-2 of the Municipal Code. The dues for 2005 were \$51,477.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Dell Server and Computer Replacement Purchases

Prepared By: David Puntteney, Information Technology Director
Scott Rope, Information Systems Manager

Recommended City Council Action

Find that the Western States Contracting Alliance (WSCA) pricing meets City Charter bidding requirements and authorize staff to proceed with 2006 calendar year purchases of hardware, servers, replacement computers, printers and software through Dell Computer Corporation in an amount not to exceed \$320,000.

Summary Statement

- The City uses over 63 computer servers to support software applications and provide services for all departments.
- Servers, desktop computers, and laptop computers are replaced on a four-year replacement schedule in order to provide a high level of reliability, availability and performance.
- Maintenance contracts for computer servers more than four years old are expensive.
- City Council authorized adequate funds in the 2006 Utility Fund, Information Technology Department operating budget, to purchase replacement servers and software.
- The City purchases hardware through Dell Computer at or below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements.
- The City is scheduled to replace 157 PCs that will reach four years of age in 2006.
- Decommissioned desktop computers are donated to the 7:10 Rotary Club for the Computers for Kids program.
- Decommissioned computer servers are relocated to the City's computer disaster recovery facility to serve as short-term recovery computers in the event of a disaster at the primary computer facility located at City Hall.

Expenditure Required: \$320,000

Source of Funds: General and Utility Fund Departmental Operating Accounts and Utility Fund, Information Technology Department Operating Budget

Policy Issue

Should the City continue to replace aged computer servers, desktop computers, laptop computers and peripheral equipment and software to ensure high availability, performance and capacity to support software applications and users?

Alternative

Forgo the 2006 replacement of computer hardware, software and servers. This alternative is not recommended for the following reasons:

- Continued maintenance on older servers is expensive. The City purchases new servers that include a four-year maintenance agreement.
- Application software upgrades frequently require more processing speed and memory. Attempting to upgrade older servers to meet the demands of new applications is many times impossible, and not cost effective, especially when combined with the cost of maintaining older computer technology.
- The expected performance and reliability of servers more than four years old is unacceptable for the City's critical applications.
- Older desktop and laptop computers lack the processing power needed to adequately support newer applications.

Background Information

In 1985, the City of Westminster had 15 personal computers installed in several departments, representing a total asset value of \$48,000. Because of the limited number of personal computers in use during the mid to late 1980's, planning for and securing adequate budget for replacing these computers, as they became obsolete, was not difficult. During the 1990's, the City continued to place added emphasis on the use of personal computers and purchased many personal computers as Staff recognized the value that personal computers offered in terms of internal communications, employee productivity and as tools to provide enhanced and efficient services for citizens and businesses. Currently, the City uses 990 personal computers throughout all departments, representing an investment of approximately \$1.76 million.

In 2001, the City established a three and four year PC replacement schedule to prevent previous problems associated with reliability, support and performance of computers exceeding four years of age. Through the standard replacement schedule and process, staff has achieved a more stabilized annual replacement cost for departments and implemented effective standards for computers throughout the City. With the improved processing power and reliability of new computers, those previously scheduled for replacement in three years were moved to a four-year replacement schedule in 2005.

The City also uses more than 63 computer servers to support applications such as Computer Aided Dispatch, Public Safety Records Management, Enterprise Resource Management, Court, Geographic Information Systems, Internet, Intranet, Utility Maintenance Management, Utility Billing, Office tools and many others. These servers are critical to departments to provide internal and external customer service and to conduct critical City operations. High reliability and performance of these systems is essential. The City has established a four-year replacement for computer servers. The decommissioned servers are frequently relocated to the City's computer disaster recovery facility to provide short term, more limited use in the event of a disaster at City Hall that would restrict access to or availability of production servers. New servers include a four-year maintenance agreement, so the City does not incur additional hardware maintenance expense during the full production life of the servers.

The City has standardized on Dell computer servers, which have some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of Dell equipment and the support provided to the City.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Purchase of Excess Workers' Compensation Insurance

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Authorize the purchase of Workers' Compensation Excess insurance for \$74,741 from Midwest Employers Casualty Company and charge this expense to the 2006 Workers' Compensation Self Insurance Fund.

Summary Statement

- City Council action is requested to authorize the expenditure for the 2006 annual premium for excess workers' compensation insurance effective February 1, 2006.
- The City annually purchases specific stop loss insurance to cover catastrophic on-the-job injuries to employees that would exceed the City's self insured amount. This insurance is purchased through a broker, Marsh USA Inc., who will purchase the coverage for the City through Midwest Employers Casualty Company. The recommended quote from Marsh for 2006 for excess workers' compensation coverage is \$74,741.
- The cost of coverage in 2005 was \$82,785. The quote for 2006 of \$74,741 represents a decrease in premium of \$8,044 (approximately 10%) from 2005. This quote reflects a change in our excess coverage program as described in the background section of this memorandum and the City's history of not having experienced excess claims.

Expenditure Required: \$74,741

Source of Funds: Workers' Compensation Self Insurance Fund

Policy Issue

Should the City continue to self-insure its workers' compensation coverage, purchasing excess insurance to cover any catastrophic issues? Should the City change the excess insurance coverage program taking on more risk at an added deductible, for less premium?

Alternatives

- (1) Maintain the self-insured retention of \$350,000 and not take on more deductible.
- (2) Increase the City's self-insured retention from \$350,000 to \$400,000 for the higher risk jobs of police and fire. Staff believes that the current self-insured retention is appropriate when considering the risk vs. savings in premium cost.
- (3) Consider fully insuring the City's Workers' Compensation Insurance Program. This alternative is not recommended due to the almost certain increase in expense and the reduction in the City's ability to manage claims.

Background Information

The Risk Management Staff completed and submitted the application for excess workers' compensation coverage to Marsh USA Inc. in late November 2005. Marsh USA Inc., acting as insurance broker on behalf of the City, then sought proposals on the open insurance market for this coverage. They received responses from only two carriers and submitted their renewal proposal to the City's Risk Management Officer on December 16, 2005. The City's current policy expired on January 1, 2006, but a one month extension of the policy was purchased to allow Council time to review the proposal.

The City currently self-insures the first \$350,000 of each workers' compensation claim. This type of program allows for more control over claims handling and payment and reaps immediate rewards from the City's loss control and safety programs. By self-insuring the City also avoids some of the increases in premiums affecting the insurance industry.

Aggregate stop loss coverage, i.e. for multiple claims, is available in the excess insurance market, but the retention levels and limits make the premium paid for this coverage an unnecessary expense. The quote received for an aggregate stop loss program was an additional \$1,815 (\$2,833 with no change in the current program). The insurance carrier would still require the City to self insure the first \$2,336,637 (paid out in \$350,000 increments per claim) in aggregate and then would only cover the next \$1,000,000 in claims from first dollar. Any claims over the total aggregate of \$3,336,637 would revert back to the City's \$350,000 self insured retention with excess insurance coverage beyond that amount. The City's insurance broker and current excess insurance carrier anticipate, based on loss analysis, total aggregate losses for the City for 2006 to be no more than \$1,000,000 to \$1,800,000. Based on this analysis, the chance of the City spending \$2,336,637 on claims is very slim.

The quote responses were as follows:

CARRIER	PREMIUM	LIMITS	RETENTION
Midwest Employers Casualty Company	\$93,142	Statutory	\$350,000
Midwest Employers Casualty Company	\$74,741	Statutory	\$350,000 + Corridor Deductible of \$100,000
Midwest Employers Casualty Company	\$87,784	Statutory	\$350,000/\$400,000 *
Safety National Casualty Corporation	\$90,219	Statutory	\$350,000
CIRSA	Declined	Statutory	\$350,000

*\$350,000 for general employees/\$400,000 for police and fire employees

Midwest Employers has offered the City three different options for 2006. The first option reflects the City's current excess program with no changes to coverage or limits. The second option reflects the City's current self-insured retention and no change to coverage, but adds a corridor deductible of \$100,000. This deductible would be payable by the City if any claims exceed the City's current retention limit but would be aggregate on all claims. Once the first \$100,000 over \$350,000 was paid it would be satisfied for the year and the excess carrier would pick up dollar one over \$350,000. Staff recommends this second option from Midwest Employers as it is a substantial decrease in premium in exchange for a slight increase in exposure to the City. The City has been self insured since 1986 and since then has only experienced one claim that went over the City's self-insured retention limit. Midwest also offered a third option with a different retention amount (\$400,000) on all police and fire claims and the current \$350,000 retention on all other employees. Since the risk of an excess claim coming out of police and/or fire operations is greater than the general employee population, Risk Management staff does not recommend this action.

Staff also completed an application for coverage with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), which currently handles the insurance coverage and claims administration for the City's property and liability insurance program, regarding workers' compensation coverage. After review of the City's application for workers' compensation coverage, CIRSA declined to quote on the program knowing that they would not be able to compete with the premiums and service fees the City currently pays.

The insurance industry has experienced numerous changes during the last five years. Prior to 2000, the industry was realizing tremendous gains from investments and therefore, making up for any underwriting losses. With the economic decline that began in 2000, investment income was no longer able to offset the losses and insurance carriers began increasing premiums. The events of 2001 were further disastrous for the insurance industry resulting in increased prices and greater limits on coverage being passed on to the consumers. Many carriers withdrew from certain specialty lines of business, such as excess workers' compensation, and many others simply did not survive. By the end of 2003 and into early 2004, brokers saw some improvements in the marketplace, but in 2005 many carriers that remain still do not want to quote programs with police and fire liabilities. Given the current market conditions and a 6% increase to the City's payroll over the 2005 policy period, Risk Management staff is very pleased with the renewal terms. According to our broker, Marsh USA Inc., the City has received one of the best renewal quotes they saw for 2006.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Option to Purchase the Second Parcel of the Family in Christ Church Property, approximately 2 acres of Open Space at W. 99th Avenue and Wadsworth Boulevard.

Prepared By: Ruth C. Becker, Open Space Coordinator

Recommended City Council Action

Authorize the City Manager to exercise the option to purchase the second parcel of the Family in Christ Church property located on W. 99th Avenue at Wadsworth Boulevard as open space under the Option Agreement dated March 22, 2005, and authorize the City Manager to expend an amount not to exceed \$257,000 of City Open Space Funds for the purchase of the property and execute all necessary closing documents for the acquisition of the property.

Summary Statement

- On April 11, 2005 (Item 8C), City Council approved the Purchase Agreement and Option Agreement with the Family in Christ Community Christian Reformed Church for purchase of the approximately 3.89 acres located between W. 99th Avenue and W. 99th Place and between Wadsworth Boulevard and Jefferson Academy in unincorporated Jefferson County for a total purchase price of \$585,000 (or \$3.45 per square foot).
- The acquisition was divided into two phases (see attached map). On May 2, 2005, the City acquired the western approximately 2 acres of the property for \$300,000. The City was granted an option to purchase the remaining approximately 2 acres of the property for \$285,000 in February, 2006. The non-refundable option consideration was \$30,000, which was paid on May 2, 2005 and which will be applied to the purchase price of the option parcel.
- The acquisition of this property will allow the City to preserve a portion of the Big Dry Creek Trail Corridor and assemble a large parcel of open space with the existing City open space to the south of W. 99th Avenue and the adjacent parcel purchased from the Church last year.
- Acquiring this parcel now provides the City with flexibility to preserve key open space and assemble a large parcel of open space along Big Dry Creek.

Expenditure Required: \$255,000 plus closing costs not to exceed \$2,000.

Source of Funds: Open Space Land Purchases Account

Policy Issue

Should the City's Open Space Funds be used for this acquisition?

Alternative

Not acquire the property at this time. This alternative is not recommended because staff believes the acquisition is in a key location along the Big Dry Creek Trail corridor.

Background Information

Staff has been negotiating to purchase this property for several years. The City acquired the western two acres of this parcel in May, 2005. The property owner was agreeable to dividing the purchase price over two years, which was beneficial to the Open Space Fund. Acquiring the eastern two acres of this property would preserve an additional 275 lineal feet of view corridor along Wadsworth Boulevard. Acquisition of this property will expand the open space buffer along the Big Dry Creek trail corridor at W. 99th Avenue and Wadsworth Boulevard and provide a total of approximately 8.2 acres of preserved open space along Wadsworth Boulevard.

The purchase price is based, in part, on an appraisal that was prepared for the Seller in October, 2003. At the time the eastern 1.56 acres of the property were zoned for commercial use (C-1 under the Jefferson County Land Use Code) and the remainder of the property was zoned A-1 for agricultural and low density residential uses. The appraised value, as of October, 2003, was \$3.50 per square foot. The Seller purchased the property in September, 2000 for \$514,600 or \$3.04 per square foot, and the appraisal indicated appreciation since that date. The proposed purchase price for the City of \$3.45 per square foot is slightly less than the appraised value in October, 2003.

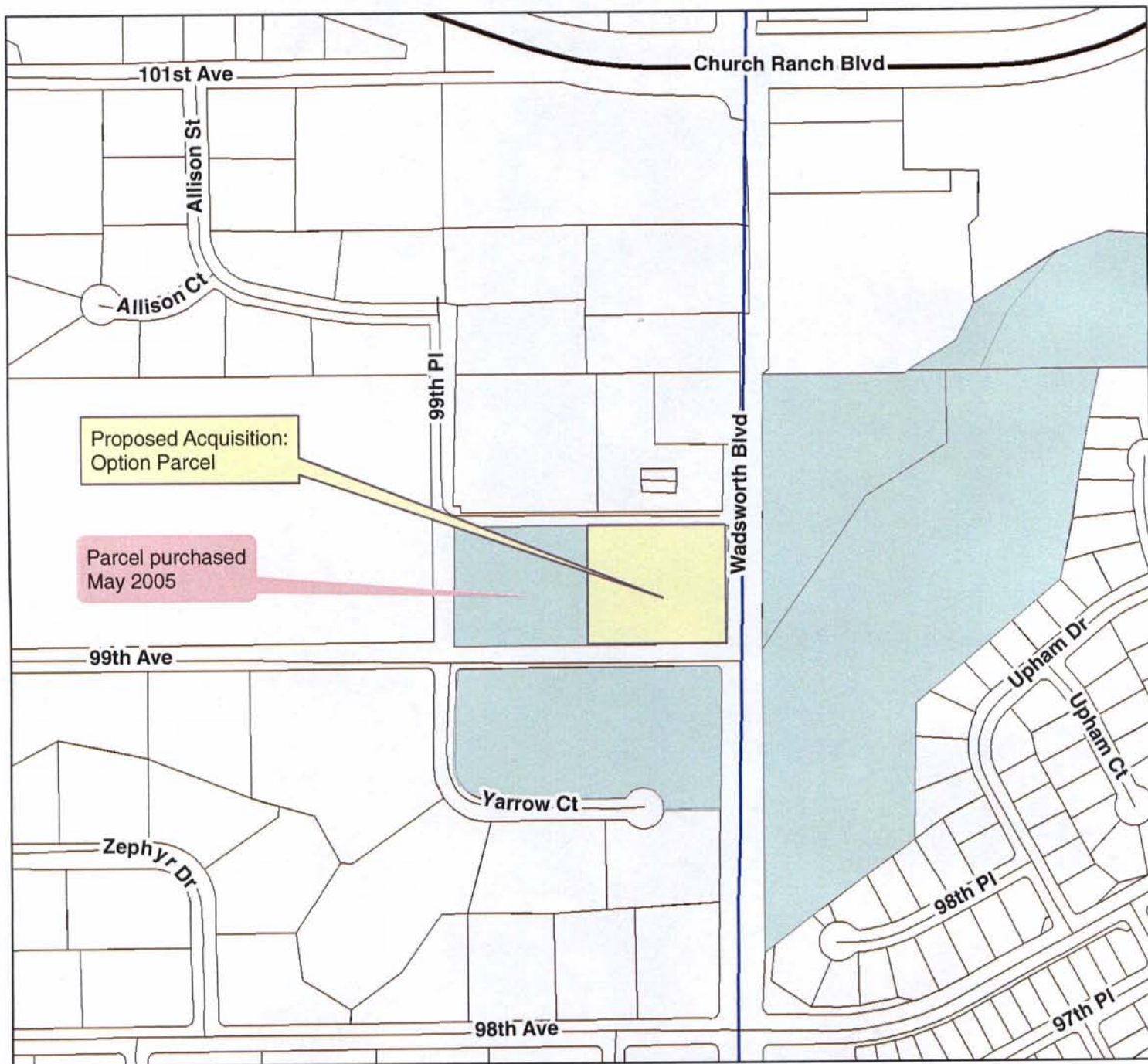
The preservation of this property has been a goal of the open space program for many years and is considered a priority by the Open Space Advisory Board. It also meets the criteria for the selection of open space.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Map

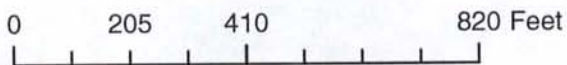
City of Westminster



Family in Christ Church Property Location Proposed Acquisition: Option Parcel

Legend

-  OpenSpace
-  Parcels_Layer





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Payment of City Participation in the Umatilla Court Construction

Prepared By: Dave Downing, City Engineer

Recommended City Council Action

Authorize the payment of \$72,273.57 to Neumann Homes of Colorado, LLC for the construction of the Umatilla Court connection between Harmony Park Subdivision and Amherst Subdivision at the approximate 132nd Avenue alignment.

Summary Statement

- During 1998, several residents of the Quail Crossing and Amherst neighborhoods participated in various public meetings with City Council and Staff pertaining to access to Arapahoe Ridge Elementary School. At the time that Arapahoe Ridge opened, 132nd Avenue was the only available route of access to the school. During these public meetings, the residents expressed a desire for the City to provide as many alternative routes to the school as possible in order to disperse traffic throughout the surrounding neighborhoods.
- In July of 2001, the City Council approved the Official Development Plan (ODP) for The Village at Harmony Park, a residential subdivision located immediately to the southwest of Arapahoe Ridge Elementary School. In keeping with the previously expressed desires of the area residents, this ODP indicated that both Pecos Street and Umatilla Court would be extended from The Village at Harmony Park to the adjoining Quail Crossing and Amherst neighborhoods, thus providing enhanced access to the school. Since the integrity of the traffic circulation system for The Village at Harmony Park was not dependent upon these extensions of Pecos Street and Umatilla Court, the City agreed to be responsible for the design and construction of the two street connections.
- The City Council appropriated \$182,000 in the 2002 General Capital Improvement Fund for "Harmony Park/Amherst Street Connections."
- It was efficient and economically prudent to have Neumann Homes of Colorado, LLC, the developer of The Village at Harmony Park, provide the design and installation of the two street connections in conjunction with other roadway construction that they were required to perform within the subdivision. In 2002, the developer completed the Pecos Street extension and was paid approximately \$96,000 by the City for this work. Neumann Homes has now completed the Umatilla Court extension and has presented an invoice to the City in the amount of \$72,273.57. City Staff has reviewed the invoice and recommends that payment to the developer be authorized by the City Council.

Expenditure Required: \$72,273.57

Source of Funds: General Capital Improvement Fund
Harmony Park / Amherst Street Connection

Policy Issue

Should the City reimburse Neumann Homes for this developer's construction of a street connection between two residential subdivisions?

Alternative

Since the City previously committed to the payment of participation in the construction of the Umatilla Court connection with the execution of the Official Development Plan and the Public Improvements Agreement for The Village at Harmony Park Subdivision, no alternative to the recommended action could be identified.

Background Information

The opening of Arapahoe Ridge Elementary School in the fall of 1997 immediately produced daily traffic jams since the school was situated at the terminus of a dead-end street. The only viable vehicular access to the school was via 132nd Avenue off of Huron Street. City Staff quickly prepared construction plans for an extension of Pecos Street between 134th Avenue and 132nd Avenue to provide a secondary access route across a tract of City-owned land. But, this proposal generated protests from many residents of Quail Crossing and Amherst Subdivisions whose lots backed onto the City-owned property. These residents were concerned that the presence of a new roadway on a piece of land that had served as informal, but not designated, open space for a number of years would diminish their quality of life. After debating this issue during two or three neighborhood and/or public meetings conducted in the first half of 1998, the majority of the affected citizens relented to the City's desire to construct the northern Pecos Street extension under the condition that the City would pursue additional routes of access to Arapahoe Ridge Elementary School in the future. Chief among the possibilities for future alternative access were potential street connections to the southwest of the school across private property that was still undeveloped at that time.

In 2001, the opportunity to provide enhanced access to the school arrived with the proposed development of The Village at Harmony Park. City Staff negotiated a mutually acceptable site plan with Neumann Homes of Colorado, LLC that included extensions of Pecos Street and Umatilla Court beyond the boundaries of the new residential subdivision. Since the two street connections were not necessarily needed to allow traffic to flow smoothly within Harmony Park, the City agreed to pay for the costs of the extensions. Sufficient funds for this construction were budgeted by the City Council the following year.

Due to the fact that Neumann Homes would be constructing streets within Harmony Park over the course of the next few years, it became convenient for City Staff to contract with the developer to install the Pecos Street and Umatilla Court extensions, too. The Pecos Street connection was completed in 2002 and the City reimbursed Neumann Homes at that time. More recently, the developer finished the Umatilla Court work and has requested payment from the City. Staff has reviewed the invoices and inspected the construction, so reimbursement in the amount of \$72,273.57 is recommended at this time.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment



Umatilla Ct. Connection

Arapahoe Ridge Elementary School



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: 2006 Extended Reclaimed Water Master Plan Contract with HDR Engineering, Inc.

Prepared By: Dan Strietelmeier, Water Resources Engineering Coordinator

Recommended City Council Action

Based on the report and recommendation of the City Manager, City Council finds the public interest will best be served by authorizing the City Manager to execute a professional services agreement with HDR Engineering, Inc. as the sole source for the work in preparing an Extended Reclaimed Water Master Plan for a cost not to exceed \$166,478.

Summary Statement

- With the construction of the Reclaimed Water Treatment Facility in 1999, the City began enhancing its water supply by substituting reclaimed water for potable water for certain water uses. The City continues to optimize the Reclaimed Water System by planning for future development and uses.
- HDR Engineering, Inc. prepared a Reclaimed Water Master Plan in 2002 and a Reclaimed Water Master Plan Update in 2004. Water Master Plans are used as system-wide guidelines in planning a distribution system for current and future customers.
- The existing 2002 Reclaimed Water Master Plan analyzed system demands and projected future demands for a 2,600 acre-foot system. The 2004 Reclaimed Water Master Plan Update identified a larger customer base and analyzed future demands for a 3,500 acre-foot system. The 2002 Reclaimed Water Master Plan and the 2004 update examined supply, treatment, storage, and pumping needs, and recommend necessary improvements based on the system size and projected demands.
- This next phase of the reclaimed master plan will provide decision making information on how to best expand, operate and manage the system by weighing a series of available alternatives in light of more information available from the last 5 years of operational history with the newly constructed reclaimed system. Based on the analysis in the first two phases of the Reclaimed system Master Plan, HDR Engineering, Inc. and Westminster Staff have developed additional concepts on ways to potentially significantly reduce future capital expenditure required to meet build out reclaimed water demands and the next phase of the reclaimed master plan will explore these options and develop recommendations for the 2007-2008 budget process.
- HDR Engineering, Inc. has a thorough knowledge of the City's Reclaimed Water System, including the customer base, having prepared the previous Master Plan and Update, and having provided technical and management services for City of Westminster utilities over the past 35 years.
- Staff has negotiated with HDR Engineering, Inc. for a price and scope of work that will produce an Extended RWMP that will expand upon the previous Master Plan and Update to create a valuable tool that will be used for examining policy decisions as well as planning future customer connections and capital projects.

Expenditure Required: Not to Exceed \$166,478

Source of Funds: Utility Fund – Reclaimed Water Treatment Plant Expansion Study CIP

Policy Issue

Should the City award this sole source negotiated contract to HDR Engineering, Inc. for completing an Extended RWMP?

Alternatives

As an alternative to awarding the contract to HDR Engineering, Inc., the City could choose to solicit proposals from several engineering firms. However, if another firm was chosen they would not be as familiar with the current Master Plans and it could take considerably more time and expense for the other firm to become knowledgeable about Westminster's Reclaimed Water System in order to produce a useful Master Plan. This alternative is not recommended.

A second alternative would be to delay or not perform the Extended RWMP. This alternative is also not recommended as delaying or not performing the Extended RWMP would severely restrict the City's water supply planning efforts by not having the information needed to compare Reclaimed System expansion to other potential water supply projects.

A third alternative is to produce the Extended RWMP in-house. This is not recommended as additional staff would need to be committed to this effort. In addition, HDR Engineering, Inc. has much more expertise and experience in completing complex Master Plans.

Background Information

The 2002 Reclaimed Water Master Plan identified a customer base and a series of capital improvement projects that the City would need to develop if were to achieve its water supply goal of meeting an annual demand of 2,600 acre-feet with reclaimed water. In 2005 Reclaimed Water system deliveries were approximately 971 acre-feet. In the 2004 Reclaimed Water Master Plan Update, HDR showed that there is a sufficient potential customer base existing in the current Reclaimed Water service area that it would make it feasible to deliver up to 3,500 acre-feet of reclaimed water per year. This additional 900 acre-feet per year can be viewed as additional water supply as it would remove future potable water demand from the City.

The 2006 Extended Reclaimed Water Master Plan will build on previous work to provide the City with a valuable decision making tool. HDR Engineering, Inc. will perform a series of in-depth evaluations not included in the 2002 Master Plan and the 2004 Update as well as refining existing information with additional data. A series of scenarios will be systematically analyzed with the associated cost and benefits of each. These evaluations will include various Reclaimed Water System parameters such as using raw water to shave peak demands, distribution system storage, capacity of the Reclaimed Water Treatment Facility and reclaimed customer demand patterns. The 2002 Master Plan and 2004 Update identified several of these alternatives as having the potential to result in a more optimized system and to reduce future capital expenditures on reclaimed system infrastructure.

HDR Engineering, Inc. plans to conduct a series of workshops with City Staff to examine alternatives, ranking each alternative so as to optimize the system. Of the alternatives studied, the City may determine that more than one operational scheme is appropriate for use depending on external pressures such as seasonal demands, drought conditions or other water supply issues. The Extended RWMP will fully analyze the costs and feasibility of different approaches and policies related to expanding the reclaimed water system. HDR Engineering, Inc. will recommend an approach and develop a Capital Improvement Project (CIP) plan to accomplish it. Staff will use this data to make specific recommendations during the 2007-2008 budget preparation. Results and findings from the Extended RWMP will be presented to City Council in 2006 as part of an update to water supply planning efforts.

HDR Engineering, Inc. has a great deal of experience in providing utility system planning services to other agencies and has assembled an excellent project team to perform the work for Westminster. Staff researched the cost of previous Master Plan services to assure the negotiated scope of work and fee with HDR Engineering, Inc. was fair and reasonable in terms of market rates and degree of technical proficiency. HDR Engineering, Inc.'s technical expertise combined with their understanding of the Westminster Reclaimed Water System ensures that the time HDR Engineering, Inc.'s staff will spend on the project is time spent on producing a Master Plan and not learning the history of the system. The costs for producing the previous Reclaimed Water Master Plan and Update performed by HDR Engineering, Inc. were charged to a credit resulting from a settlement agreement regarding the Semper Clearwell. The Extended RWMP scope, task hours and hourly rates are fair and appropriate for providing the City with a final product that will be utilized for future Reclaimed Water System planning.

Based on all the factors detailed in this memorandum, Staff determined it was in the best interest of the City to negotiate a scope of work and cost proposal with HDR Engineering, Inc. for an Extended RWMP, rather than seek bids for this service.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Intergovernmental Agreement with Jefferson County School District's Risk Management Department for Third Party Administration Services

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement with the Jefferson County School District for Third Party Administration services for the City's workers' compensation program.

Summary Statement

- City staff annually contracts with an outside vendor to administer the City's workers' compensation self-insured program. This third-party administrator is responsible for claims adjusting, processing of all payments to medical providers and employees, and all claim reporting required by the Colorado State Department of Labor and Employment.
- In the past City staff has issued a Request for Proposal and evaluated the proposals to choose an administrator. For the past three years the City has contracted with Gallagher Bassett Services at an average cost to the City of almost \$47,000 per year.
- Jefferson County School District is a self-insured and self-administered employer with a fully staffed Risk Management department and in-house insurance adjusters. The District currently administers their own workers' compensation claims and the claims for Adams County.
- Anticipated costs after the first year will be approximately \$28,000 resulting in savings to the City of approximately \$19,000 per year.

Expenditure Required: \$ 45,935 first year of contract

Source of Funds: Workers' Compensation Self Insurance Fund

Policy Issue

Should the City enter into this Intergovernmental Agreement with the Jefferson County School District?

Alternatives

- (1) City Council could reject staff's recommendation to utilize Jefferson County School District's Risk Management department for claims administration services and direct staff to seek proposals on the open third party administration market.
- (2) City Council could authorize staff to renew the City's contract with Gallagher Bassett Services for another year.

Background Information

Since the City became a self-insured employer in 1986, the City has contracted with an outside vendor for the payment of bills and the adjusting and processing of all workers' compensation claims. There are a limited number of administrators currently doing business in Colorado and Risk Management staff is fairly familiar with all of them and have used several different ones in the past.

2005 represented the third year the City contracted with Gallagher Bassett Services and therefore, staff was beginning the process of putting out a Request for Proposal to check the market. In talking with others in the Colorado workers' compensation industry, staff discovered that Jefferson County School District's Risk Management department was looking to bring on another Colorado governmental entity to share in their internal costs of self-administering their own program.

Jefferson County School District's Risk Management staff has participated in IGA's for claims administration with the Joint School District Pool made up of four school districts and has administered the workers' compensation program for Adams County since 1989. The District's Risk Management staff has a combined total of 56 years of experience in claims administration with the least experienced staff member having a total of eight years of claims handling experience. Their department staff consists of six FTE who handle all risk management duties for the school district including property and liability, workers' compensation and loss control.

First year costs for this program will be approximately \$45,935 due to the one time expense of converting the City's data from the Gallagher Bassett system to the District's electronic claims system. Substantial savings will be realized in the second year of the IGA when costs are anticipated to be approximately \$27,000 to \$28,000 per year. Gallagher Bassett Services proposed contract with the City for 2006 anticipated an increase of 6% in claims processing fees from their 2005 base rate of \$40,787 to \$43,197. This amount does not include additional service fees Gallagher Bassett charges on an annual basis.

As an alternative, staff did approach the Colorado Intergovernmental Risk Sharing Agency (CIRSA) who handles the insurance coverage as well as claims administration for the City's property and liability insurance program, regarding workers' compensation coverage and administration services. After review of the City's application for workers' compensation coverage, CIRSA declined to quote on the program knowing that they would not be able to compete with the premiums and service fees the City currently pays.

The attached Intergovernmental Agreement will act as the contract between the City and the District in regards to the service the District will provide the City. The IGA was drafted from the current IGA the District has with Adams County along with modifications made by the City's Risk Management and City Attorney staff and agreed upon by the District Risk Manager and the District's legal department.

Respectfully submitted,

J. Brent McFall, City Manager
Attachment

INTERGOVERNMENTAL SHARED SERVICES AGREEMENT
for
WORKERS' COMPENSATION CLAIMS ADMINISTRATION

THIS AGREEMENT is made and entered into this 1st day of February 2006, pursuant to Article 14, Section 18(2)(a) of the Constitution of Colorado and Section 29-1-203 of the Colorado Revised Statutes by and between the City of Westminster, Colorado, hereinafter referred to as "Westminster," and the Board of Education for the Jefferson County School District R-1, a body politic organized under and existing by virtue of the laws of the State of Colorado, hereinafter the "District."

WHEREAS, Westminster is self-insured in its workers' compensation risks; and

WHEREAS, Westminster desires to enter into an Intergovernmental Agreement, with the District for administration of workers' compensation claims; and

WHEREAS, the District is skilled in and has the necessary personnel and equipment available to meet Westminster's needs relative to the administration of workers' compensation claims; and

WHEREAS, the District is willing to provide such services on the terms and conditions as hereinafter set forth.

W I T N E S S E T H :

NOW, THEREFORE, in consideration of the terms, covenants, and conditions hereof, it is hereto stipulated and agreed as follows:

ARTICLE 1. Claims Administration. The District agrees to review all claims and loss reports submitted from Westminster for claims occurring after January 31, 2006 and assumes the handling of all open claims which occurred prior to February 1, 2006 and process each in accordance with applicable law which shall include but shall not be limited to the following:

Review all claim and loss reports and process each in accordance with applicable law.

Create files and conduct the necessary investigations in consultation with Westminster.

Establish and maintain reserves on the basis of most probable final cost.

Obtain medical reports and pay medical bills as required by statute. Monitor treatment for appropriateness.

Admit or deny claims, with prior approval from Westminster, in accordance with statutory guidelines based on investigation and analyses of medical information.

Pay disability benefits on admitted cases in a timely manner. Will obtain medical verification on continuing disability before payment.

Review files every thirty days for closure.

Outline claim strategy regarding defense and further claim handling in accordance with settlement authorization extended by Westminster.

Negotiate settlements as authorized by Westminster or refer to authorized counsel.

Assist Westminster's counsel with defense of litigated cases.

Investigate and pursue subrogation, where appropriate.

Refer cases to vocational rehabilitation in accordance with State requirements.

Appropriately document all files.

Provide copies of all written correspondence from the District to medical care providers, claimants, attorneys, rehabilitation counselors, investigators and State agencies to Westminster.

Attends hearings as required.

ARTICLE 2 REPORTING. The District agrees to maintain an automated loss information system and provide the following reports to Westminster on a timely basis:

Reports to excess insurer per policy requirements.

Computerized loss reports summarizing losses by location with information including claimant's name, age, date of loss, occupation, cause of loss, injury.

Monthly cumulative check register, giving a summary of all medical, indemnity and other payments for that month.

Quarterly vendor reports.

Data for the calculation of Westminster's experience modification factor.

ARTICLE 3. OWNERSHIP OF CLAIM FILES. All files and materials gathered by or entrusted to the District in the course of investigating or administering any claim under this Agreement shall be the sole property of Westminster. Any material contained in these files shall be treated by the District as confidential consistent with applicable federal and state law. All closed files will be stored by the District for ten years, after which they should be destroyed with Westminster's approval.

ARTICLE 4. AUDITS. Westminster and/or their designees shall have authority to conduct audits of claim files at the District's Risk Management Department.

ARTICLE 5. TERMS AND TERMINATION.

A. The term of this Agreement shall commence as of February 1, 2006 and shall continue for a period of one year to be automatically renewed unless notice of termination per Section B shall be given by either party. The District shall give Westminster written notice ninety days prior to the annual anniversary date stating any proposed changes in fee.

B. This Agreement may be terminated by either party at any time provided ninety days written notice has been given to the other party. Upon termination, all existing claim files shall be returned to Westminster. If desired, the District shall continue to administer the existing claim files for a fee to be negotiated at that time.

ARTICLE 6. CONSIDERATION. In consideration for the above service being provided by the District, Westminster agrees to the following schedule of fees for the first 24 months of this IGA which shall be payable to the District as indicated:

CLAIMS ADMINISTRATION

\$455 per claim for lost time.

\$165 per claim for medical only.

\$24 per claim for record only.

An additional fee of \$228 for lost time claims and \$83 for medical only claims may be charged for claims that remain open in excess of three years from the date opened by the District. In the event that the category of a claim changes after the initial set up, any service charge paid will be credited against the revised fee.

Claims open at the commencement of this agreement will be administered by the District per the above fee schedule.

Claims administration fees will be reviewed no more than every other year of the IGA with a 90 day advance notice given to Westminster of any increase in fees.

An advance fee of \$10,000 will be due upon inception of contract to be adjusted on a semi-annual basis.

ARTICLE 7. ALLOCATED EXPENSES.

A. The term "Allocated Loss Expenses" shall mean all costs, charges or expenses of others that the District, its agents or employees incur for Westminster's approved litigation, settlement, adjustment or investigation of claims or suits to include, without limitation: all court costs, court fees and court expenses; interest; fees for services of process; fees to attorneys approved by Westminster; costs of investigative services; costs of employing experts for preparation of maps, photographs, diagrams, chemical or physical analysis or for advice, opinion or testimony concerning claims under investigation or in litigation; costs for legal transcripts or testimony taken at coroners inquests; criminal or civil proceedings; costs for copies of any public records; costs of deposition and court reported or recorded statements; costs of expenses of subrogation and any other similar fee; costs or expenses reasonably chargeable to the litigation, settlement, adjustment or investigation of a claim or loss or to the protection and perfection of the subrogation right of Westminster.

B. All allocated expenses shall be charged back to Westminster on an "as incurred" basis. The limit on any payment by the District of a qualified claim or loss, and/or for Allocated Loss Expenses related to such claim, as the case may be, shall be \$10,000. This amount may be changed at any time by Westminster upon written notice to the District. Any negotiated settlement, payment or expenses to be incurred in excess of this amount must be approved by one of the following employees of Westminster:

The Risk Management Officer or the Deputy City Manager for Administration

The District shall be responsible for any unauthorized payments made by a District employee.

ARTICLE 8. VENDOR CONTRACTS. With the prior approval of Westminster and within the disbursement authority in ARTICLE 7 above, the District may employ, subcontract or otherwise engage competent, capable and qualified persons or firms outside its organization for work hereunder which, in the District's best judgment, cannot be satisfactorily handled by its own staff. In any such event, the District retains the direct reporting relationship with Westminster and the District has a continuing responsibility for compliance with the terms of this Agreement.

ARTICLE 9. INDEPENDENT CONTRACTOR. The District hereby declares that in the performance of this Agreement it shall act as an independent contractor and not as an agent or employee of Westminster. To the extent permitted by law, and without waiving its rights and protections under the Colorado Governmental Immunity Act, the District shall indemnify and hold Westminster harmless from and against any and all claims, losses, penalties, fines, damages and expenses, including court costs, attorneys' and expert witness fees, arising out of or attributable to the acts, errors or omissions of the District, its employees and agents. Westminster shall be responsible for its own acts and employees during the term of this Agreement. The foregoing indemnification provisions shall survive the termination of this Agreement.

ARTICLE 10. LIMITATIONS.

A. Opinions or recommendations made by the District shall in no way constitute any form of warranty or guarantee whatsoever that Westminster shall or shall not have any stated monetary loss exposure from claims.

B. The services to be provided by the District are not of a legal nature, and the District shall in no event give or be required to give any legal opinion or provide any legal representation to Westminster. The District may, but shall be under no duty to recommend counsel to Westminster. Westminster, at all times, has full and sole discretion to select legal representation and counsel of its own choosing, and any selection of such representation or counsel shall be by separate agreement between Westminster and such counsel.

ARTICLE 11. MISCELLANEOUS.

A. This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes all prior and contemporaneous agreements or understanding, written or oral, of the parties. This Agreement may be amended only in writing executed by both parties.

B. No waiver of one or more provisions of the Agreement shall constitute a waiver of any other provision hereto.

C. This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their successors and assigns.

D. Any notice required to be given by the District under this agreement shall be sent to the Risk Management Office, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.

E. This Agreement shall be construed in accordance with the laws of the State of Colorado.

F. All claims concerning breach of this Agreement shall be brought in Jefferson County District Court or the United States District Court for the District of Colorado, and the parties to this Agreement hereby acknowledge personal and subject matter jurisdiction, and venue, of these courts. Should any party be required to retain an attorney to enforce the provisions of this Agreement, whether or not litigation is actually commenced, the non-breaching party shall be entitled to recover from the party breaching this Agreement those reasonable attorneys' fees and costs incurred as a result of such breach.

CITY OF WESTMINSTER, COLORADO

JEFFERSON COUNTY SCHOOL DISTRICT NO.
R-1

By: _____
J. Brent McFall, City Manager

By: _____
Lorie Gillis, Chief Financial Officer

ATTEST:

By: _____
Linda Yeager, City Clerk

APPROVED AS TO FORM AND CONTENT:

APPROVED AS TO FORM AND CONTENT:

By: _____
City Attorney

By: _____
School District Attorney



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Second Reading for Councillor's Bill No. 72 re the Activant Solutions, Inc.
Business Assistance Package

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillors Bill No. 72 on second reading authorizing the City Manager to execute and implement the business assistance package (BAP) with Activant Solutions. The BAP totals \$16,000, which includes \$2,500 in permit fee rebates, \$3,750 in construction use tax rebates, and \$9,750 in equipment use tax rebates at move-in.

Summary Statement

- This Councillor's Bill was passed on first reading on December 19, 2005.
- Activant Solutions Inc. is "a leading technology provider of business management solutions serving small and medium-sized businesses in four primary markets: hardware and home center, lumber and building materials, the automotive parts aftermarket and wholesale distribution."
- Activant is currently officed in Westmoor Technology Park and with the recent purchase of Prophet 21 needs to expand their office facilities.
- Activant Solutions Inc. is considering expanding at its current location or moving to either Broomfield or Lafayette.
- Activant Solutions Inc. currently employs 68 people with average salaries of \$72,000. They expect to add another 30 jobs over the next 5 years.
- Assistance is based upon the retention and expansion of a quality, high paying Westminster employer.
- Activant is required by the terms of the agreement to remain in business in the City for a period of at least three years after the new operations commence.

Expenditure Required: \$16,000

Source of Funds: The business assistance package with Activant Solutions will be funded through revenue received from permit fees, construction use tax, and sales and use tax on furniture, fixtures, and equipment at move-in.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO. **3257**

COUNCILLOR'S BILL NO. **72**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

Kauffman – Major

**A BILL
FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE
WITH ACTIVANT SOLUTIONS TO AID IN THEIR RELOCATION AND EXPANSION
IN WESTMOOR TECHNOLOGY PARK**

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, Activant Solutions plans to lease 35,000 square feet in Westmoor Technology Park in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and Activant Solutions is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Activant Solutions in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 19th day of December 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of January 2006.

ATTEST:

Mayor

City Clerk

Exhibit A

BUSINESS ASSISTANCE PACKAGE FOR ACTIVANT SOLUTIONS IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this _____ day of _____, 2006, between the CITY OF WESTMINSTER (the "City"), and the Activant Solutions.

WHEREAS, the City wishes to provide certain assistance to Activant Solutions to aid in the retention and expansion of this company in the City; and

WHEREAS, Activant Solutions plans to lease 35,000 square feet in Westmoor Technology Park, thus providing primary job retention and growth within the City; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below, the City and the Activant Solutions agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to the Activant Solutions 50% of the building related permit fees, required under W.M.C. Section 11-10-3 (E), excluding water and sewer tap fees, collected from the Activant Solutions in connection with the finish and occupancy of the lease space at 10955 Westmoor Drive. The permit fee rebate will be approximately \$2,500.

2. Use Tax Rebate- Construction. The City shall rebate to Activant Solutions 50% of the Building Use Tax on the construction materials, collected from the Activant Solutions in connection with the tenant finish of the 35,000 square feet in the building at 10955 Westmoor Drive, required under W.M.C. sections 4-2-9 and 4-2-3. The rebate will be approximately \$3,750.

3. Sales and Use Tax Rebate- Furniture and Fixtures At Move-In. For a period of 3 months before and 3 months after Activant Solutions obtains the Certificate of Occupancy for the Westminster facility at 10955 Westmoor Drive, the City will rebate 50% of the General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishing and equipment purchased to furnish the new facility. The rebate will be approximately \$9,750.

4. Payments of Rebates. Rebates will be paid to Activant Solutions by the City in quarterly installments from revenue actually collected and received by the City from Activant Solutions. Payments of each quarterly installment shall be made within 20 days of the calendar quarter end and will be submitted electronically.

5. Entire Agreement. This instrument shall constitute the entire agreement between the City and Activant Solutions and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

6. Termination. This Business Assistance Package shall terminate and become void and of no force or effect upon the City if Activant Solutions has not moved into their new space at 10955 Westmoor Drive by December 31, 2006 or should Activant Solutions not comply with the City regulations or code.

7. Business Termination. In the event Activant Solutions ceases business operations within the City within three (3) years after the new operations commence, then Activant Solutions shall pay to the City the total amount of fees and taxes that were due and payable by Activant Solutions to the City but were rebated by the City, as well as reimburse the City for any funds provided to Activant Solutions pursuant to this Agreement.

8. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

9. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

10. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.

ACTIVANT SOLUTIONS

CITY OF WETSMINSTER

President

J. Brent McFall
City Manager

ATTEST:

Linda Yeager
City Clerk

Adopted by Ordinance No.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Public Hearing and Action on a Comprehensive Land Use Plan Amendment to Remove the Minimum Size Restriction from the Traditional Mixed Use Neighborhood Development (TMUND) Land Use Category

Prepared By: Max Ruppeck, Senior Projects Manager

Recommended City Council Action

1. Hold a public hearing.
2. Pass Councillor's Bill No. 1 on first reading amending the Comprehensive Land Use Plan (CLUP) to remove the minimum size restriction of 50 acres from the text describing the Traditional Mixed Use Neighborhood Development category. This recommendation is based upon a finding that the proposed amendment is in the public good and that:
 - a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
 - b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
 - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d) The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.

Summary Statement

The Traditional Mixed Use Neighborhood Development (TMUND) category in the CLUP allows a wide range of uses and densities including single family and multiple family residential, offices, and retail and service commercial. The guidelines allow these uses to be mixed in a single building. The TMUND Design Guidelines have been developed and incorporate a number of design features such as compact, mixed use, walkable developments, narrower streets where alley-loaded or recessed garages occur, and a wide variety of housing types and densities. The current description of the TMUND category under Policy B1b states that such developments are appropriate in "...undeveloped areas of at least 50 acres in size..." In order to be clear that the TMUND designation can be applied to areas of less than 50 acres and in redevelopment areas currently within a mixed use neighborhood, staff is proposing the 50 acre limitation language be removed. The 50 acre minimum requirement was to insure a large enough area to accommodate these mixed uses and features, but occasionally this range of uses may already be in place in surrounding areas and/or a minimum development/re-development area is not necessary, particularly in the older, developed parts of the City. This proposed amendment will significantly increase the opportunities for mixed use development and redevelopment in the City.

Expenditure Required: \$0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed this proposal on December 13, 2005, and voted 5-2 to recommend the City Council approve the CLUP amendment removing the minimum size restriction of 50 acres from the Traditional Mixed Use Neighborhood Development (TMUND) land use designation as described in the agenda memorandum.

Commissioners Barsoom and Boschert were the dissenting votes. Commissioner Barsoom stated that he would like to see a specific acreage in the text. Commissioner Boschert reasoned that if as stated in the testimony that smaller acreage can be used with the current text, there is no reason to change the text. (See Exhibit A.) However, staff feels that the language in Policy B1b needs to be amended to remove the 50 acre restriction, and staff recommends the 50 acre reference be removed throughout the CLUP for more consistency and flexibility.

There were eight members of the public who voiced concerns and had questions regarding this application. Many of the people providing testimony requested the item be tabled for further review. Staff answered all questions and stated that the Planning Commission would be making a recommendation to City Council for a public hearing on January 9, 2006.

Policy Issue

Should the City approve a Comprehensive Land Use Plan amendment to remove the 50 acre minimum development area size from the TMUND category?

Alternatives

1. Deny the CLUP amendment removing the 50 acre minimum development size from the TMUND Land Use category. This action would not allow staff to utilize this designation for developments less than 50 acres in size.
2. Approve a minimum development size other than 50 acres.

Background Information

Nature of Request

There are currently only two TMUND designated areas in the City: the largely developed Bradburn project at W. 120th Avenue and the vacant property on the west side of Sheridan Boulevard and south of 96th Street. In order to encourage the development of additional TMUND's in the City, staff is recommending the 50 acre minimum required area be removed from two areas in the Comprehensive Land Use Plan. Specifically, the language to be amended/deleted occurs in Section III "Goals and Policies," page III-3, Policy B1b, where the words "undeveloped" and "of at least 50 acres in size ..." would be deleted. Similarly, in Section IV "Land Use and Development Plan," page IV-31, the following language is proposed to be deleted:

"In order to accommodate this mix of uses, projects of this nature shall comprise a minimum of 50 acres, or when combined with an adjacent neighborhood mixed-use land use area meet the minimum land area requirement."

Location

No specific locations for the TMUND designation are being recommended at this time. Only the text referring to the 50 acre minimum size is recommended to be amended. Any future property requesting the TMUND designation would be required to amend the Comprehensive Land Use Plan map.

Comprehensive Land Use Plan Amendment

The Westminster Municipal Code requires an amendment to the Comprehensive Land Use Plan (CLUP) be in the public good and in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering a CLUP amendment. Staff has reviewed these criteria and has provided the following comments on each.

1. The proposed amendment must “Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed.” The purpose of the TMUND land use category is to provide for mixed use developments that are pedestrian oriented with interconnected street and alley ways, grid street patterns, narrower streets, and a variety of parks, trails and open space. These features emulate historical urban patterns rather than the typical, single use suburban residential developments. With the 50 acre minimum size for TMUND’s, few properties qualified for such developments. Indeed, City staff has informally used the TMUND Design Guidelines for developments smaller than 50 acres (such as Harris Park Square at 73rd Avenue and Lowell Boulevard), but the mixed-use opportunities in single buildings were not available. By eliminating the 50 acre minimum area provision, more development and redevelopment opportunities will be possible, particularly in the older sections of South Westminster and other areas within existing mixed use neighborhoods.

2. The proposed amendment must, “Be in conformance with the overall purpose, intent, goals, and policies of the Plan.” Applicable goals are stated in Section III of the Community Goals and Policies section of the Plan. They include:
 - Goal B1 – Encourage development of pedestrian-oriented neighborhood centers that serve the needs of residents and create unique identity for neighborhoods.
 - Policy B1b – Encourage Traditional Mixed-Used Neighborhood Development in appropriate undeveloped areas of at least 50 acres in size* which have a number of characteristics including a mix of land uses including retail and other businesses, various housing types and densities, parks and open space, civic and educational uses, all in close proximity and easily walkable from one use to another.

* This language will be deleted if this amendment is adopted.

 - Goal B4 – Develop well-designed, walkable neighborhoods.
 - Policy B4a – New housing developments will be of a pedestrian scale. Massing, setbacks, and character of new housing developments should encourage new structures that do not overly dominate the street and promote a neighborhood-oriented pattern of development.
 - Policy B4b – Pedestrian-oriented neighborhoods that incorporate creative residential design places to walk and bike, and connections to neighborhood parks and other civic facilities will be promoted and advocated by the City.
 - Policy B4c – A variety of residential designs will be provided in each neighborhood to discourage a “tract” housing appearance. (This may include functional front porches, varied setbacks, garages setback further than the main structure, varied garage orientations, etc.)
 - Goal C4 – Higher density housing should be in “Transit Oriented Developments,” “Traditional Mixed-Use Development Neighborhoods,” or in “District Centers,” adjacent to existing transit facilities where high density residential uses are appropriate.

Based upon these goals and policies, staff has found this proposed amendment to be in conformance with the overall purpose, intent, goals, and policies of the Plan.

3. The proposal must, “Be compatible with existing and surrounding land uses.” Since this is a text amendment, no specific existing or proposed uses are identified. As properties request TMUND designations, consideration of surrounding uses will be made. Preliminary and Official Development Plan reviews also consider surrounding uses.

4. The proposal must, “Not result in detrimental impacts to the City’s existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City.” Again, since this is a text amendment, impacts on public infrastructure cannot be determined until specific areas for TMUND designations are identified.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on December 1, 2005.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Since this is a text amendment only, no property posting applies.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. Since this is a text amendment only, and applies Citywide, no mailings of notice to individuals were provided.

Applicant/Property Owner

City of Westminster

Surrounding Land Use and Comprehensive Land Use Plan Designation

Since this is a text amendment only, the Surrounding Uses Table does not apply.

Site Plan Information

Since this is a text amendment only, site plan information does not apply. When specific properties apply for TMUND designation, the TMUND Design Guidelines will become effective in the Preliminary and Official Development Plan reviews.

Service Commitment Category

Not applicable in a text only amendment.

Referral Agency Responses

Not applicable in a text only amendment.

Neighborhood Meeting(s) and Public Comments

Since this is a text amendment only, no neighborhood meeting was held. Staff has received several telephone calls regarding this amendment. While all questions were answered, some callers still requested the item be tabled.

Respectfully submitted,

J. Brent McFall, City Manager

Attachments

- Councillor’s Bill – CLUP Ordinance
- Exhibit A – Legal Description
- Comprehensive Land Use Plan (Page III-3 indicating language to be deleted)
- Comprehensive Land Use Plan (Page IV-31, 32 indicating language to be deleted)
- Criteria and Standards for Land Use Applications

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **1**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE LAND USE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the City requesting a text change in the Westminster Comprehensive Land Use Plan described in Exhibit A, attached hereto and incorporated herein by reference.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 13, 2005, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the requested amendments will further the public good, that there is a justification and need for the revisions, and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly its goals and policies regarding redevelopment and economic revitalization.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the text of the Westminster Comprehensive Land Use Plan to change the text described in Exhibit A.

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of January, 2006.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

In order to encourage the development of additional TMUND's in the City, staff is recommending the 50 acre minimum required area be removed from the Westminster Comprehensive Land Use Plan. Specifically, the language to be amended/deleted is as follows:

Comprehensive Land Use Plan Amendment
Section III "Community Goals and Policies" Page III-3

Policy B1b

Encourage Traditional Mixed-Used Neighborhood Developments in appropriate ~~undeveloped~~ areas ~~of at least 50 acres in size~~ which have a number of characteristics including a mix of land uses including retail and other businesses, various housing types and densities, parks and open space, civic and educational uses, all in close proximity and easily walkable from one use to another.

Comprehensive Land Use Plan
Section IV "Land Use and Development Plan" Page IV-31

The purpose of this category is to depict those areas of the City that are now developed, or are appropriate to be developed in a TMUND pattern. The traditional mixed-use neighborhood development represents a pattern of development that has a number of characteristics, including business, residential, park, school, and civic uses in close proximity and easily walkable from one use to another. ~~In order to accommodate this mix of uses, projects of this nature shall comprise a minimum of 50 acres, or when combined with an adjacent neighborhood mixed use land use area meet the minimum land area requirement.~~

Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (P.U.D.) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The P.U.D. exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The P.U.D. is compatible and harmonious with existing public and private development in the surrounding area.
5. The P.U.D. provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The P.U.D. has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

Official Development Plan (ODP) Application

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.

5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

- Policy A2c** Evaluate existing business park areas as to the need for retail and residential development to support primary employment in these areas.

B. Neighborhoods

Goal B1 *Encourage development of pedestrian-oriented neighborhood centers that serve the needs of residents and create unique identity for neighborhoods.*

- Policy B1a** Neighborhoods should have a focal point, such as a school, park, or other public or private recreation facility that, gives the neighborhood a unique identity, and provides opportunities for social activity. Neighborhood centers will be easily accessible via walkable streets and trails.

- Policy B1b** Encourage Traditional Mixed-Used Neighborhood Developments in appropriate ~~undeveloped~~ areas of ~~at least 50 acres in size~~ which have a number of characteristics including a mix of land uses including retail and other businesses, various housing types and densities, parks and open space, civic and educational uses, all in close proximity and easily walkable from one use to another.

Goal B2 *Preserve existing neighborhoods, revitalize declining neighborhoods, and develop new neighborhoods that are safe and attractive, and served by public facilities and convenient commercial uses.*

- Policy B2a** New neighborhoods will be designed with a system of interconnected local streets offering multiple routes for any given trip, and bikeways and pedestrian paths that provide links to other neighborhoods as well as mass transit corridors and commercial areas along arterial roadways. Existing neighborhoods and new development should interconnect so as not to require traffic between adjacent neighborhoods to use arterial streets.
- Policy B2b** Existing neighborhoods will be protected from new development that is incompatible with residential uses. This may include increased setbacks, earth berms, landscaping, and fences.
- Policy B2c** Promote neighborhood revitalization through creative infill and mixed-use development.



TMUND Traditional Mixed-Use Neighborhood Development (TMUND)

Primary Uses

A mix of residential types, including medium and small lot single family cluster homes, town homes, condominiums, and apartments and lofts. Also allows for offices, personal/business services, retail commercial, live-work, or a combination of above within a single building.

Secondary Uses

Public/Quasi-public uses; open space. Senior Housing. Child Care.

Density

The overall residential density of the development shall be determined in the Preliminary or Official Development Plan (PDP or ODP). In general, a mixture of residential uses from single family to multiple family are permitted up to 18 dwelling units per acre. Greater densities may be allowed if approved by the Planning Commission and City Council. Supporting non-residential uses shall not exceed a floor area ratio (FAR) of 0.5 coverage of the site when developed as part of a master plan.

Locational and Other Characteristics

Traditional mixed-use neighborhoods represent a pattern of development that includes a number of fundamental features and principles, including the following:

- ❖ **Compact Walkable Development:** a compact pattern with businesses, homes, parks and civic uses in close proximity, easily walkable from destination to destination.
- ❖ **Mixed-Use Village Center:** retail/office and a variety of housing providing opportunities for residents to walk to shops, services, parks, and open space.

- ❖ **Pedestrian Oriented District:** pedestrians, bicycles, and autos have equal opportunity to traverse the neighborhood with convenience and safety.
- ❖ **Interconnected Street and Block Patterns:** a better integration of each area within the community, making walking and bicycling more direct and convenient.
- ❖ **Narrower Streets:** designed for slow-moving traffic, balancing the needs of auto circulation with the convenience and enjoyment of a walkable community.
- ❖ **A Variety of Parks:** Central parks and green space are part of the urban makeup of the village center. In addition, parks and open spaces are in a variety of sizes and scattered throughout the residential neighborhoods.

The purpose of this category is to depict those areas of the City that are now developed, or are appropriate to be developed in a TMUND pattern. The traditional mixed-use neighborhood development represents a pattern of development that has a number of characteristics, including business, residential, park, school, and civic uses in close proximity and easily walkable from one use to another. ~~In order to accommodate this mix of uses, projects of this nature shall comprise a minimum of 50 acres, or when combined with an adjacent neighborhood mixed-use land use area meet the minimum land area requirement.~~

A TMUND Village Center should provide a variety of commercial uses, restaurants, and service facilities in a close compact area. Residential uses are permitted on the second and third floors with businesses on the ground floor. Vehicular traffic may be served by on-street parking rather than large

Adopted – June 14, 2004

parking facilities. Pedestrian traffic is given priority and the shopping is oriented to that mode of travel. Central parks and green spaces are part of the urban makeup of the village center.

Block patterns are usually in a grid interconnected form, providing a variety of options to access other areas of the community. In residential areas garages may be located to the rear of the property and serviced via alleys or partially hidden behind the home. Streets are narrower with on-street parking, which aids in traffic calming within the residential areas. Lots may be smaller with homes located closer to the street. Front porches are a prominent feature of a majority of the homes. Parks and open spaces are in a variety of sizes and scattered throughout the residential neighborhoods.

Residential uses range from single family detached to multi-family. These uses must function tighter as a part of the overall TMUND.

The development location and intensity should be designed to provide optimal transit opportunities for residents.

The development will have a pedestrian-oriented design that encourages walking and bicycling, and creates a distinct, identifiable neighborhood. The development should include a pedestrian friendly, interconnected street system that provides sidewalks, street trees, and bicycle lanes so that people can walk or bicycle throughout the neighborhood.

A TMUND should be built around a neighborhood center or focal point which will serve as the focal point for community activities. The neighborhood center may include civic uses; such as a school, library, post office, or public plaza; a neighborhood park; recreation center; and other neighborhood services such as retail uses.

The City approved specific Design Guidelines for Traditional Mixed-Use Neighborhood Developments. The guidelines describe more specific development characteristics.



(1) Lowry Town Center mixed-use, (2) Bradburn school, (3) Single family in Longmont, (4) and (5) Bradburn, a TMUND project located in the northeast area of the City at 120th Avenue and Lowell Boulevard, incorporates commercial, a mix of residential types, and amenities, including parks, civic uses, and a community center (Continuum, Civitas).



Agenda Item 10 C&D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Public Hearing and Action on a Comprehensive Land Use Plan Amendment to Expand the Boundaries of the “Westminster Center District Center” and Add Language to Allow Medium to High Density Residential Uses

Prepared By: Max Ruppeck, Senior Projects Manager

Recommended City Council Action

1. Hold a public hearing.
2. Pass Councillor’s Bill No. 2 on first reading amending the Comprehensive Land Use Plan (CLUP) to extend the “District Center” land use designation westward to Wadsworth Parkway, between W. 92nd Avenue and W. 88th Avenue, and eastward to US 36 to include the existing Regional Transportation District (RTD) Park-n-Ride and former Police Building and amend the language in the Comprehensive Land Use Plan (P. IV-30) to allow medium to high density residential uses. This recommendation is based on a finding that the proposed amendment is in the public good and that:
 - a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
 - b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
 - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d) The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.

Summary Statement

1. The first part of this amendment would expand the Westminster District Center west to Wadsworth Parkway and east to US 36. Due to the Regional Transportation Districts (RTD’s) plans for a commuter rail station and the need to encourage redevelopment in the area. This change would expand the development and/or redevelopment opportunities in the area.
2. The second part of this amendment would add medium to high density residential uses to the list of allowed uses within the Westminster District Center. This would allow for residential and mixed use projects in this area in addition to the presently allowed land uses.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed this proposal on December 13, 2005, and voted unanimously (7-0) to recommend the City Council approve the extension of the District Center designation westward to Wadsworth Parkway between W. 92nd Avenue and W. 88th Avenue and eastward to include the RTD Park-n-Ride and former Police Building. The Planning Commission further recommended approval of adding language to the Westminster Center District Center description (P. IV-30) to include “medium to high density residential.” This recommendation is based on the following findings set forth in the Westminster Comprehensive Land Use Plan.

- a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
- b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
- c) The proposed amendment is compatible with existing and planned surrounding land uses; and
- d) The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.

Eight people had questions or spoke in opposition to the proposal and requested that the proposal be tabled. City staff answered the questions. Some of the concerns centered on the lack of any specific development proposals.

Policy Issues

1. Should the City approve a Comprehensive Land Use Plan amendment to expand the “District Center” designation westward to Wadsworth Parkway and eastward to include the RTD Park-n-Ride and former police building? (See attached map).
2. Should the City approve adding language to the Westminster Center District Center description (P. IV-30) to include “medium to high density residential?”

Alternatives

1. Deny the CLUP amendment to expand the District Center designation.
2. Deny adding language to the Westminster Center District Center to include “medium to high density residential.”

Background Information

Nature of Request

Currently there are five “District Centers” in Westminster (see attached “Figure 6 – District Centers” map), including the “Westminster Center” District Center that currently encompasses the Westminster Mall and other areas immediately west of Harlan Street including the Costco store and various other retail and office uses. Other District Centers in the City include the South Westminster District Center, the Westminster Promenade District Center, the Standley Lake District Center, and the rapidly developing I-25 District Center at the City’s northeast Huron Street and I-25 corridor. While each of these District Center areas will vary in terms of focus and function, each serves as an urban activity center for working, shopping and/or entertainment, and in some cases, residential use. Please see the attached description of District Center (P. IV-24 of the CLUP). The proposed amendments are described as follows:

1. The first part of this amendment would expand the Westminster District Center west to Wadsworth Parkway and east to US 36. Due to the Regional Transportation Districts (RTD’s) plans for a commuter rail station and the need to encourage redevelopment in the area. This change would expand the development or redevelopment opportunities in the area.
2. The second part of this amendment would add medium to high density residential uses to the list of allowed uses within the Westminster District Center. This would allow for residential and mixed use projects in this area in addition to the presently allowed land uses.

Location

The affected area includes the entire area between W. 88th Avenue and W. 92nd Avenue westward to Wadsworth Parkway, and east to US 36, including the existing RTD Park-n-Ride and the former City Police Building.

Comprehensive Land Use Plan Amendment

The Westminster Municipal Code requires the applicant requesting an amendment to the Comprehensive Land Use Plan (CLUP) to prove the amendment will be in the public good and in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering a CLUP amendment. Staff has reviewed these criteria and has provided the following comments on each.

1. The proposed amendment must, “Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed.” The CLUP states that...“The City Center area is the major retail trade center in the City and the northern suburbs, and the Plan stresses the need to keep Westminster Center vibrant and sustainable.” The CLUP further states that ...“the Plan encourages pedestrian-oriented improvements and the development of extensive pedestrian and transit facilities and linkages. The City also supports a commuter rail station near 88th and Sheridan.” The proposed location of the commuter rail station is near the railroad tracks and Harlan Street, approximately ½ mile west of Sheridan Boulevard. By expanding the District Center designation to Wadsworth Parkway, the proposed rail station is at the approximate center of the proposed District Center. Furthermore, adding a higher density residential component provides another development opportunity to allow this area to become even more “vibrant and sustainable.”
2. The proposed amendment must, “Be in conformance with the overall purpose, intent, goals, and policies of the Plan.” Applicable goals are stated in Section III of the Community Goals and Policies section of the Plan. They include:
 - Goal C4 – Higher density housing should be in “Transit Oriented Developments,” “Traditional Mixed Use Developments,” or in “District Centers, adjacent to existing transit facilities where high density uses are appropriate.
 - Goal D2 – Continue to enhance Westminster Center as a vibrant and unique regional shopping and entertainment experience.
 - Policy D2c – The City will encourage the development and redevelopment of Westminster Center as a diverse, mixed-use activity area, incorporating a mix of commercial, employment opportunities, offices, housing and entertainment.
 - Policy 2Dd – The City will encourage multi-modal transportation alternatives in the Westminster Center area.
 - Goal D5 – Promote Transit Oriented Development (TOD) at key transit facilities in the City.
 - Policy D5a – Promote development of transit oriented mixed-use developments in appropriate locations, including Mandalay/Promenade, Westminster Center, South Westminster, and 140th and I-25 (North I-25 District Center).
 - Policy D5b – Promote and coordinate the development of bus and rail facilities and Park-n-Rides with the Regional Transportation District (RTD) in Transit Oriented Development areas.
 - Policy D5c – Transit Oriented Developments shall be planned to include a mix of appropriate uses including moderate to higher density residential, employment generating uses, and regional conveniences and specialty commercial uses.

- Goal F1 – Continue to promote redevelopment of targeted areas as a pathway to economic revitalization and improved physical conditions.
- Policy F1a – Promote redevelopment in targeted areas, including Westminster Center, 72nd/Sheridan area, 80th and Sheridan, Holly Park, the Federal Boulevard Corridor, Mandalay, and South Westminster (72nd/Federal/Lowell).
- Policy F1c – Actively seek public and private sector investment to encourage and induce redevelopment in targeted areas in the City.

Based upon these goals and policies, staff has found this proposed amendment to be in conformance with the overall purpose, intent, goals, and policies of the Plan.

3. The proposal must, “Be compatible with existing and surrounding land uses.” Land uses in the area proposed for redevelopment include retail and service commercial, office, public facilities (e.g. the Municipal Service Center) and high density residential (over 18 du’s/acre); no single family detached or attached (townhome) dwellings exist in the area. There are some residential areas north of W. 92nd Avenue and south of W. 88th Avenue (in Arvada), but these areas are already adjacent to existing commercial and land use designations.
4. The proposal must, “Not result in detrimental impacts to the City’s existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City.” While development in accordance with the CLUP may have impacts, these will be mitigated as each new development is reviewed through the Official Development Plan review process. Existing laneage and some improvements to W. 92nd Avenue, Sheridan Boulevard, Wadsworth Parkway and W. 88th Avenue will accommodate the development and redevelopment of the proposed expanded District Center. Staff anticipates additional traffic both within and at the boundaries of the affected area, but views this as a positive impact for the area. Existing 4 and 6 lane roadways in the area provide significant traffic carrying capacity. Existing and planned future RTD improvements (bus rapid transit and a commuter rail station) will provide even more capacity. Individual projects will require traffic and utility impact studies at the Official Development Plan stage.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- Published Notice: Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on December 1, 2005.
- Property Posting: Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on December 2, 2005.
- Written Notice: At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The required notices were mailed on December 2, 2005.

Applicant/Property Owner
City of Westminster

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	CLUP Designation	Use
East: US 36/Sheridan Interchange	-	-	Public
South: Westminster Village Shopping Center, Lowe’s Home Improvement Store, City of Arvada retail and residential	PUD	Retail Commercial	Retail
West: Mission Hill (Retail), Silo (Retail and Office)	PUD	Retail, Commercial, Office	Retail, Office
North: Madison Hill (Multi-Family), Trendwood (Single-Family), City Farmers’ High Line Open Space, Tri-City Baptist Church, Greenlawn Acres (Single-Family)	PUD	Retail, Open, R-3.5 Residential, R-8 Residential	Single-Family Residential Townhomes, Open Space, Retail

Site Plan Information

This CLUP amendment anticipates the general redevelopment of the Westminster Center area and does not propose any specific site plan or buildings. Each development will require a Preliminary Development Plan and an Official Development Plan in which traffic, site design, landscape design, public/school land dedication, parks/trails/open space, signage and lighting are addressed.

Service Commitment Category

None at this time. Service Commitments will be made in accordance with the City’s Growth Management Program.

Referral Agency Responses

No referrals to other agencies were made with this amendment. Referrals will be made with subsequent Preliminary and Official Development Plans.

Neighborhood Meeting(s) and Public Comments

In lieu of a neighborhood meeting, an information packet was sent to all affected land owners in the proposed area. One call was received from the management of the Westminster Mall inquiring about traffic impacts and the status of the proposed commuter rail station. Staff returned the call and discussed the proposal. More information will be provided as site specific development occurs.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Comprehensive Land Use Plan Ordinance
- Exhibit A – Existing and Proposed CLUP Designation Map
- Exhibit B – Legal Description
- Westminster Center District Center Expansion Map
- Proposed Language Change (CLUP Page IV-30)
- Comprehensive Land Use Plan Figure 6 “District Centers”
- Comprehensive Land Use Plan “District Centers” Description (CLUP Pages IV-24 and IV-25)
- Criteria and Standards for Land Use Application

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **2**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE LAND USE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the City for the properties depicted in Exhibit A, attached hereto and incorporated herein by reference, requesting a change in the land use designations from "R-8 Residential; R-18 Residential; Retail Commercial; Office; Industrial; Business Park, Private Park/Open Space, Public/Quasi-Public" to "District Center" for the property described in Exhibit B, attached hereto.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 13, 2005, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly its policies and goals on redevelopment and economic revitalization.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designations of the properties in attached Exhibit B to "District Center."

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of January, 2006.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT B

“All of the properties surrounded by West 92nd Avenue on the north, US 36 on the east, West 88th Avenue on the south, and Wadsworth Parkway on the west; except for those properties already designated as “District Center” and those properties not currently within the City of Westminster city limits. In addition, all of the properties surrounded by Sheridan Boulevard on the west, US 36 right-of-way on the north and east and Turnpike Drive on the south which include the existing RTD Park-n-Ride and the former City Police Building.

Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (P.U.D.) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The P.U.D. exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The P.U.D. is compatible and harmonious with existing public and private development in the surrounding area.
5. The P.U.D. provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The P.U.D. has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

Official Development Plan (ODP) Application

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

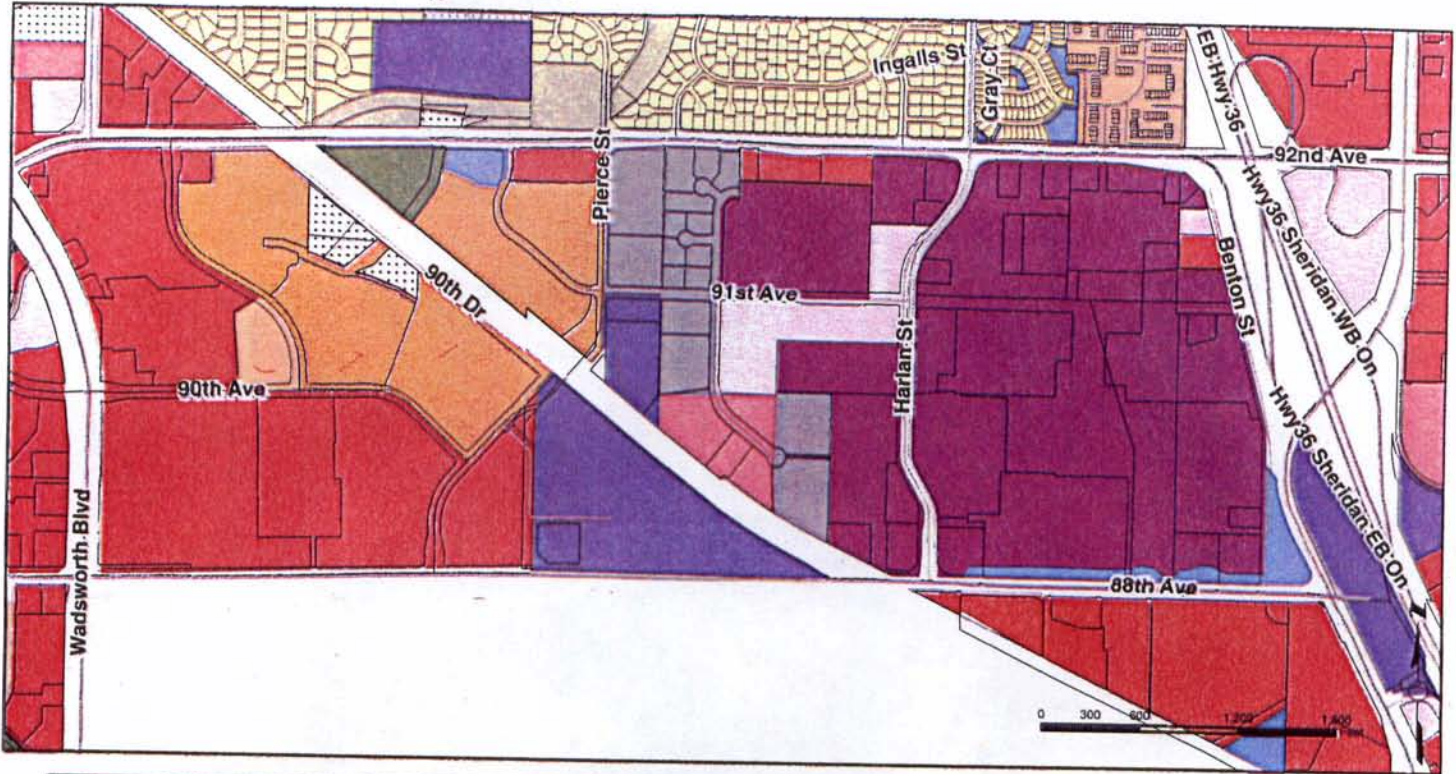
(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.

5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

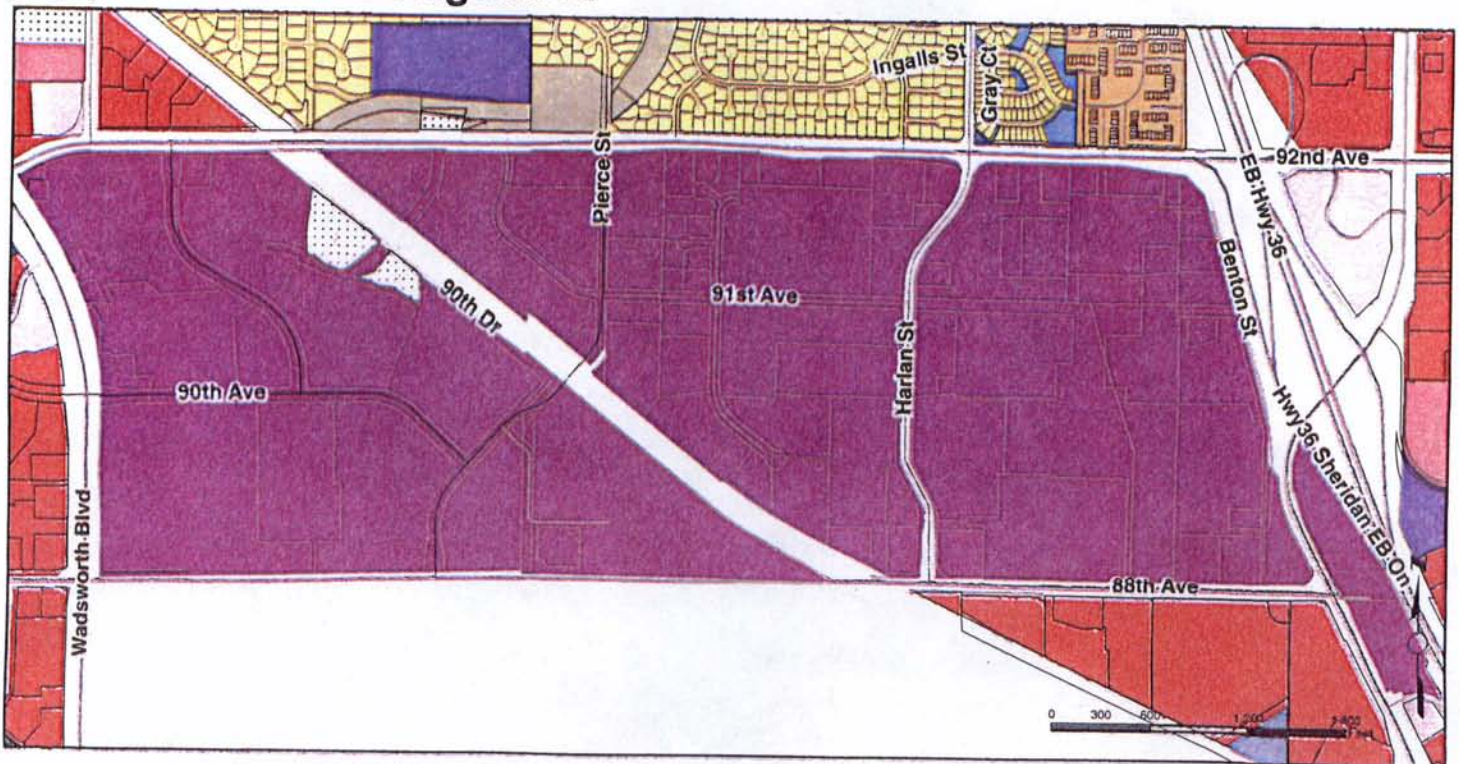
Existing CLUP Designation



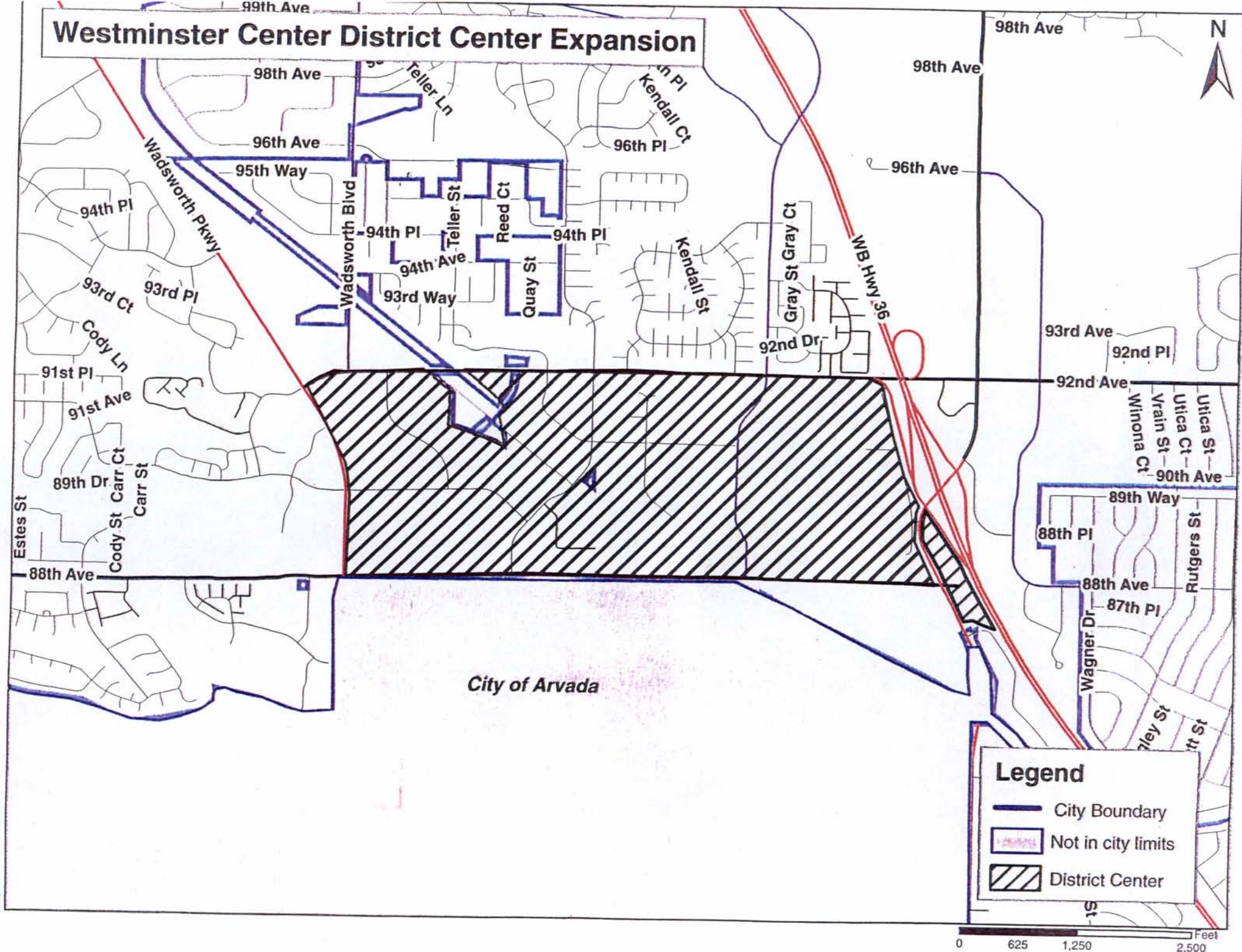
LEGEND			
	R-1		Office/Residential
	R-2.5		District Center
	R-3.5		Traditional Mixed Use
	R-5		City Owned Open Space
	R-8		Public Parks
	R-18		Private Parks/Open Space
	Retail Commercial		Golf Courses
	Office		Public/Quasi Public
	Industrial		N.E. Comprehensive Land Use Plan
	Business Park		Major Creek Corridor Non Public

Description of Change: Expansion of District Center.




Proposed CLUP Designation

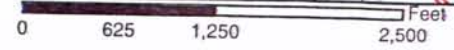


Westminster Center District Center Expansion



City of Arvada

- Legend**
-  City Boundary
 -  Not in city limits
 -  District Center



Westminster Center District Center

The City Center area is the major retail trade center in the City and the northern suburbs, and the Plan stresses the need to keep Westminster Center vibrant and sustainable. It comprises approximately 140 acres, almost all of which is developed. In recent years, the mall and surrounding retail stores have experienced increased competition from big box stores and new regional malls in nearby communities. Until 2000, the Westminster Mall had not undergone a major renovation in nearly 20 years. Given the financial importance of the mall to the City, the City negotiated an agreement with the owners of the mall to undertake an \$11 million major mall renovation, funded in part with \$7.5 million in City money. The mall renovation was completed in January 2001.

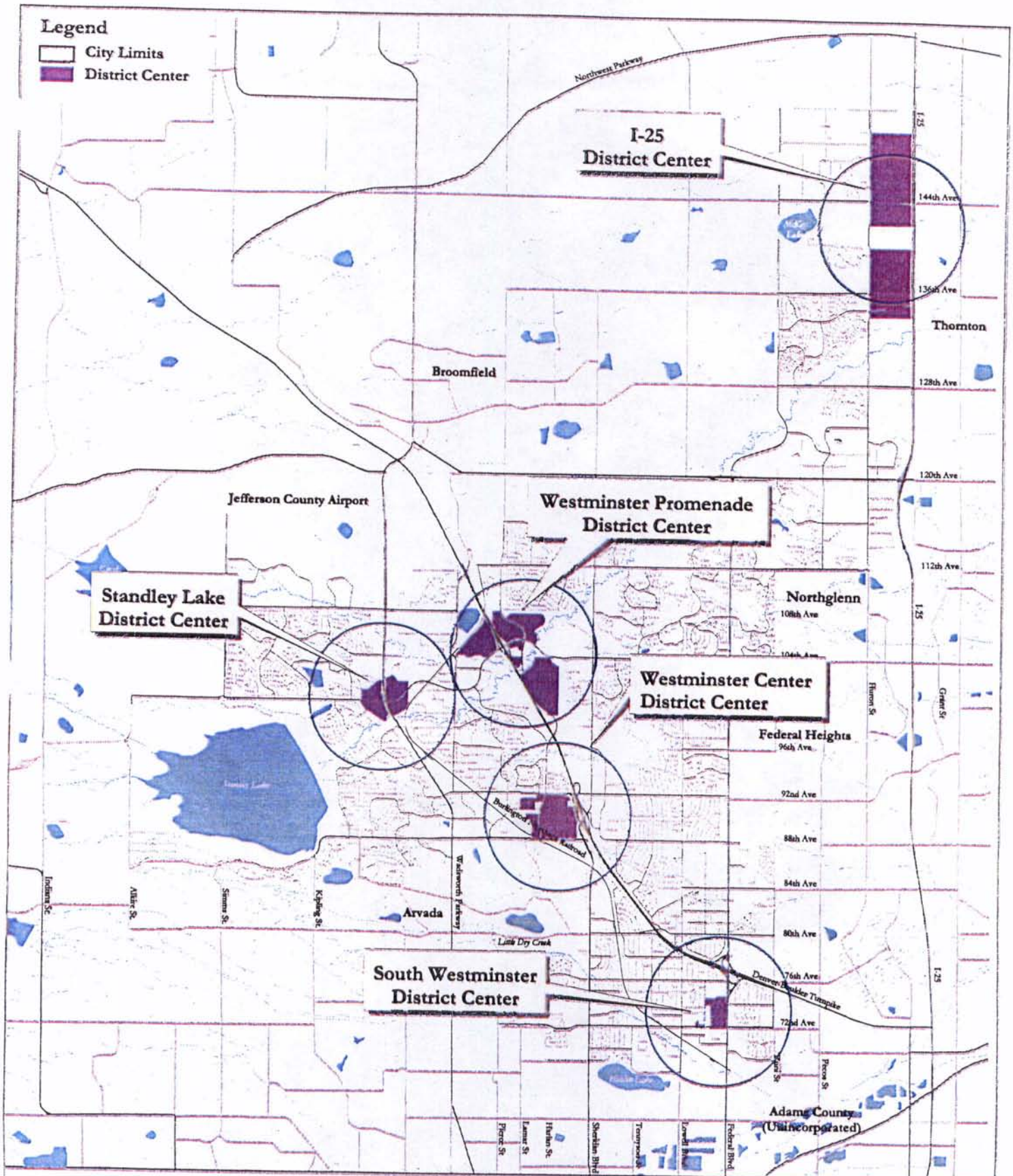
Westminster Mall serves as the focal point for the larger Westminster Center area. The City will allow only uses that would lend to the enhancement of the Westminster Mall and the entire Westminster Center area. For example, mini-storage, RV storage, and other uses that do not generate significant sales revenue and diminish the character of the shopping district will be generally prohibited. The City has made significant improvements to the area's overall circulation and transportation system through a 15 million dollar bond financed investment. In addition, the Plan encourages pedestrian-oriented improvements and the development of extensive pedestrian and transit facilities and linkages. The City also supports a commuter rail station near 88th and Sheridan and a mixture of uses in the area to utilize the station. These would include retail, office and medium to high density residential.



Westminster Mall

Legend

- City Limits
- District Center



District Centers

WESTMINSTER COMPREHENSIVE LAND USE PLAN

Figure 6

District Centers

The Land Use Plan designates five district centers throughout the City as follows (see Figure 6):

- I-25 District Center;
- Westminster Promenade;
- Standley Lake;
- Westminster Center; and
- The South Westminster Center.

Uses for each District Center will vary, but all District Centers will serve as urban activity centers—community destinations for working, shopping, or entertainment. The physical environment will promote walking, bicycling, and transit, within an interconnected and attractive urban streetscape design. The design and orientation of District Centers should be pedestrian-oriented, and special improvements should be considered to make them rich, enjoyable public places. The design of a District Center should be coordinated by an overall plan. The Centers should be linked to the City's open space and trails system, adequately buffered from existing adjacent uses and should be immediately accessible to the mass transit system that serves the City (see detailed descriptions of each District Center in the following sections, and in Chapter V, Area Plans).

Primary Uses

Employment uses, retail, public/quasi-public (civic center uses).

Secondary Uses

Open space; residential uses (depending on the District Center).

Intensity

Residential development should be developed at a density of at least 5 dwelling units per acre to support transit. Not all district centers include residential development.

Locational and Other Characteristics

The design of District Centers should take into consideration the following characteristics:

- ❖ **Size:** Activity centers generally should not exceed 640 acres, to support a half-mile walking distance for pedestrians. However, circumstances exist when areas over 640 acres are possible, especially in multi-node centers such as the I-25 District Center.
- ❖ **Residential Density to Support Transit:** Residential density should be sufficiently high in order to support a level of activity that can serve transit. Not all district centers are currently proposed to include housing, but some may include additional housing to support jobs over time.
- ❖ **Employment Density to Support Transit:** The proposed gross employment density range should meet recommended employment densities for local transit service and increased pedestrian access to various services.
- ❖ **Defined by Streets or Other Physical Features:** District Centers are defined on the Land Use Plan and are generally bounded by physical or constructed features with some level of permanence, such as streets, ditches, or canals.
- ❖ **Designed to Accommodate Transit Access:** Each District Center shall incorporate transit facilities or shall have immediate access to transit routes and facilities. These activity centers are generally built at higher densities than the surrounding areas.
- ❖ **Containing Public Plazas or Open Space Designed as a Focal Point:** District Centers should include at least one predominant location for an outdoor open space or plaza, with amenities such as

Adopted – June 14, 2004

benches, monuments, kiosks, or public art, designed to serve as a central gathering place or community activity center. These areas shall be designed to create comfortable outdoor spaces designed to attract and accommodate people, where higher pedestrian activity is likely to occur. Outdoor spaces shall be linked to and made visible from streets and sidewalks.

❖ **Pedestrian-Oriented Site Design:**

Entrances and parking lots should be designed to be functional and inviting with continuous landscaped walkways linking all land uses. Buildings shall be oriented to sidewalks or other outdoor spaces for people, not set back behind parking lots or oriented only to parking lots. The City limits or prohibits buildings on isolated "pad sites" surrounded by parking lots and driveways. Parking lots shall not dominate the frontage of streets, interrupt pedestrian routes, or negatively affect surrounding land uses or neighborhoods. Access must serve the needs of the pedestrian as well as the motorist. Accordingly, the following design aspects must be considered equally: (1) pedestrian access to the site and buildings; (2) gathering areas for people; and (3) auto access and parking lots. Continuous internal pedestrian walkways shall be provided to connect focal points of pedestrian activity such as transit stops, street crossings, building entry points, and parking areas.

Each District Center will vary in design, purpose, and land use mix (e.g., primarily retail commercial, entertainment or employment). A brief description of each District Center is contained on the following pages.



Westminster Promenade North of 104th Avenue at Westminster Boulevard



Agenda Item 10 E-G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Public Hearing and Action on a Comprehensive Land Use Plan Amendment and Rezoning of Three Parcels at 7309-7319 Orchard Court

Prepared By: Hazel Cho, Planner I

Recommended City Council Action

1. Hold a public hearing.
2. Pass Councillor's Bill No. 3 on first reading amending the Comprehensive Land Use Plan (CLUP) for a portion of Block 35 of Harris Park Subdivision (Parcel D) and Lot 2A of the First Replat of House's Resubdivision changing the designation from Retail Commercial to Public Parks; and the CLUP amendment for Lot 1A of the First Replat of House's Resubdivision changing the designation from Retail Commercial to R-3.5 Residential. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
 - a. There is justification for the proposed change and the Plan is in need of revision as proposed; and
 - b. The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
 - c. The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d. The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
3. Pass Councillor's Bill No. 4 on first reading rezoning Lots 1A and 2A of the First Replat of House's Resubdivision from C-1 (Commercial District) to R-A (One-Family Residential District). This recommendation is based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code have been met.

Summary Statement

The CLUP amendment and rezoning of the three parcels are City initiated applications to bring the properties' CLUP and zone district designations into conformance with the existing and future intended use of the properties.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed this proposal on December 13, 2005, and voted unanimously (7-0) to recommend the City Council approve the CLUP amendment for three parcels from Retail Commercial to Public Parks and R-3.5 Residential.

The Planning Commission also voted unanimously (7-0) to recommend the City Council approve the rezoning for two parcels from C-1 (Commercial District) to R-A (One-Family Residential District). This recommendation is based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code.

There were two members of the public who voiced concerns and had questions regarding this application.

Mr. Greg Pachello, a business owner whose property is located south of the site at 3856 W. 73rd Avenue was concerned about Parcel D becoming a public park for general safety reasons. Mr. Pachello was concerned about limited visibility into the park that might encourage criminal activity such as vandalism and graffiti as well as the kind of park planned for the area. Vicky Bunsen, representative of the Westminster Housing Authority, indicated that at this time, the park is not intended to be an active park. Future meetings with the surrounding neighbors are planned to occur before the final plan is decided, but concerns regarding visibility for safety are also concerns for the City.

Mr. Gary Scofield, 7130 Canosa Ct., indicated that he is a member of the Westminster Presbyterian Church located just north of Parcel D at 3990 W. 74th Avenue and he asked whether the church had been contacted about this application. Vicky Bunsen replied that the church is within the public notification boundary for receiving a notice on the hearing and should have received the letter. In addition to the legal notification requirement, Ms. Bunsen stated that she has had previous discussions and has also presented conceptual plans for the public park to the church pastor as well as their governing board and that they were supportive of the plan.

Policy Issues

1. Should the City approve a Comprehensive Land Use Plan amendment for Parcel D and Lot 2A changing the designation from Retail Commercial to Public Parks and Lot 1A from Retail Commercial to R-3.5 Residential?
2. Should the City approve the rezoning for Lots 1A and 2A from C-1 to R-A?

Alternatives

1. Deny the CLUP amendment. Recommending denial would not bring the use into conformance with the official Comprehensive Land Use Plan and there could be the potential ability that the properties could change to a Retail Commercial use.
2. Deny the rezoning. Denial would make the lot with the existing home, Lot 1A, an illegal non-conforming use and the park area could potentially be converted for business use as the C-1 zoning would remain.

Background Information

Nature of Request

The City of Westminster approved the First Replat of House's Resubdivision in August 2005 to create two lots (1A and 2A). Following the approval of the replat, Lot 1A that contains the residential home, was sold for use as a residence and is now occupied. The existing residential home was considered to be a legal non-conforming use and with the approval of the CLUP amendment and rezoning the lot will be identified as a legal conforming use. The residential structure and the detached garage at 7319 Orchard Ct. were both designated by City Council as historical landmarks in the Spring of 2005. Parcel D and Lot 2A are owned by the City of Westminster and both parcels are intended for use as a public park. The proposed CLUP amendment for Parcel D and Lot 2A, in conjunction with the rezoning of Lot 2A will appropriately reclassify the use for the properties.

Location

The parcels are generally located north of 73rd Avenue, west of Orchard Court, and east of Bradburn Boulevard. The areas proposed for the public park will be identified with the address of 7309 Orchard Court (Parcel D and Lot 2A) and 7319 Orchard Court is the address for the residential lot. (Please see attached vicinity map).

Comprehensive Land Use Plan Amendment

The Westminster Municipal Code requires the owner of the property requesting an amendment to the Comprehensive Land Use Plan (CLUP) to prove the amendment is in the public good and in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering a CLUP amendment. Staff has reviewed these criteria and has provided the following comments on each.

1. The proposed amendment must, “Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed.” The proposed CLUP amendment is needed to appropriately reflect the existing and future intended use of the properties.
2. The proposed amendment must, “Be in conformance with the overall purpose, intent, goals, and policies of the Plan.” Applicable goals are stated in Section III of the Community Goals and Policies section of the Plan. They include:
 - Policy B1a - Neighborhoods should have a focal point, such as a school, park, or other public or private recreation facility that, gives the neighborhood a unique identity, and provides opportunities for social activity. Neighborhood centers will be easily accessible via walkable streets and trails.
 - Goal B2 - Preserve existing neighborhoods, revitalize declining neighborhoods, and develop new neighborhoods that are safe and attractive, and served by public facilities and convenient commercial uses.
 - Goal B3 - Enhance the older neighborhoods in South Westminster.
 - Policy B3a - The preservation and enhancement of existing residential neighborhoods will be encouraged by preserving, and building upon their unique character of South Westminster’s tree-lined streets, quiet neighborhoods, and distinctive architectural styles.
 - Policy B4b - Pedestrian-oriented neighborhoods that incorporate creative residential design places to walk and bike, and connections to neighborhood parks and other civic facilities will be promoted and advocated by the City.
 - Goal H1 - Provide new and upgrade existing parks, recreational, and cultural facilities based on the needs of the community.
 - Policy H1b - Promote the development of “walk-to” parks within local neighborhood areas. Encourage private neighborhood parks in new developments.
 - Goal H2 - Preserve the unique visual character of Westminster.
 - Goal J2 - Strengthen Westminster’s identity and livability through thoughtful design and enhancement of the community’s civic buildings, public places, and landscaping.
 - Policy J4a - Encourage the restoration of the 73rd and Bradburn area to enhance its historic character and identity.

Based upon these goals and policies, staff has found this proposed amendment to be in conformance with the overall purpose, intent, goals, and policies of the Plan.

3. The proposal must, “Be compatible with existing and surrounding land uses.” This application is compatible with existing and surrounding land uses as no new construction is associated with the CLUP amendment and rezoning. The residential parcel (Lot 1A) is in keeping with the surrounding adjacent land uses of single-family residential lots to the north and east. The public park area will be an amenity to the neighborhood and provide an additional buffer between residential and commercial uses.

4. The proposal must, “Not result in detrimental impacts to the City’s existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City.” The potential impacts to the area are expected to be positive in nature as the City continues to encourage a more vibrant community by valuing the historic character of the neighborhood and preserving lands for public park use.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before City Council shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on December 29, 2005.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on December 29, 2005.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on December 28, 2005.

Applicant/Property Owner

City of Westminster
Westminster Housing Authority
Vicky Bunsen, Programs Coordinator

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	CLUP Designation	Use
Harris Park Subdivision; North	R-2	R-3.5 Residential & Public/Quasi Public	Residential & Parking Lot (Church)
Harris Park Subdivision; West	C-1, R-3, & R-2	Retail Commercial, R-18 Residential, & R-3.5 Residential	Commercial & Residential
Harris Park Subdivision & House’s Resubdivision; East	B-1& R-2	Retail Commercial & R-3.5 Residential	Commercial & Residential
Harris Park Subdivision, South	C-1	Retail Commercial	Commercial

Site Plan Information

The following site plan information provides a few examples of how the proposals comply with the City’s land development regulations and guidelines; and the criteria contained in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached).

- **Traffic and Transportation:** N/A
- **Site Design:** N/A
- **Landscape Design:** Landscaping enhancements for the public park area are planned to occur in the future.
- **Public Land Dedication/School Land Dedication:** N/A
- **Parks/Trails/Open Space:** No dedication for parks, trails, and open space were required with this application.

SUBJECT: Public Hearing and Action re Orchard Court CLUP Amendment and Rezoning Page 5

- Architecture/Building Materials: Lot 1A (existing residential home and garage) was designated as a historical landmark that will ensure that the character of the home will be preserved and future improvements to the home will further enhance the home and surrounding neighborhood.
- Signage: N/A
- Lighting: N/A

Service Commitment Category

N/A

Referral Agency Responses

No referrals to other agencies were made nor were they required with the CLUP amendment and rezoning application.

Neighborhood Meeting(s) and Public Comments

No inquiries were received by the City with the neighborhood contact process where property owners within three-hundred (300) feet of the parcel boundaries were notified by mail.

No inquiries were received by the City from the public notification.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Vicinity Map
- CLUP Amendment Ordinance
- Exhibit A (CLUP Map)
- Exhibit B (Legal Descriptions)
- Zoning Ordinance
- Zoning Map
- Criteria and Standards for Land Use Applications

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **3**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE LAND USE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner of three parcels of land, for a change in the land use designation for an approximately 0.161 acre parcel located at 7319 Orchard Court from "Retail Commercial" to "R-3.5 Residential" and a change in the land use designations for an approximately 0.355 acre parcel located at 7019 Orchard Court and an approximately 0.720 acre portion of Block 35 of Harris Park Subdivision from "Retail Commercial" to "Public Parks", as depicted on Exhibit A, attached hereto and incorporated herein by reference.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 13, 2005, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C. §11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly its policies on neighborhoods and parks facilities.

Section 2. The City Council approves the requested amendments and authorizes City staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the land use designations of three parcels of land described on Exhibit B, attached hereto and incorporated herein by reference, as follows:

- from "Retail Commercial" to "R-3.5 Residential" for Lot 1A of the First Replat of Houses's Resubdivision,
- from "Retail Commercial" to "Public Parks" for Lot 2A of the First Replat of Houses's Resubdivision, and
- from "Retail Commercial" to "Public Parks" for Parcel D, a portion of Block 35 of Harris Park Subdivision.

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 9th of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 23rd day of January, 2006.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT B

CLUP Amendment change from “Retail Commercial” to “R-3.5 Residential” for:

Lot 1A of the First Replat of House’s Resubdivision, Section 31, Township 2 South, Range 68 West, 6th P.M., City of Westminster, Adams County, Colorado. (approx. 0.161 acres)

CLUP Amendment change from “Retail Commercial” to “Public Parks” for:

Lot 2A of the First Replat of House’s Resubdivision, Section 31, Township 2 South, Range 68 West, 6th P.M., City of Westminster, Adams County, Colorado. (approx. 0.355 acres)

CLUP Amendment change from “Retail Commercial” to “Public Parks” for:

Legal Description for Parcel D (a portion of Block 35 of Harris Park Subdivision,) located in the SE ¼ of Section 31, Township 2 South, Range 68 West, 6th P.M., City of Westminster, Adams County, Colorado, more particularly described as follows:

That part of Block 35, Harris Park, and that part of reserved Hawthorne Street East of and adjoining said Block 35, according to the recorded plat thereof, more particularly described as follows; beginning at a point on the West line of said Block 35 which is 480 feet south of the Northwest corner of said Block 35; thence East to a point which is 110 feet west of the East line of said block, which is the true point of beginning; thence north a distance of 166.5 feet; thence East 190 feet to the east line of said Hawthorne Street; thence South along the East line of said Hawthorne Street a distance of 166.5 feet; thence West a distance of 190 feet to the true point of beginning.

(approx. 0.720 acres)

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **4**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE ZONING OF TWO PARCELS OF LAND
GENERALLY LOCATED AT THE NORTHWEST CORNER OF 73RD AVE. AND ORCHARD
CT. IN SECTION 31, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6TH P.M., ADAMS COUNTY,
COLORADO FROM CITY OF WESTMINSTER C-1 (COMMERCIAL DISTRICT) TO
CITY OF WESTMINSTER R-A (ONE-FAMILY RESIDENTIAL).**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for the rezoning of the property described below from City of Westminister C-1 (Commercial District) to City of Westminister R-A (One-Family Residential) zoning has been submitted to the City for its approval pursuant to Westminister Municipal Code Section 11-5-2.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 13, 2005, and has recommended approval of the requested amendments.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminister Municipal Code.

e. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminister Municipal Code Sections 11-4-3 and 11-5-3(A).

f. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for rezoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the properties described as follows:

Lot 1A & Lot 2A, First Replat of House's Resubdivision, Westminister, Adams County, Colorado from City of Westminister C-1 (Commercial District) to City of Westminister R-A (One-Family Residential).

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of January, 2006.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office
Orchard Court Zoning

Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (P.U.D.) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The P.U.D. exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The P.U.D. is compatible and harmonious with existing public and private development in the surrounding area.
5. The P.U.D. provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The P.U.D. has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

Official Development Plan (ODP) Application

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.

5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

4035 7411

3919

7410

7410

Orchard Court Vicinity Map

Osceola St

7400

7415

7411

7410

74th Ave

3990

7399

7405

7402

4054

4046

7397

7400

7390

7355

[7380]

7385

7403

7380

7347

7348

7365

7391

7360

7337

7346

7345

7381

7350

7335

7344

7335

7371

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7331

7340

7331

7361

7320

7329

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7351

7320

7327

[7309]

7313

3995

3971

3969

3947

3915

7328

7341

7317

[7309]

[7309]

3935

7320

7307

3707

73rd Ave

3843

3825

3805

3809

3807

3795

7303

7239

7290

7292

3854

3830

3790

3740

3716

3700

7280

7290

3856

7299

7290

7280

3948

7280

7285

7270

7263

7231

72nd Way

3950

Osceola St

7268

7265

7250

Newton St

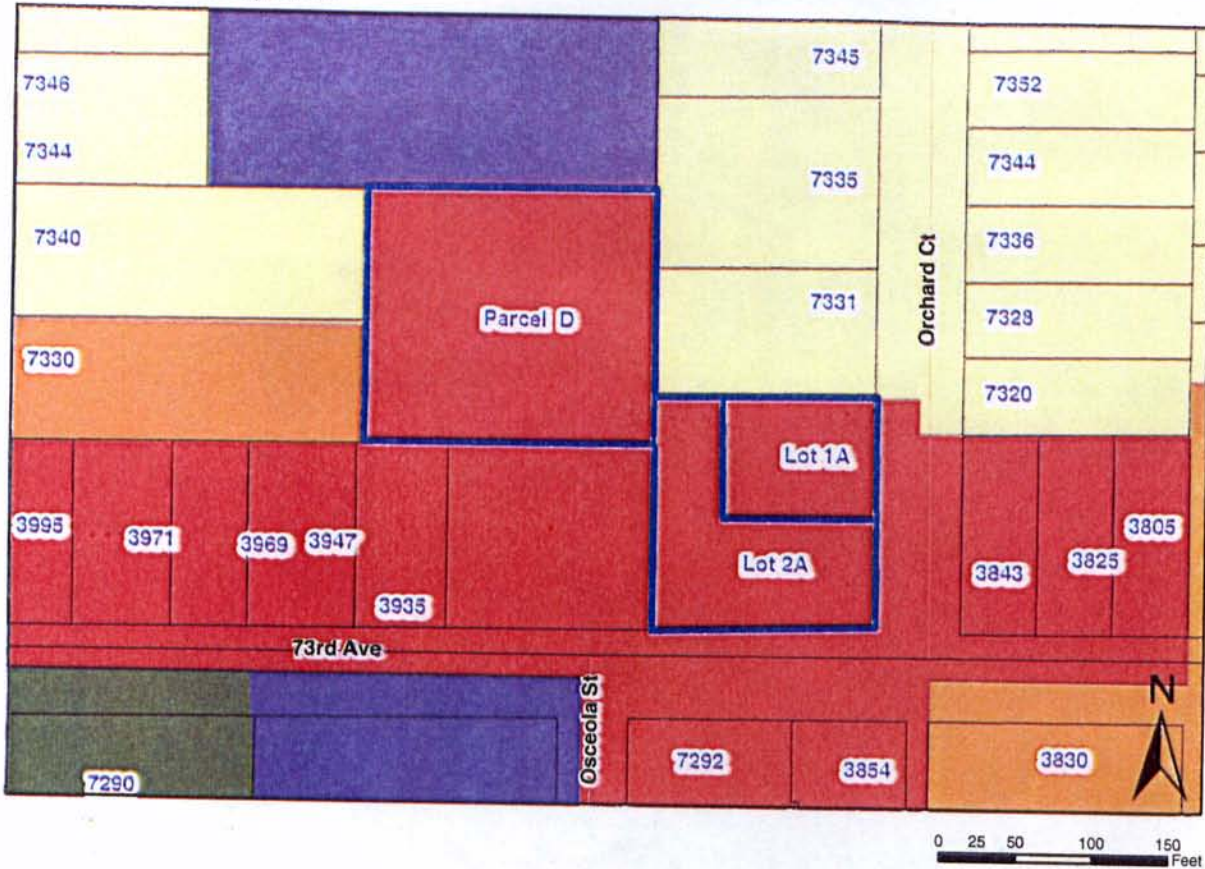
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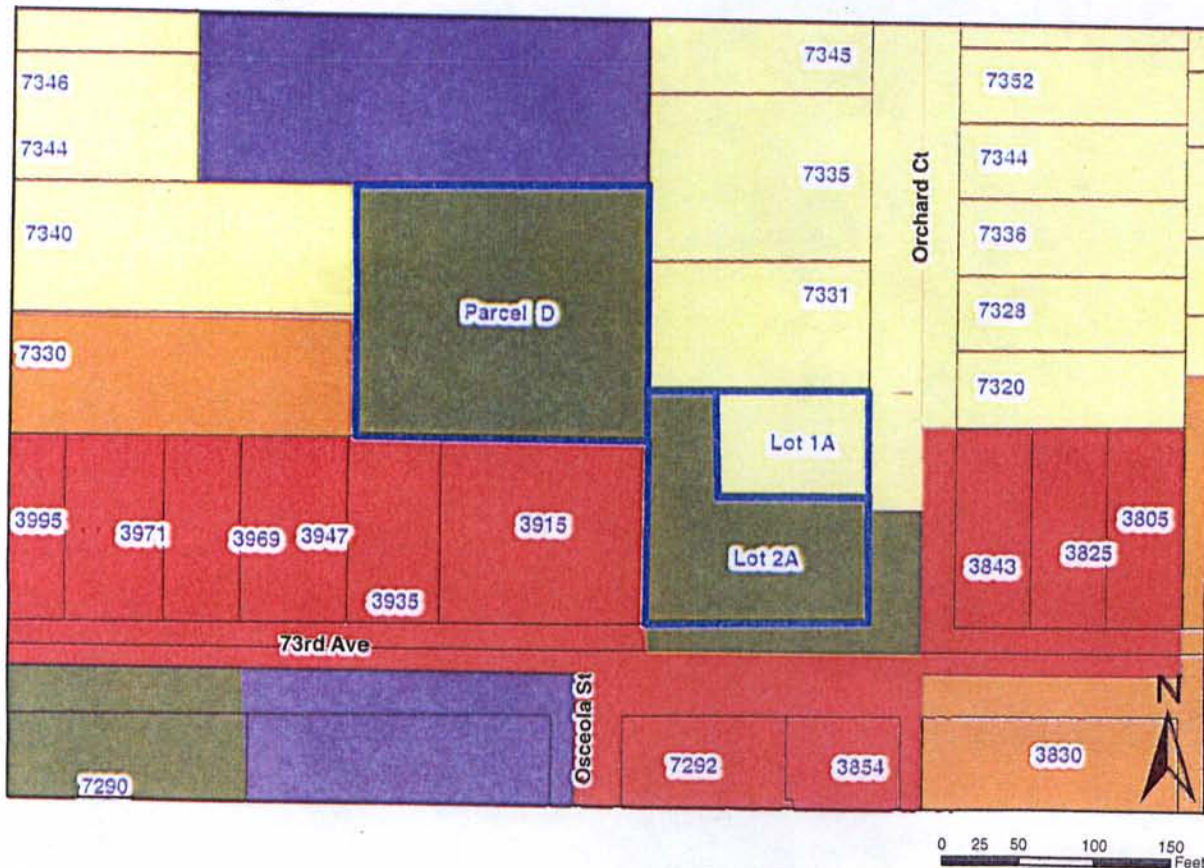
Orchard Court CLUP Amendment

Current CLUP Designation



Description of Change:
 CLUP designation is currently Retail-Commercial. Proposed designation is Public Parks and R-3.5.

Proposed CLUP Designation

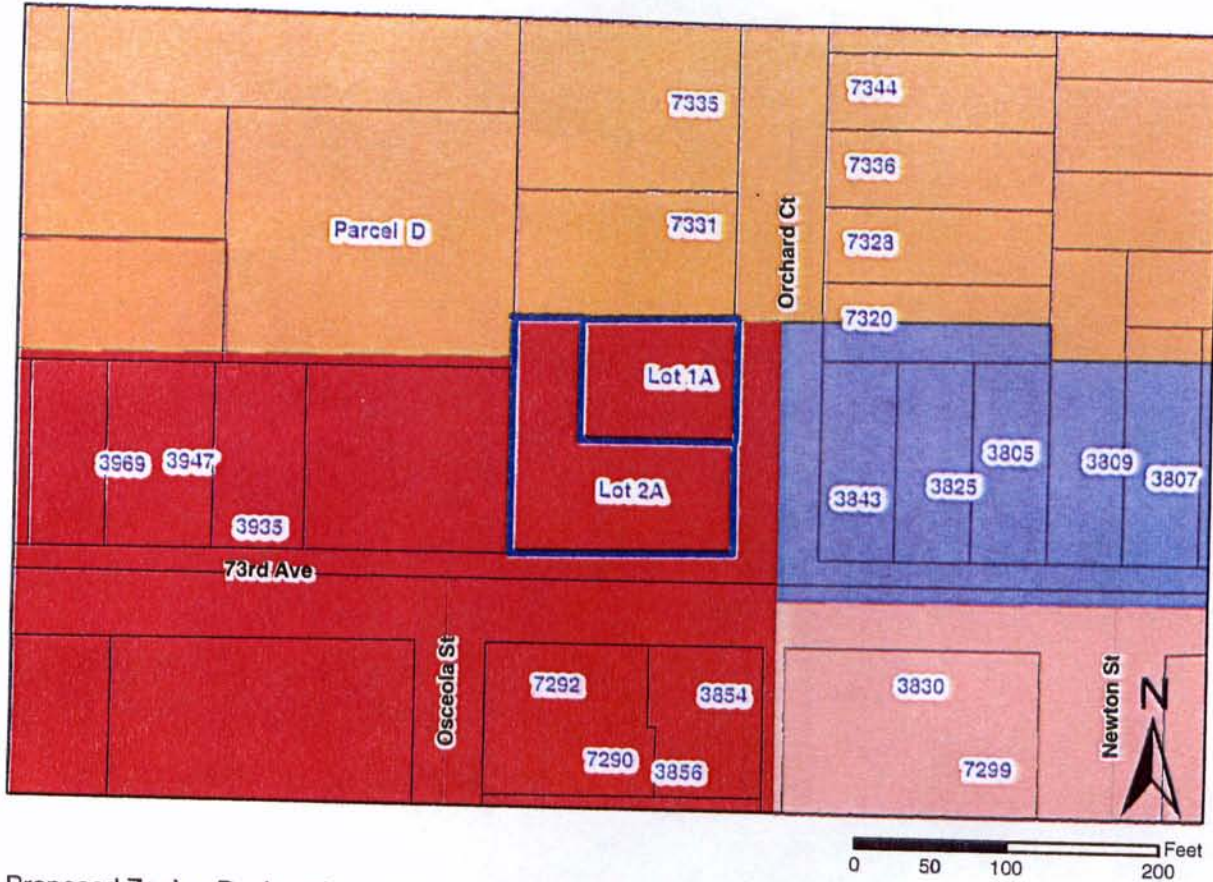


Legend
 Comprehensive Plan

- R-1
- R-2.5
- R-3.5
- R-5
- R-8
- R-18
- Retail Commercial
- Office
- Industrial
- Business Park
- Office/Residential
- District Center
- Traditional Mixed Use
- City Owned Open Space
- Public Parks
- Priv. Parks/Open Space
- Golf Courses
- Public/Quasi Public
- N.E. Dev. Plan
- Maj. Crk. Corr. Non Public

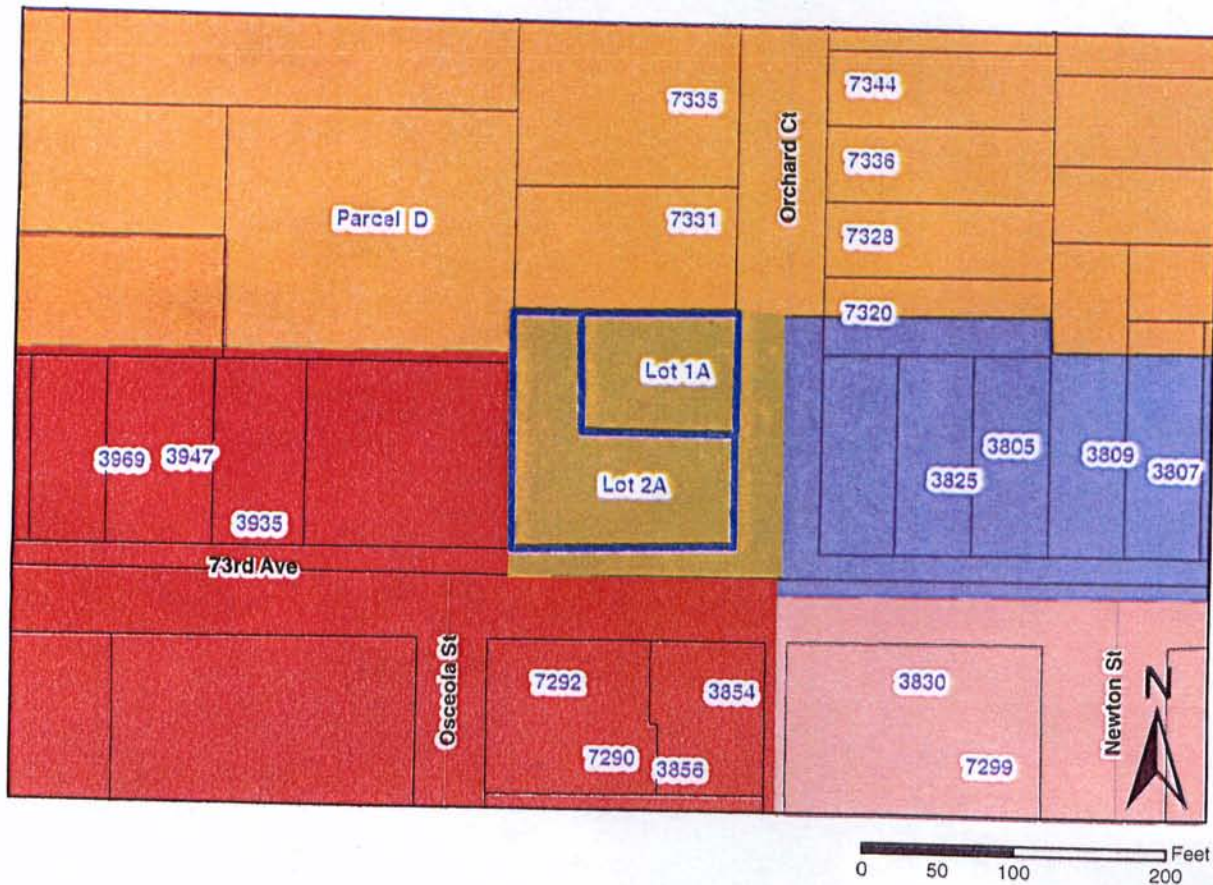
Orchard Court Rezoning

Current Zoning Designation



Description of Change:
Property is currently zoned C-1. Proposed designation is R-A.

Proposed Zoning Designation



Legend	
Zoning	
	B-1
	C-1
	M-1
	O-1
	PUD
	R-3
	R-1
	R-2
	R-4
	R-5
	R-A
	R-E
	T-1
	City Boundary



Agenda Item 10 H-L

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Public Hearing and Action on the Camalick Property Annexation, Comprehensive Land Use Plan Amendment, and Zoning

Prepared By: David Falconieri, Planner III

Recommended City Council Action

1. Hold a public hearing.
2. Adopt Resolution No. 1 making certain findings of fact concerning the Camalick property as required under Section 31-12-110 C.R.S.
3. Pass Councillor's Bill No. 5 on first reading annexing the Camalick property open space to the City.
4. Pass Councillor's Bill No. 6 on first reading amending to the Comprehensive Land Use Plan for the Camalick property changing the designation from Northeast Comprehensive Development Plan to City Owned Open Space be approved. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
 - a. There is justification for the proposed change and the Plan is in need of revision as proposed; and
 - b. The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
 - c. The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d. The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
5. Pass Councillor's Bill No. 7 on first reading rezoning the Camalick property from A-1 (Jefferson County) to O-1. This recommendation is based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code have been met.

Summary Statement

- The Camalick property is located at the northwest corner of Barber Drive and Zephyr Street, adjacent on the west to the Chambers Preserve/Walnut Creek Open Space, and is 9.7 acres in size. The property was purchased in 2005 by the City with open space funds. Staff is including in the annexation adjacent portions of the Burlington Northern Santa Fe Railroad.
- The property is governed by the provisions of the Northeast Comprehensive Development Plan that permits the use of the property as open space. The property is currently vacant and provides the last remaining link for the Walnut Creek Open Space corridor between Wadsworth Parkway and Wadsworth Boulevard.

Expenditure Required: \$0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed this proposal on December 13, 2005, and voted unanimously (7-0) to recommend the City Council approve the annexation and rezoning of the Camalick property from A-1 (Jefferson County) to O-1. This recommendation is based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code.

The Planning Commission also recommended that the Comprehensive Land Use Plan be amended to change the designation of the Camalick property from Northeast Comprehensive Development Plan to City Owned Open Space.

Five residents addressed the Commission asking for clarification of what was being annexed and regarding what improvements were planned for the open space property. One was concerned that the increased pedestrian traffic on the proposed trail would lead to increased crime in the area. None however, were opposed to the annexation.

Policy Issues

1. Should the City annex the Camalick property?
2. Should the City approve a Comprehensive Land Use Plan amendment for the Camalick property changing the designation from Northeast Comprehensive Development Plan to City Owned Open Space?
3. Should the City approve the rezoning of the Camalick property from A-1 to O-1?

Alternative

Make a finding that there is no community of interest with the Camalick property and take no further action. If this action is taken, the Camalick property will remain unincorporated and subject to County codes and regulations.

Background Information

Nature of Request

The Camalick property was purchased with City open space funds in order to complete the Walnut Creek open space corridor. The adjacent portions of the Burlington Northern Santa Fe Railroad right-of-way are also included to avoid the creation of enclaves in the future.

Location

The property is located at the northwest corner of Barber Drive and Zephyr Street southeast corner of 96th Avenue and Balsam Street. (Please see attached vicinity map).

Comprehensive Land Use Plan Amendment

The Westminster Municipal Code requires the owner of the property requesting an amendment to the Comprehensive Land Use Plan (CLUP) to prove the amendment is in the public good and in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering a CLUP amendment. Staff has reviewed these criteria and has provided the following comments on each.

1. The proposed amendment must, “Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed.” The Northeast Comprehensive Development Plan (NECDP) has been adopted into the City’s Comprehensive Land Use Plan (CLUP). The NECDP states as a principle goal that protection of natural areas, wildlife habitat and vacant lands should be protected where possible.

2. The proposed amendment must, “Be in conformance with the overall purpose, intent, goals, and policies of the Plan.” Applicable goals are stated in Section III of the Community Goals and Policies section of the Plan. They include:
 - Goal H4 – Enhance the City’s open space system to preserve and protect natural areas, vistas, and view corridors, and to complete the open space and trail system.
 - Policy H4c – Continue to develop trails in accordance with the City’s Trails MasterPlan.

Based upon these goals and policies, Staff has found this proposed amendment to be in conformance with the overall purpose, intent, goals, and policies of the Plan.

3. The proposal must, “Be compatible with existing and surrounding land uses.” As stated above, the proposed uses as specified on the Official Development Plan (ODP) will be compatible with the rural nature of the surrounding properties.
4. The proposal must, “Not result in detrimental impacts to the City’s existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City.” While the development will have impacts, all have been mitigated to the satisfaction of City Staff. Any construction on the property would be consistent with the use of the property as open space.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before Planning Commission are required to be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on December 1, 2005.
- **Property Posting:** Notice of public hearings are required to be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on December 2, 2005.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant is required to mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The City mailed the required notices on December 2, 2005.

Applicant/Property Owner

City of Westminster

Surrounding Land Use and Comprehensive Land Use Plan Designations

Development Name	Zoning	CLUP Designation	Use
Unincorporated Jefferson County; North	A-1	Northeast Comprehensive Development Plan	Agricultural and Residential
Chamber Preserve/Walnut Creek Open Space; West	O-1	City Owned Open Space	Open Space
Bott Property City Open Space (across railroad ROW); East	O-1	City Owned Open Space	Open Space
Unincorporated Jefferson County, South	A-1	Northeast Comprehensive Development Plan	Residential and Agricultural

Site Plan Information

The following site plan information provides a few examples of how the proposals comply with the City's land development regulations and guidelines; and the criteria contained in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached).

- Traffic and Transportation: No improvements are contemplated at this time except for a trail connection.
- Site Design: NA.
- Landscape Design: NA
- Public Land Dedication/School Land Dedication: NA.
- Parks/Trails/Open Space: The Walnut Creek Trail will be constructed in the future through this property connecting with the Chambers Preserve Property to the west.
- Architecture/Building Materials: NA.
- Signage: None
- Lighting: None.

Service Commitment Category

NA

Referral Agency Responses

A copy of the proposed plans was sent to the following agencies: Jefferson County. Staff received a response from the County, and they had no concerns regarding the development.

Neighborhood Meeting(s) and Public Comments

No public comments were received regarding this case.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Vicinity Map
- Resolution – Findings of Fact
- Annexation Ordinance
- CLUP Ordinance
- Exhibit A – Legal Description
- CLUP Map – Exhibit B
- Zoning Ordinance
- Exhibit A – Legal Description
- Zoning Map - Exhibit C
- Criteria and Standards for Land Use Applications

RESOLUTION

RESOLUTION NO **1**

INTRODUCED BY COUNCILLORS

SERIES OF 2006

DITTMAN - PRICE

A RESOLUTION PURSUANT TO SECTION 31-12-110, C.R.S., SETTING FORTH THE FINDINGS OF FACT AND CONCLUSION OF CITY COUNCIL WITH REGARD TO THE PROPOSED ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN SECTIONS 11 AND 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, ALSO KNOWN AS THE CAMALICK PROPERTY.

WHEREAS, pursuant to the laws of the State of Colorado, there has been filed with the City Clerk an application for the annexation of the property described in said application; and

WHEREAS, City Council has held a hearing concerning the proposed annexation as required by sections 31-12-108 and -109, C.R.S.; and

WHEREAS, having completed the required hearing, the City Council wishes to set forth its findings of fact and conclusion regarding the proposed annexation.

NOW, THEREFORE, be it resolved by the City Council of the City of Westminster that:

1. The City Council finds:

- a. Not less than 1/6 of the perimeter of the area proposed to be annexed is contiguous with the City of Westminster;
- b. A community of interest exists between the area proposed to be annexed and the City;
- c. The area is urban or will be urbanized in the near future; and
- d. The area is integrated with or is capable of being integrated with the City.

2. The City Council further finds:

- a. With respect to the boundaries of the territory proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowners thereof, except to the extent such tracts or parcels are separated by dedicated street, road, or other public way; and
- b. With regard to the boundaries of the area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty (20) acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the previous year), has been included in the area being proposed for annexation without the written consent of the owners thereof, except to the extent such tract of land is situated entirely within the outer boundaries of the City immediately prior to the annexation of said property.

3. The City Council further finds:

- a. That no annexation proceedings concerning the property proposed to be annexed by the City has been commenced by another municipality;
- b. That the annexation will not result in the attachment of area from a school district;
- c. That the annexation will not result in the extension of the City's boundary more than three (3) miles in any direction;
- d. That the City of Westminster has in place a plan for the area proposed to be annexed; and
- e. That in establishing the boundaries of the area to be annexed, the entire width of any street or alley is included within the area annexed.

4. The City Council further finds that an election is not required and no additional terms or conditions are to be imposed upon the area to be annexed.

5. The City Council concludes that the City may proceed to annex the area proposed to be annexed by ordinance pursuant to section 31-12-111, C.R.S.

PASSED AND ADOPTED this 9th day of January, 2006.

ATTEST:

Mayor

City Clerk

Camalick Annexation

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **5**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF
CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN
SECTIONS 11 AND 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF
JEFFERSON, STATE OF COLORADO.**

WHEREAS, pursuant to the laws of the State of Colorado, there was presented to and filed with the Council of the City of Westminster a written application for annexation to and by the City of Westminster of the hereinafter-described contiguous, unincorporated territory situate, lying and being in the County of Jefferson, State of Colorado; and

WHEREAS, City Council has been advised by the City Attorney and the City Manager that the application and accompanying maps are in substantial compliance with Section 31-12-101, et.seq., Colorado Revised Statutes, as amended; and

WHEREAS, City Council has held the required annexation hearing in conformance with all statutory requirements; and

WHEREAS, City Council has heretofore adopted Resolution No. 1 making certain findings of fact and conclusions regarding the proposed annexation as required by Section 31-12-110, C.R.S., and now finds that the property proposed for annexation under the application may be annexed by ordinance at this time; and

WHEREAS, the Council of the City of Westminster has satisfied itself concerning the conformance of the proposed annexation to the annexation policy of the City of Westminster.

NOW, THEREFORE, the City of Westminster ordains:

Section 1. That the annexation is hereby accomplished by and to the City of Westminster, State of Colorado, of the following described contiguous unincorporated territory situate, lying and being in the County of Jefferson, State of Colorado, to wit:

A parcel of land situated in portions of the southwest quarter of Section 11 and the northwest quarter of Section 14, Township 2 South, Range 69 West of the Sixth Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, being more particularly described as follows;

Beginning at the northwest corner of Parcel 2, as shown in the Mandalay Gardens Exemption Survey Number 3, recorded at Book 108, Page 10, at Reception No. 92015695 in the records of said Jefferson County;

Thence south along the west line of said parcel to the northwest corner of Parcel 3, said Mandalay Gardens Exemption No. 3;

Thence southerly on the west line of Parcel 3 and its extension thereof to the southerly right-of-way line of Barber Drive;

Thence northeasterly along the south right-of-way line of said Barber Drive to the most northerly corner of Tract 67C., Mandalay Gardens, as recorded in Book 5, Page 36 in the records of said County;

Thence southeasterly along the northeasterly line of said Tract 67C and its extension thereof to the southeasterly right-of-way line of the Burlington Northern Railroad;

Thence northeasterly along said southeasterly right-of-way to the most westerly corner of the Bott annexation map;

Thence northeasterly along the northwesterly line of said Bott annexation map, said line also being the southeasterly right-of-way of the Colorado and Southern Railroad to a point on a curve, said point being the most northerly line of said Bott annexation map;

Thence southeasterly along said curve to a point on the westerly right-of-way of 105th Avenue;

Thence northeasterly along said westerly right-of-way line of 105th Avenue, said line being shown on the Bott annexation map and the annexation map for Woods third annexation to the City of Westminster to the south line of the southeast quarter of said Section 11;

Thence southwesterly along the south line of said southeast quarter to the south quarter corner of said Section 11;

Thence northerly along the west line of said southeast quarter to a point on the northerly right-of-way of the Burlington Northern Railroad;

Thence southwesterly along said northwesterly right-of-way to the northeasterly right-of-way of Old Wadsworth, shown as Standley Avenue on the map of Mandalay Gardens;

Thence southeasterly along said northeasterly right-of-way line to the southeasterly right-of-way of the Burlington Northern Railroad;

Thence southwesterly along said southeasterly right-of-way line to the southwesterly right-of-way of said Old Wadsworth;

Thence northwesterly along said southwesterly right-of-way to the northwesterly right-of-way of Zephyr Street as shown on Mandalay Gardens Exemption Survey No. 3;

Thence southwesterly along said northwesterly right-of-way to the north line of the aforementioned Parcel 3 of Mandalay Gardens Exemption Survey No. 3;

Thence westerly along said north line to the southeasterly corner of the aforementioned Parcel 2 Mandalay Gardens Exemption Survey No. 3;

Thence northerly along the east line of said Parcel 2 to the northeast corner of said Parcel 2;

Thence westerly along the north line of said Parcel 2 to the point of beginning.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of January, 2006.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Camalick Annexation

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 6

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE LAND USE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owners of the properties described in Exhibit A, attached hereto and incorporated herein by reference, requesting a change in the land use designations from "Northeast Comprehensive Development Plan" to "City Owned Open Space" for the approximately 9.7 acre property located west of the Burlington northern rail;road tracks and north of the 103rd Avenue alignment.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 13, 2005, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C. §11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly the goal that encourages the enhancement of the City's open space system to preserve and protect natural areas, vistas, and view corridors, and to complete the open space and trail system.

Section 2. The City Council approves the requested amendments and authorizes City staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designations of the properties described in attached Exhibit A to "City Owned Open Space."

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of January, 2006.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

A parcel of land situated in portions of the southwest quarter of Section 11 and the northwest quarter of Section 14, Township 2 South, Range 69 West of the Sixth Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, being more particularly described as follows;

Beginning at the northwest corner of Parcel 2, as shown in the Mandalay Gardens Exemption Survey Number 3, recorded at Book 108, Page 10, at Reception No. 92015695 in the records of said Jefferson County;

Thence south along the west line of said parcel to the northwest corner of Parcel 3, said Mandalay Gardens Exemption No. 3;

Thence southerly on the west line of Parcel 3 and its extension thereof to the southerly right-of-way line of Barber Drive;

Thence northeasterly along the south right-of-way line of said Barber Drive to the most northerly corner of Tract 67C., Mandalay Gardens, as recorded in Book 5, Page 36 in the records of said County;

Thence southeasterly along the northeasterly line of said Tract 67C and its extension thereof to the southeasterly right-of-way line of the Burlington Northern Railroad;

Thence northeasterly along said southeasterly right-of-way to the most westerly corner of the Bott annexation map;

Thence northeasterly along the northwesterly line of said Bott annexation map, said line also being the southeasterly right-of-way of the Colorado and Southern Railroad to a point on a curve, said point being the most northerly line of said Bott annexation map;

Thence southeasterly along said curve to a point on the westerly right-of-way of 105th Avenue;

Thence northeasterly along said westerly right-of-way line of 105th Avenue, said line being shown on the Bott annexation map and the annexation map for Woods third annexation to the City of Westminster to the south line of the southeast quarter of said Section 11;

Thence southwesterly along the south line of said southeast quarter to the south quarter corner of said Section 11;

Thence northerly along the west line of said southeast quarter to a point on the northerly right-of-way of the Burlington Northern Railroad;

Thence southwesterly along said northwesterly right-of-way to the northeasterly right-of-way of Old Wadsworth, shown as Standley Avenue on the map of Mandalay Gardens;

Thence southeasterly along said northeasterly right-of-way line to the southeasterly right-of-way of the Burlington Northern Railroad;

Thence southwesterly along said southeasterly right-of-way line to the southwesterly right-of-way of said Old Wadsworth;

Thence northwesterly along said southwesterly right-of-way to the northwesterly right-of-way of Zephyr Street as shown on Mandalay Gardens Exemption Survey No. 3;

Thence southwesterly along said northwesterly right-of-way to the north line of the aforementioned Parcel 3 of Mandalay Gardens Exemption Survey No. 3;

Thence westerly along said north line to the southeasterly corner of the aforementioned Parcel 2 Mandalay Gardens Exemption Survey No. 3;

Thence northerly along the east line of said Parcel 2 to the northeast corner of said Parcel 2;

Thence westerly along the north line of said Parcel 2 to the point of beginning.

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **7**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE ZONING OF
THE CAMALICK ANNEXATION PROPERTY, A 9.7 ACRE PARCEL LOCATED WEST OF
THE BURLINGTON NORTHERN RAILROAD TRACKS AND NORTH OF THE 103RD
AVENUE ALIGNMENT, JEFFERSON COUNTY, COLORADO FROM A-1 TO O-1.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for the rezoning of the property generally located WEST OF THE Burlington Northern Railroad tracks and north of the 103rd Avenue alignment, as described in attached Exhibit A, incorporated herein by reference, from the A-1 zone to an O-1 zone has been submitted to the City for its approval pursuant to W.M.C. §11-5-2.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 9th, 2005 and has recommended approval of the requested amendments.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. § 11-5-14.

e. That based on the evidence produced at the public hearing, the proposed O-1 zoning complies with all requirements of City Code, including, but not limited to, the provisions of W.M.C §11-5-14, regarding standards for approval of planned unit developments and §11-4-3, requiring compliance with the Comprehensive Land Use Plan.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property, described in attached Exhibit A, from the A-1 zoning district to the O-1 zoning district.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of, January, 2006.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

A parcel of land situated in portions of the southwest quarter of Section 11 and the northwest quarter of Section 14, Township 2 South, Range 69 West of the Sixth Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, being more particularly described as follows;

Beginning at the northwest corner of Parcel 2, as shown in the Mandalay Gardens Exemption Survey Number 3, recorded at Book 108, Page 10, at Reception No. 92015695 in the records of said Jefferson County;

Thence south along the west line of said parcel to the northwest corner of Parcel 3, said Mandalay Gardens Exemption No. 3;

Thence southerly on the west line of Parcel 3 and its extension thereof to the southerly right-of-way line of Barber Drive;

Thence northeasterly along the south right-of-way line of said Barber Drive to the most northerly corner of Tract 67C., Mandalay Gardens, as recorded in Book 5, Page 36 in the records of said County;

Thence southeasterly along the northeasterly line of said Tract 67C and its extension thereof to the southeasterly right-of-way line of the Burlington Northern Railroad;

Thence northeasterly along said southeasterly right-of-way to the most westerly corner of the Bott annexation map;

Thence northeasterly along the northwesterly line of said Bott annexation map, said line also being the southeasterly right-of-way of the Colorado and Southern Railroad to a point on a curve, said point being the most northerly line of said Bott annexation map;

Thence southeasterly along said curve to a point on the westerly right-of-way of 105th Avenue;

Thence northeasterly along said westerly right-of-way line of 105th Avenue, said line being shown on the Bott annexation map and the annexation map for Woods third annexation to the City of Westminster to the south line of the southeast quarter of said Section 11;

Thence southwesterly along the south line of said southeast quarter to the south quarter corner of said Section 11;

Thence northerly along the west line of said southeast quarter to a point on the northerly right-of-way of the Burlington Northern Railroad;

Thence southwesterly along said northwesterly right-of-way to the northeasterly right-of-way of Old Wadsworth, shown as Standley Avenue on the map of Mandalay Gardens;

Thence southeasterly along said northeasterly right-of-way line to the southeasterly right-of-way of the Burlington Northern Railroad;

Thence southwesterly along said southeasterly right-of-way line to the southwesterly right-of-way of said Old Wadsworth;

Thence northwesterly along said southwesterly right-of-way to the northwesterly right-of-way of Zephyr Street as shown on Mandalay Gardens Exemption Survey No. 3;

Thence southwesterly along said northwesterly right-of-way to the north line of the aforementioned Parcel 3 of Mandalay Gardens Exemption Survey No. 3;

Thence westerly along said north line to the southeasterly corner of the aforementioned Parcel 2 Mandalay Gardens Exemption Survey No. 3;

Thence northerly along the east line of said Parcel 2 to the northeast corner of said Parcel 2;

Thence westerly along the north line of said Parcel 2 to the point of beginning.

Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (P.U.D.) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The P.U.D. exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The P.U.D. is compatible and harmonious with existing public and private development in the surrounding area.
5. The P.U.D. provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The P.U.D. has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

Official Development Plan (ODP) Application

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

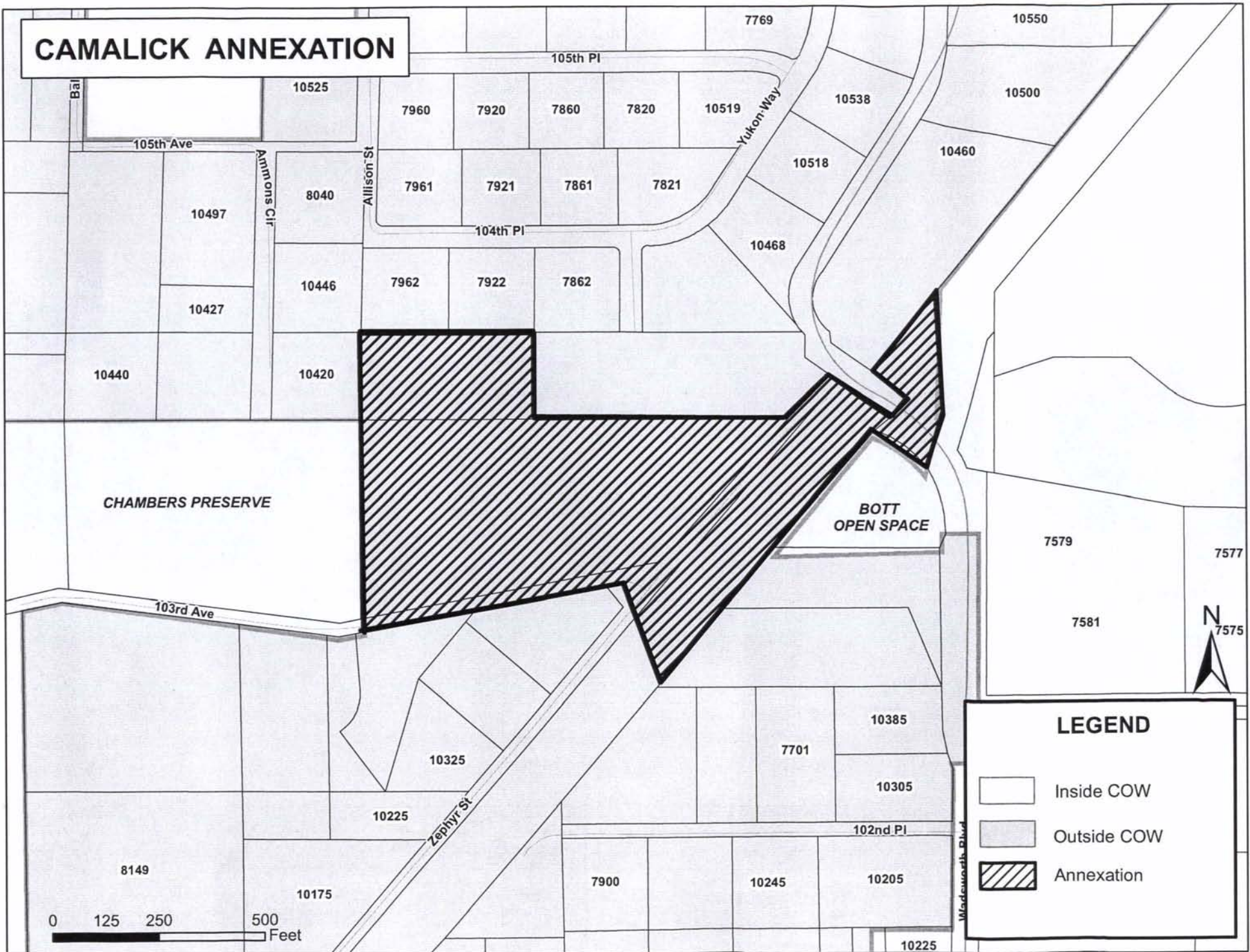
(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.

5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

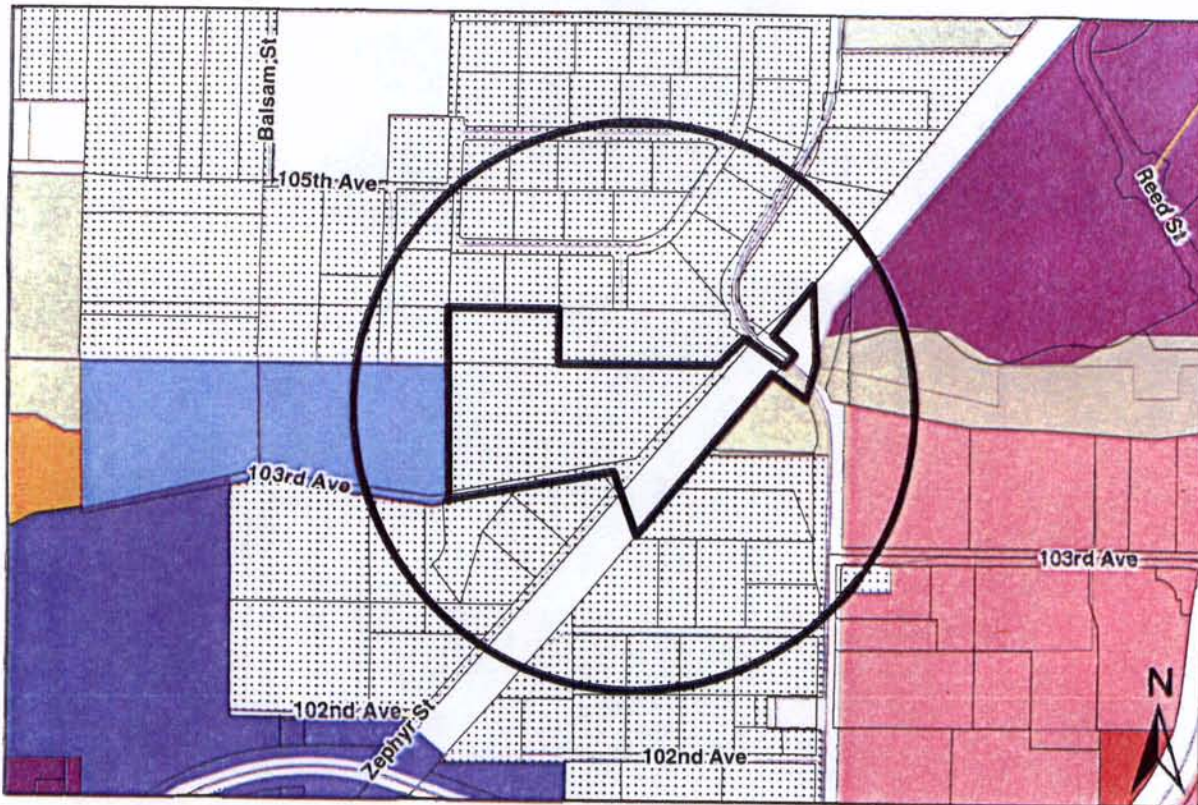
(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

CAMALICK ANNEXATION



Camalick Annexation CLUP Amendment

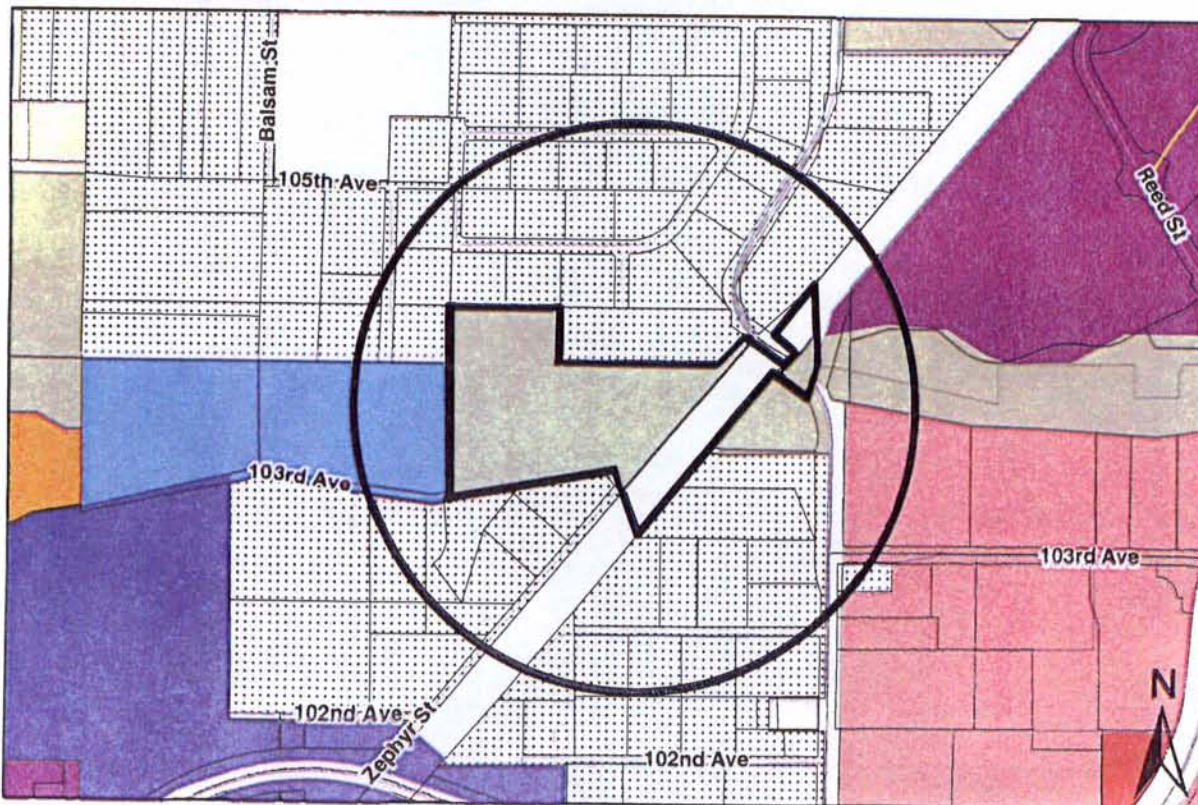
Current CLUP Designation



Legend

- R-1
- R-2.5
- R-3.5
- R-5
- R-8
- R-18
- Retail Commercial
- Office
- Industrial
- Business Park
- Office/Residential
- District Center
- Traditional Mixed Use
- City Owned Open Space
- Public Parks
- Priv. Parks/Open Space
- Golf Courses
- Public/Quasi Public
- N.E. Dev. Plan
- Maj. Crk. Corr. Non Public

Proposed CLUP Designation

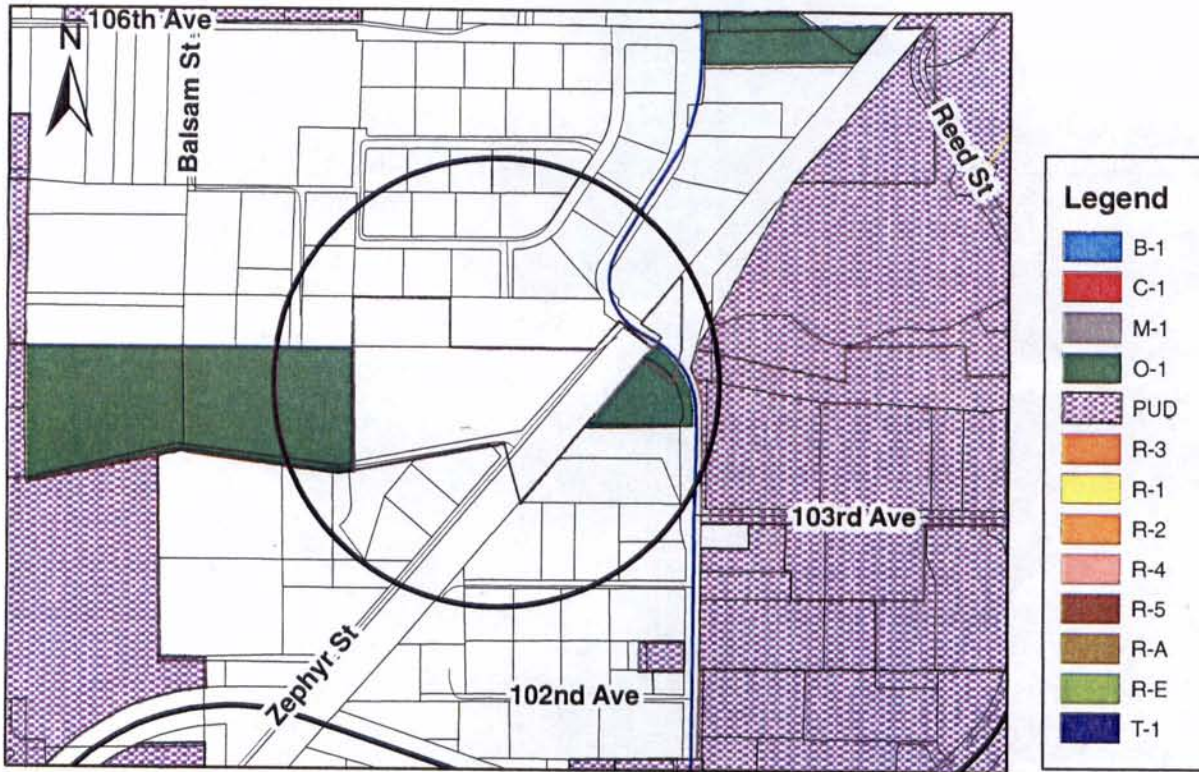


Description of Change:
 Property was designated
 Northeast Comprehensive
 Land Use Plan.
 Proposed designation is
 City Owned Open Space.

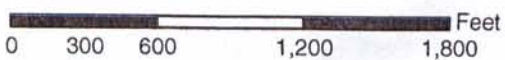
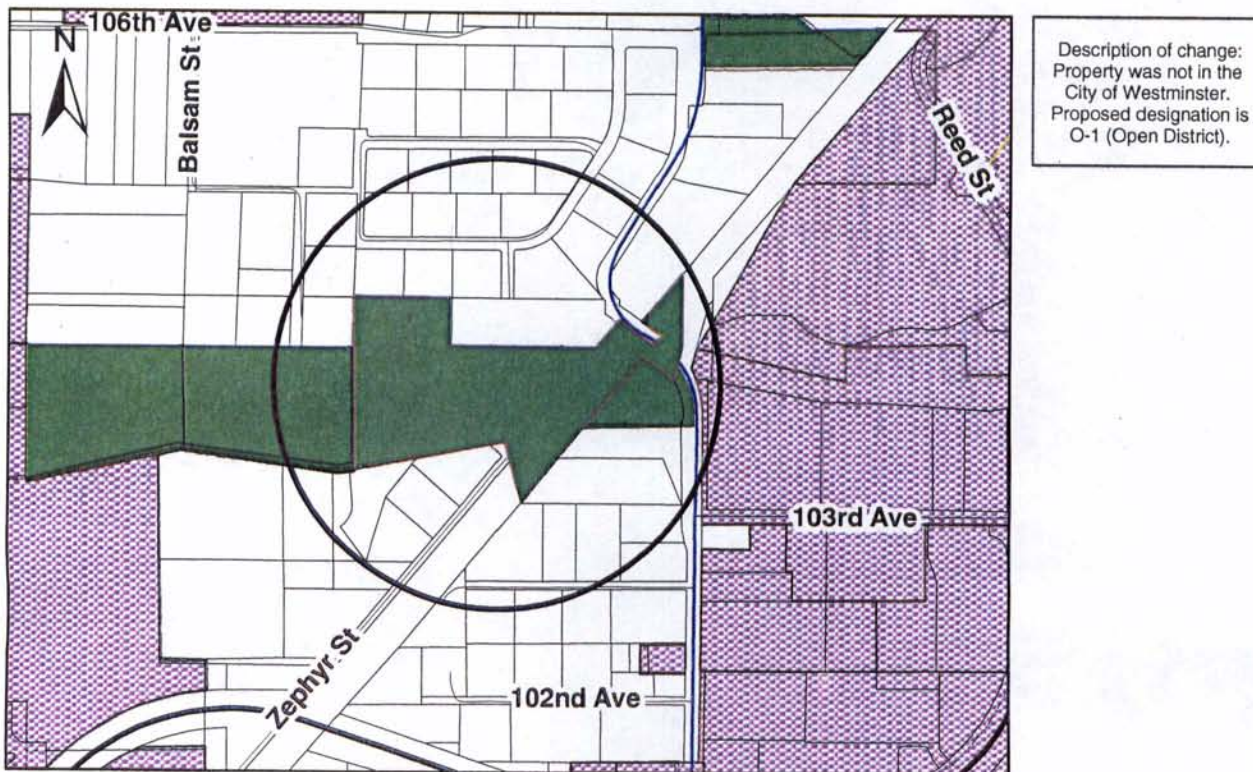


Camalick Annexation Rezoning

Original Zoning Designation



Proposed Zoning Designation

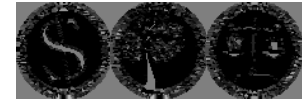




**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
January 9, 2006



SUBJECT: Resolution No. 2 re Intergovernmental Agreement with the Colorado Department of Transportation – Big Dry Creek Trail at Wadsworth Boulevard Project

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Adopt Resolution No.2 authorizing the City Manager to execute an Intergovernmental Agreement (IGA) with the Colorado Department of Transportation (CDOT) for the design and construction of the Big Dry Creek Trail at Wadsworth Boulevard Project.

Summary Statement

- In 2003, the City was successful in obtaining significant federal funding through the Denver Regional Council of Governments (DRCOG) for the design and construction of a grade-separated connection for the Big Dry Creek Trail at the (Old) Wadsworth Boulevard crossing of the creek. Under the DRCOG Transportation Improvement Program (TIP) process, local government applicants for federal funding must agree to provide a match of at least 20% of the total estimated cost of the proposed project and higher local matches are generally needed to make a project competitive in the selection process. For this project, the City offered to fund 50% of the estimated cost.
- Despite the fact that the proposed project is not located on the State Highway system, CDOT is the authorized administrator of federal funding for these TIP projects. In order to move forward, the City must enter into an IGA with CDOT to address the respective design, construction and maintenance responsibilities of the two parties for this project.
- The funding outlined in this IGA includes an initial City share of \$350,000 and a federal share of \$1,400,000. In order to adhere to the earlier commitment to provide 50% of the funding for the project, the City will need to appropriate a minimum of \$1,795,000 in the next three years for the remainder of the estimated cost of the trail connection. An additional \$745,000 of federal funds will also become available for the construction of the project at that time. Therefore, each party will have provided \$2,145,000 by 2009.
- Requests for Proposals for the design of this project will be issued in mid-January and a consultant will be selected in February or March.

Expenditure Required: \$350,000

Source of Funds: General Capital Improvement Fund

Policy Issue

Should the City continue with the effort to design and construct a grade separated trail under Wadsworth Boulevard at Big Dry Creek and enter into an intergovernmental agreement with the Colorado Department of Transportation for this work?

Alternative

Do not authorize execution of the intergovernmental agreement. This alternative is not recommended because the City is receiving a substantial amount of federal funds - \$1,400,000 in 2006 and another \$745,000 in 2009 - to design and construct this project.

Background Information

The Big Dry Creek Trail at Wadsworth Boulevard Project is an important link in the Big Dry Creek trail system. The current trail crossing of Wadsworth Boulevard is the only location where the Big Dry Creek Trail crosses a major street at-grade rather than via an underpass. The major facet of this project will be the construction of a new bridge on Wadsworth Boulevard to provide the necessary vertical clearance for the trail to pass under the street and to also accommodate the flow of 100-year storm waters under the bridge structure to prevent the flooding of any structures in the area. To meet these requirements, the roadway will need to be raised approximately nine feet above its current elevation at Big Dry Creek. Wadsworth Boulevard will be reconstructed from approximately 99th Avenue to a point south of 98th Avenue. The new section of trail installed as part of this project will tie into the existing trail on the east side of Wadsworth Boulevard and 99th Avenue to the west. The 99th Avenue roadway is currently used as the Big Dry Creek Trail in this vicinity. A separate project will later provide a detached trail along 99th Avenue between the limits of this project and the railroad underpass to the west.

In October 2003, the City of Westminster prepared an application to the Denver Regional Council of Governments (DRCOG) requesting funds in the 2005-2010 Transportation Improvement Program (TIP). The City was awarded Federal funds in the amount of \$2,145,000 under the condition that a local match of \$2,145,000 would be provided. On July 25, 2005, Council appropriated \$350,000 from the 2004 carryover to partially fund this project. CDOT has agreed to allow the City to use this amount as a partial local match until 2009 when the City will be required to budget the remaining local match of \$1,795,000. Under this arrangement, the federal funding available in 2006 is \$1,400,000, and the remaining federal funds of \$745,000 become available in 2009 when construction is planned. The total budget for this project in 2006 is \$1,750,000 (\$350,000 local and \$1,400,000 federal) which will be used to design the project and acquire right-of-way in preparation for construction in 2009.

An intergovernmental agreement has been negotiated by staff with CDOT and is ready for approval. The key elements of the IGA are as follows:

- Design. The IGA requires the City to solicit proposals from engineering firms for the design of this project using CDOT's rather stringent consultant selection process. The City is also required to administer the design of the project.
- Right-of-way acquisition. The IGA obligates the City to acquire the necessary right-of-way for the construction of this project.
- Project management/construction services. The IGA stipulates that the City will provide project management to oversee the construction of the project.

- Maintenance. The IGA obligates the City to maintain all elements of this project once construction is complete. It should be noted that Wadsworth Boulevard is not on the State Highway system, so this requirement is reasonable.
- Future Amendments to the IGA. This IGA obligates the funding for 2006, which is \$350,000 of City funds and \$1,400,000 of federal funds. Prior to 2009, the City and CDOT will amend this IGA to secure the remaining funding for this project that will be a minimum of \$1,795,000 of City funds and a maximum of \$745,000 of federal funds. The total federal funds available for this project are \$2,145,000. If the project costs more than the 2003 estimate of \$4,290,000, the City will have to budget for any funds above this amount to cover the additional cost.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. 2

INTRODUCED BY COUNCILLORS

SERIES OF 2006

A resolution of the City Council of the City of Westminster approving an Intergovernmental agreement between the City of Westminster and The Colorado Department of Transportation (CDOT) for the design, construction oversight and maintenance of the improvements to be constructed for the Big Dry Creek Trail under Wadsworth Boulevard.

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Section 29-1-201, et seq., and 29-20-205 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the agreement identifies funding obligations of the City of Westminster and of the Federal government;

NOW, THEREFORE, be it resolved that the Westminster City Council resolves that:

1. The agreement between the City of Westminster and the Colorado Department of Transportation pertaining to the design, construction oversight and maintenance of the Big Dry Creek Trail under Wadsworth Boulevard Project, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved
2. The City Manager is hereby authorized to execute and the City Clerk to attest the attached agreement

PASSED AND ADOPTED this 9th day of January, 2006.

ATTEST:

Mayor

City Clerk

(FMLAWRK
PROJECT STE M356-020, (14966)
REGION 6 (JH)

Rev 10/03
06 HA6 00041
CMS ID 06-077

TRANSPORTATION ENHANCEMENT CONTRACT

THIS CONTRACT made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and THE CITY OF WESTMINSTER, 4800 West 92nd Avenue, Westminster, Colorado, 80031, FEIN: 846000726, hereinafter referred to as the “Contractor” or the “Local Agency.”

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Appropriation Code 010, Organization Number 9991, Program 2000, Functions 3020 and 3301, Object 2312 1P, Phases D and C, Reporting Category 6320, Contract Encumbrance Number 14966, (Contract Encumbrance Amount: \$776,250.00).
2. Required approval, clearance and coordination has been accomplished from and with appropriate agencies.
3. Pursuant to Title I, Subtitle A, Section 1108 of the “Transportation Equity Act for the 21st Century” of 1998 (TEA-21) and/or the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and will in the future be allocated for transportation projects requested by Local Agencies and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”), hereinafter referred to as the “Program.”
4. Pursuant to § 1007(a) of TEA-21, at 23 U.S.C. § 133(d)(2), certain Surface Transportation project funds are made available only for eligible “Transportation Enhancement Activities”, as defined in § 23 U.S.C. § 101(a), and this contract provides for the performance by the Local Agency of a project for an eligible Transportation Enhancement Activity.
5. Pursuant to § 43-1-223, C.R.S. and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State.
6. The Local Agency has requested that a certain local transportation project be funded as part of the Program, and by the date of execution of this contract, the Local Agency and/or the State has completed

and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that, before the Work begins, form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.

7. Federal-aid funds have been made available for project STE M356-020 (14966), which shall consist of constructing a bridge on Old Wadsworth Boulevard over big Dry Creek to provide for a grade separated Big Dry Creek Trail crossing, referred to as the "Project" or the "Work." Such Work will be performed in Westminster, Colorado, specifically described in Exhibit A.

8. The matching ratio for this federal aid project is 80% federal-aid funds to 20% Local Agency funds, it being understood that such ratio applies only to such costs as are eligible for federal participation, it being further understood that all non-participating costs shall be borne by the Local Agency at 100%.

9. The Local Agency desires to comply with the Federal Provisions and other applicable requirements, including the State's general administration and supervision of the Project through this contract, in order to obtain federal funds.

10. The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit B.

11. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and Exhibit B.

12. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.

13. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of constructing a bridge on Old Wadsworth Boulevard over big Dry Creek to provide for a grade separated Big Dry Creek Trail crossing, in Westminster, Colorado, as more specifically described in Exhibit A.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 28 of this contract

2. This contract
3. Exhibit A (Scope of Work)
4. Exhibit C (Funding Provisions)
5. Exhibit D (Certification for Federal-Aid Contracts)
6. Exhibit E (DBE Requirements)
7. Exhibit F (Contract Modification Tools)
8. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

Section 4. Project Funding Provisions

The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit B.

The funding provisions for the Project are attached hereto as Exhibit C. The Local Agency shall provide its share of the funds for the Project as outlined in Exhibit C.

Section 5. Transportation Enhancement Advance Payment Provisions

The advance payment provisions described herein shall apply only to a **percentage of the construction work portion of an enhancement project, as described below**. Payment for all **other** work portions of the Project, including for the design work, shall be on a reimbursement basis, as described below.

- A. Pursuant to FHWA's approval under 23 U.S.C. § 133(e)(3)(B), the State will provide an advance payment up to a maximum percentage of the total amount for the construction portion of transportation enhancement project activities, in accord with the following procedures.
 1. the State will provide advance payment to the Local Agency of 70% of the federal funds budgeted and available for the construction of this transportation enhancement project, in accord with 23 U.S.C. § 133(e)(3)(B and as described herein.
 2. the Local Agency shall submit the following to the State representative identified in section VII, after execution of this Contract:
 - a) a financial statement for the construction of the project; and
 - b) an invoice for advance payment of 70% of the federal funds budgeted and available for the construction of the project.
 3. After receipt of such statement and invoice, the State will issue a warrant to the Local Agency in the amount of the approved advance payment of construction project funds, subject however to the prior performance of the following: A) the satisfactory completion of the design of the project; B) the State approving the Local Agency's

- construction contract; and C) the State issuing to the Local Agency a Notice To Proceed with the construction of the project.
4. the advanced funds shall be used by the local agency only for the performance of the construction work of the project. Upon receipt of the notice to proceed from the State, the Local Agency shall proceed expeditiously to start the construction work and prosecute it diligently to completion. If for any reason the local agency does not start the construction work within 120 days of receipt of the notice to proceed, or if the Local Agency starts the construction work but discontinues or abandons performance before completion, the Local Agency shall remit to the State all federal funds reimbursed or advanced by the State for the project not later than 30 days after the 120th day, or after the date the Local Agency discontinues/abandons performance, as applicable.
 5. When the Project construction work is completed, the Local Agency shall submit to the State all required paperwork for that construction work, together with a final statement of costs for that construction work and a billing for the remaining 30% of the federal funds budgeted and available for the Project construction work. The State shall not reimburse the Local Agency the remaining 30% of the construction work costs until the State has reviewed the billings and has inspected the completed project construction work, subject to the terms and conditions of this contract.
- B. Except as provided in A. above, the State will reimburse the Local Agency for the federal-aid share of the project design, and other work following the State's review and approval of such charges, subject to the terms and conditions of this contract. The Local Agency will prepare and submit to the State monthly charges for costs incurred relative to the design, and work portions of the project. Provided, however, that charges incurred by the Local Agency prior to the date of FHWA authorization for the project and prior to the date this contract is executed by the State Controller or his designee will not be charged by the Local Agency to the project, and will not be reimbursed by the State, absent specific FHWA and/or State Controller approval thereof.
- C. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of performance of the Work, not exceeding the maximum total amount described in Exhibit C. The applicable principles described in Title 49, Code of Federal Regulations, Part 18 (the "Common Rule"), Subpart C ("Financial Administration"), including 49 C.F.R. 18.22, shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
1. in accordance with the provisions of Exhibit C and with the terms and conditions of the contract.
 2. necessary for accomplishment of the Work.
 3. reasonable in amount for the goods and services provided.
 4. actual net cost to the Local Agency (i.e., the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred).
 5. incurred for Work performed subsequent to the effective date of this contract.
 6. satisfactorily documented.
- D. The Local Agency shall establish and maintain a proper accounting system in accordance with

generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.

1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

E. Upon execution of this contract the State is authorized, in its discretion, to perform any necessary administrative support services pursuant to this contract. These services may be performed prior to and in preparation for any conditions or requirements of this contract, including prior FHWA approval of project work. The Local Agency understands and agrees that the State may perform such services, and that payment for such services shall be at no cost to the State but shall be as provided in Exhibit C. At the request of the Local Agency, the State shall also provide other assistance pursuant to this contract as may be agreed in writing. In the event that federal-aid project funds remain available for payment, the Local Agency understands and agrees the costs of any such services and assistance shall be paid to the State from project funds at the applicable rate. However, in the event that such funding is not made available or is withdrawn for this contract, or if the Local Agency terminates this contract prior to project approval or completion for any reason, then all actual incurred costs of such services and assistance provided by the State shall be the sole expense of the Local Agency.

F. If the Local Agency is to be billed for CDOT incurred direct costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 45 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 45 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that at the request of the State, the State Treasurer may withhold an equal amount from future apportionments due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 45 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

G. The Local Agency will prepare and submit to the State monthly charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of

reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures, and standardized billing format attached hereto and made a part hereof as Exhibit D.

- H. To be considered for payment, billings for payment pursuant to this contract must be received within 60 days after the period for which payment is being requested and final billings on the contract must be received by the State within 60 days after the end of the contract term.
1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
 2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
 3. Incorrect payments to the Local Agency due to omission, error, fraud, or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
 4. Any costs incurred by the Local Agency that are not allowable under the Common Rule shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

Section 6. State and Local Agency Commitments

The Local Agency Contract Administration Checklist in Exhibit G describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in Exhibit G.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:

- a. perform or provide the Plans, to the extent required by the nature of the Work.
- b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
- c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.

- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

2. If the Local Agency is the responsible party:

- a. The local agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State, including those in Attachment #1 (Exhibit H) attached hereto. If the Local Agency does enter into a contract with a consultant for the Work:
 - (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(d) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
 - (2) it shall ensure that all changes in the consultant contract have prior approval by the State and FHWA. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
 - (3) it shall require that all consultant billings under that contract shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - (4) it (or its consultant) shall use the CDOT procedures described in Attachment 1 [change] to administer that design consultant subcontract, to comply with 23 CFR 172.5(b) and (d).
 - (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with Attachment 1 [change] and 23 CFR 172.5(b)and (d).

(6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) “The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose.”

(b) “Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.”

(c) “The consultant shall review the construction contractor’s shop drawings for conformance with the contract documents and compliance with the provisions of the State’s publication, Standard Specifications for Road and Bridge Construction, in connection with this work.”

d. The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State and FHWA requirements.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.
2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

3. If the Local Agency is the responsible party:
 - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
 - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
 - (1) in advertising and awarding the bid for the construction of a federal-aid project, the Local Agency shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency/contractor shall incorporate Form 1273 (Exhibit I) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
 - (2) the Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.
 - (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.
 - c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.
 - (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
 - (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be

- evaluated for compliance with 48 CFR Part 31.
- (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
 - (4) All force account work shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

D. State's obligations

1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Local Agency Contract Administration Checklist, Exhibit G, within the Work of this contract.

Section 7. ROW Acquisition and Relocation

Prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable State and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with all federal and state statutes, regulations, CDOT policies and procedures, 49 CFR Part 24, the government wide Uniform Act regulation, the FHWA Project Development Guide and CDOT's Right of Way Operations Manual.

Allocation of Responsibilities can be as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (311 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Operation Manual. The manual is located at <http://www.dot.state.co.us/DevelopProjects/DesignSupport>.

Section 8. Utilities

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

Section 9. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 10. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

Section 11. Maintenance Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 12. Federal Requirements

The Local Agency and/or their contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. The contractor shall also require compliance with these statutes and regulations in subgrant agreements permitted under this contract. A listing of certain federal and state laws that may be applicable are described in Exhibit J.

Section 13. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of six (6) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and FHWA to inspect the project and to inspect, review and audit the project records.

Section 14. Termination Provisions

This contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 15. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 16. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 6, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:
John Schwab
CDOT Region 6
2000 South Holly Street
Denver, Colorado 80222
(303) 370-2040

If to the Local Agency:
David Loseman
City of Westminster
Community Development
4800 West 92nd Avenue
Westminster, Colorado 80031
(303) 430-2400 X2125

Section 17. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 18. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 20. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 21. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 22. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 23. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued

performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 24. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 25. Funding Letters

The State may allocate more or less funds available on this contract using a Funding Letter substantially equivalent to Exhibit F and bearing the approval of the State Controller or his designee. The funding letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

Section 26. Disadvantaged Business Enterprise (DBE)

The Local Agency will comply with all requirements of Exhibit E and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 CFR Part 26 under this contract, it must submit a copy of its program's requirements to the State for review and approval before the execution of this contract. If the Local Agency uses its program for this contract, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for its use as described above.

Section 27. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the

Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 28. Single Audit Act Amendment

All state and local government and non-profit organization Sub-Grantees receiving more than \$500,000 from all funding sources, that are defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements that apply to Sub-Grantees receiving federal funds are as follows:

- a) If the Sub-Grantee expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.
- b) If the Sub-Grantee expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the “financial” procedures and processes for this program area.
- c) If the Sub-Grantee expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
- d) Single Audit can only be conducted by an independent CPA, not by an auditor on staff.
- e) An audit is an allowable direct or indirect cost.

Section 29.

SPECIAL PROVISIONS

(For Use Only with Inter-Governmental Contracts)

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION

To the extent authorized by law, the contractor shall indemnify, save, and hold harmless the State against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now or hereafter amended.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION.

The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

7. SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00

No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

Effective Date: August 1, 2005

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:
BILL OWENS, GOVERNOR

CITY OF WESTMINSTER
Legal Name of Contracting Entity

By _____
Executive Director
Department of Transportation

846000726
Social Security Number or FEIN

Signature of Authorized Officer

LEGAL REVIEW:
JOHN W. SUTHERS
ATTORNEY GENERAL

Print Name & Title of Authorized Officer

By _____

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
LESLIE M. SHENEFELT

By _____
Date _____

Effective Date: August 1, 2005

FORM 463
or
SCOPE OF WORK

Colorado Department of Transportation DESIGN DATA <input type="checkbox"/> Metric <input checked="" type="checkbox"/> English Page 1		Origin Date: 02/07/2005		Project code: 14966		STIP number: DR6184						
		Revise Date:		Project number: STE M356-020								
		Revision #:		PE Project Code		PE Project Number						
		Region: 06										
Status: <input checked="" type="radio"/> preliminary <input type="radio"/> final <input type="radio"/> revised												
Prepared by: DLOSEMAN		Revised by:		Project description: OLD WADSWORTH BIG DRY CK TRAIL								
Date: 02/07/2005		Date:		County1: Jefferson		County2:	County3:					
Submitted by Proj.Mgr: STRASSERG		Approved by Preconstruction Engineer:		Municipality: Westminster								
Date: 02/08/2005				System code: Other Federal-Aid Highway								
				Oversight: Exempt								
				Planned length: 0.37								
Geographic location: Located in City of Westminster and the county of Jefferson on Old Wadsworth Blvd. between 96th Ave. and 98th Ave.												
Terrain type: <input type="radio"/> Level <input type="radio"/> Plains <input type="radio"/> Rolling <input checked="" type="radio"/> Urban <input type="radio"/> Mountainous												
Description of proposed construction/improvement (attach map showing site location) Construct a bridge on Old Wadsworth Blvd. over Big Dry Creek to provide for a grade seperated Big Dry Creek Trail crossing. The trail section beneath the bridge will be a minimum 10 foot wide and lighted.												
1 Traffic (Note: use columns A, B, and/or C to identify facility described below)												
		Current year: -2004 -			Future year: --		Facility location					
Facility		ADT	DHV	DHV % trucks	ADT	DHV	Industrial	Commercial	Residential	Other		
A Old Wadsworth Blvd.		12,803					<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
B							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
C							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2 RdwyClass												
	Route	Refpt	Endrefpt	Functional classification	Facility type	Rural code						
1.	999			Collector (minor)	Undivided	50,000 - 199,999						
2.												
3.												
3 Design Standards (Identify substandard items with a checkmark in 1st column and clarify in remarks)												
	A = Old Wadsworth Blvd.				B =				C =			
	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate
<input type="checkbox"/>	Surface type	HI	HI	HI								
<input type="checkbox"/>	Typical section type											
<input type="checkbox"/>	# of travel lanes	2	4	4								
<input type="checkbox"/>	Width of travel lanes	12	12	12								
<input type="checkbox"/>	Shoulder wd. lt./median											
<input type="checkbox"/>	Shoulder wd rt./outside											
<input type="checkbox"/>	Side slope dist. ("z")											
<input type="checkbox"/>	Median width											
<input type="checkbox"/>	Posted speed	40	40	40								
<input type="checkbox"/>	Design speed											
<input type="checkbox"/>	Max. superelevation											
<input type="checkbox"/>	Min. radius											
<input type="checkbox"/>	Min. horizontal ssd											
<input type="checkbox"/>	Min. vertical ssd											
<input type="checkbox"/>	Max. grade											
Project under <input type="radio"/> 1R <input type="radio"/> 3R <input type="radio"/> 4R <input type="radio"/> Other: _____ criteria												
Variance in minimum design standards required <input type="radio"/> Yes <input checked="" type="radio"/> No <input type="checkbox"/> Justification attached <input type="checkbox"/> Request to be submitted <input type="checkbox"/> Bridge (see item 4) <input type="checkbox"/> See remarks				<input type="checkbox"/> Safety project <input type="checkbox"/> Not all standards addressed				Existing guardrail meets current standards: <input type="radio"/> Yes <input type="radio"/> No Comments:				
<input checked="" type="checkbox"/> Stage construction												
<input type="checkbox"/> Resurfacing projects <input type="checkbox"/> Recommendations concerning safety aspects attached												

4 Major Structures

S=to stay, R=to be removed, P=proposed new structure

Structure ID#	Length	Ref. Point	Feature Intersected	Standard Width	Structure Rdwy	Load	Horizontal Clearance	Vertical Clearance	Year Built

Proposed treatment of bridges to remain in place (address bridge rail, capacity, and allowable surface thickness)

5 Project Characteristics (proposed)

Median type: depressed painted raised none

Lighting Handicap ramps Traffic control signals Striping

Curb and gutter Curb only Left-turn slots continuous width =

Sidewalk width = 8' Bikeway width = 10' Right-turn slots continuous width =

Parking lane width = Detours Signing: construction permanent

Landscape requirements: (description) Other: (description)

6 Right of Way	ROW and/or perm. easement required:	<input checked="" type="radio"/> Yes	<input type="radio"/> No	Est. No. _____	7 Utilities (list names of known utility companies) Comcast Cable, Xcel Energy, Qwest Communication, City of Westminster.
	Relocation required:	<input type="radio"/>	<input checked="" type="radio"/>	_____	
	Temporary easement required:	<input checked="" type="radio"/>	<input type="radio"/>	_____	
	Changes in access:	<input type="radio"/>	<input checked="" type="radio"/>	_____	
	Changes to connecting roads:	<input checked="" type="radio"/>	<input type="radio"/>	_____	

8 Railroad crossings # of crossings:

	Railroad Name	Agreements required	Present protection	Condition of x'ings
1		<input type="checkbox"/>		
2		<input type="checkbox"/>		
3		<input type="checkbox"/>		
4		<input type="checkbox"/>		

Recommendations:

9 Environmental

Type: _____

Comments:
128 initiated 2/15/05

10 Coordination

Withdrawn lands (power sites, reservoirs, etc.) cleared through BLM forest service office Irrigation ditch name: _____

New traffic ordinance required Modify schedule of existing ordinance Municipality: _____

Other: _____

11 Construction method

noAdReason: Design Local F/A P.O. RR F/A Study Utility F/A CDOT F/A Miscellaneous

Advertised by: State Local None Entity/Agency contact name: David W. Loseman

Phone number: (303) 430-2400

12 Remarks (Include additional pages if needed)

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION**

EXHIBIT C FUNDING PROVISIONS

A. The Local Agency has estimated the total cost the Work to be \$1,750,000.00 which is to be funded as follows:

1 BUDGETED FUNDS			
a. Federal Funds			\$1,400,000.00
	(80% of Participating Costs)		
b. Local Agency Matching Funds			\$350,000.00
	(20% of Participating Costs)		
	Local Agency Matching for CDOT -		
c. Incurred Non-Participating Costs			\$0.00
	(Including Non-Participating Indirects)		
TOTAL BUDGETED FUNDS			\$1,750,000.00
2 ESTIMATED CDOT-INCURRED COSTS			
a. Federal Share			\$0.00
	(80% of Participating Costs)		
b. Local Share			
	Local Agency Share of Participating Costs	\$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	\$0.00	
	Estimated to be Billed to Local Agency		\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS			\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY			
a. Federal Funds Budgeted (1a)			\$1,400,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY			\$1,400,000.00
FOR CDOT ENCUMBRANCE PURPOSES			
	Total Encumbrance Amount (\$1,400,000.00 divided by 80%)		\$1,750,000.00
	Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$973,750.00
	Net to be encumbered as follows:		\$776,250.00
	Design	2312 1P 3020	\$776,250.00
	Const	2312 1P 3301	\$0.00

- B. The matching ratio for the federal participating funds for this project is 80% federal-aid funds (CFDA #20 2050) to 20% Local Agency funds, it being understood that such ratio applies only to the \$1,750,000.00 (\$1,400,000.00 Federal Funds and \$350,000.00 Local Agency Matching funds) that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$1,750,000.00, and additional federal funds are made available for the project, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the local agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$1,750,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.
- C. The maximum amount payable to the Local Agency under this contract shall be \$621,000.00 which consists of the Total Estimated Payment to Local Agency of \$1,400,000.00 minus Federal Share of ROW Acquisition/Relocation of \$779,000.00 (For CDOT accounting purposes, the federal funds of \$621,000.00 and local matching funds of \$155,250.00 will be encumbered for a total encumbrance of \$776,250.00), unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.
- D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from federal and/or state and/or Local Agency sources, as applicable. Should these sources, either federal or Local Agency, fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

ATTACHMENT LO

Certification for Federal-Aid Contracts

The contractor certifies, by signing this contract, to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 23. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its contractor agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The contractor (subrecipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the contractor upon request:

Business Programs Office
Colorado Department of Transportation
4201 East Arkansas Avenue, Room 287
Denver, Colorado 80222-3400

Phone: (303) 757-9234

Exhibit F

COLORADO DEPARTMENT OF TRANSPORTATION FUNDING INCREASE/DECREASE AND APPROVAL LETTER Region:	CONTRACT	AUTHORITY: State Controller Policy letter on June 12, 1996 CDOT Controller letter on May 23, 1996
Complete section 1 and submit to CDOT Controller's office.		

(1) This form to be used for the following contracts/situations only (check the appropriate situation):

indefinite quantity, order more/add more utility/railroad, underestimated total cost
 CDOT construction, sum of CMO's LA construction, underestimated cost
 CDOT construction, underestimated total cost CDOT consultant, underestimated cost

SECTION 1 (Region use)

Date: (2)			Project code (3)		
To: CDOT Controller (FAX #(303) 757-9573 or e-mail CONTROLLER)			Project # (4)		
From: Region # (5)	Office: (5)	Phone # (5)	FAX # (5)		

CDOT has executed a contract with: (6)

Address: (6)

FEIN # (6)	Contract routing # (7)	COFRS encumbrance # (Indicate PO, SC or PG #) (8)
------------	------------------------	---

Fund (9)	Orgn. (9)	Appro. (9)	Prgm. (9)	Func. (9)	Object/Sub-obj N/P (9)	GBL (9)	Reporting Catg. (9)	Proj/Sub/Phase (9)
----------	-----------	------------	-----------	-----------	------------------------	---------	---------------------	--------------------

Original contract amount \$ (10)	Has a Budget Request been processed to cover the contract amount increase? yes no (14)
----------------------------------	---

Previous Funding Letter(s) total \$ (11) (Funding letter #1 thru #__)	Preparer's name (15) PHONE NO:
--	---------------------------------------

This Funding Letter total \$ (12) (#__)	Contract Administrator's/Business Manager's Approval (16) PHONE NO:
--	--

Adjusted contract amount \$ (13)	CDOT Designee Approval (17)
	Local Agency approval (18)

SECTION 2 (Controller's Office use) (19)

Total allotment amount \$ (19)	Commission budget \$ (19)
--------------------------------	---------------------------

If construction: <input type="checkbox"/> CE pool elig. (19)	CE charges \$ (19)	Indirect chgs \$ (19)	Adjusted contract amount plus total CE & indirect charges calculation \$ (19)
--	--------------------	-----------------------	---

I have reviewed the financial status of the project, organization, grant and have determined that sufficient funds are available to cover this increase, effective as of _____ (19)

State Controller or Delegee (20)	Date (20)
----------------------------------	-----------

LOCAL AGENCY
CONTRACT ADMINISTRATION
CHECKLIST

CDOT Form 1243

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No. STE M356-020	STIP No. DR6184	Project Code 14966	Region 06
Project Location OLD WADSWORTH BIG DRY CK TRAIL			Date 01/21/05
Project Description Construct a bridge on Old Wadsworth Blvd. over Big Dry Creek to provide for a grade separated Big Dry Creek Trail crossing. The trail section beneath the bridge will be a minimum 10 foot wide and lighted.			
Local Agency City of Westminster		Local Agency Project Manager David Loseman	
CDOT Resident Engineer John Schwab		CDOT Project Manager Gary Strasser	

INSTRUCTIONS:

This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the *CDOT Local Agency Manual*.

The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463	X	
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct consultant selection/execute agreement	X	
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct public involvement	X	
5-6	Conduct Field Inspection Review	X	
5-7	Conduct environmental processes (may require FHWA concurrence/involvement)	X	
5-8	Acquire right-of-way (may require FHWA concurrence/involvement)	X	
5-9	Obtain utility and railroad agreements	X	
5-10	Conduct Final Office Review	X	
5-11	Justify force account work by the Local Agency	X	
5-12	Justify proprietary items	X	
5-13	Document design exceptions - CDOT Form 464	X	
5-14	Prepare plans, specifications and construction cost estimates	X	
5-15	Ensure authorization of funds		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) goals for consultant and construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) John Schwab _____ January 21, 2005 _____ CDOT Resident Engineer Date		X
6-3	Set On-the-Job Training goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	
ADVERTISE, BID AND AWARD			
7-1	Obtain approval for advertisement period of less than three weeks		X
7-2	Advertise for bids	X	
7-3	Distribute "advertisement set" of plans and specifications	X	
7-4	Review worksite and plan details with prospective bidders while project is under advertisement	X	
7-5	Open bids	X	
7-6	Process bids for compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to award		X
7-8	Approve rejection of low bidder		X
7-9	Award Contract	X	
7-10	Provide "award" and "record" sets of plans and specifications	X	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Conduct conferences:		
	Preconstruction (Appendix B)	X	
	Presurvey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HBP Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8-3	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-4	Supervise construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." David Loseman _____ (303) 430-2400, Ext 2125 _____ Local Agency Professional Engineer or Phone number	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	CDOT Resident Engineer		
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8-5	Approve shop drawings	X	
8-6	Perform traffic control inspections	X	
8-7	Perform construction surveying	X	
8-8	Monument right-of-way	X	
8-9	Prepare and approve interim and final Contractor pay estimates	X	
	Provide the name and phone number of the person authorized for this task.		
	<u>David Loseman</u> (303) 430-2400, Ext 2125 Local Agency Representative Phone number		
8-10	Prepare and approve interim and final utility/railroad billings	X	
8-11	Prepare Local Agency reimbursement requests	X	
8-12	Prepare and authorize change orders	X	
8-13	Approve all change orders		X
8-14	Monitor project financial status	X	
8-15	Prepare and submit monthly progress reports	X	
8-16	Resolve Contractor claims/disputes	X	
8-17	Conduct routine, random project reviews		
	Provide the name and phone number of the person responsible for this task.		X
	<u>John Schwab</u> (303) 370-2040 CDOT Resident Engineer Phone number		
MATERIALS			
9-1	Conduct Materials Preconstruction meeting	X	
9-2	CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed 	X X	X
9-3	Perform project acceptance samples and tests	X	
9-4	Perform laboratory verification tests	X	
9-5	Accept manufactured products <ul style="list-style-type: none"> • Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices 	X X X	
9-6	Approve sources of materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> <ul style="list-style-type: none"> • Generate IAT schedule • Schedule and provide notification • Conduct IAT 	X X	X
9-8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot bituminous pavement 	X X	
9-9	Check final materials documentation	X	
9-10	Complete and distribute final materials documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill project bulletin board and preconstruction packet requirements	X	
10-2	CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10-3	Conduct employee interviews. Complete CDOT Form 280 - Equal Employment Opportunity and Labor Compliance Verification	X	
10-4	Monitor Disadvantaged Business Enterprise participation to ensure compliance with the "commercially useful function" requirements	X	
10-5	Conduct trainee interviews. Complete CDOT Form 200 - OJT Training Questionnaire when project utilizes on-the-job trainees	X	
10-6	Check certified payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11-1	Conduct final project inspection, and complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11-2	Write final project acceptance letter	X	
11-3	Advertise for final settlement	X	
11-4	Prepare and distribute final As-Constructed plans	X	
11-5	Check final quantities, final plans and the final pay estimate	X	
11-6	Check material documentation and submit final material certification (see Chapter 9)	X	
11-7	Obtain CDOT Form 17 - Contractor DBE Payment Certification from the Contractor and submit to the Resident Engineer	X	
11-8	Process final payment	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11-10	Complete and submit CDOT Form 950 - Project Closure		X
11-11	Retain project records for six years from date of project closure	X	
11-12	Retain final version of this checklist and distribute copies	X	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

ATTACHMENT #1

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172 and 23 CFR 172(d) state that, "When federal-aid highway funds participate in the contract a local shall use the same procedures as used by the State to administer contracts ...". Therefore, local agencies must comply with this CFR requirement and the following state procedures when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and Colorado Revised Statute (C.R.S.) 24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172.5(b)(1-6)].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of ten percent (10%) Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants should be done in accordance with C.R.S. 24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the project,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,

Exhibit H

- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

Under 24-30-1401, cost shall not be considered as a factor in the evaluation of professional consultant services.

6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursement for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six (6) to fifteen (15) percent of the total direct and indirect costs.
7. A qualified local agency employee shall be responsible and in charge of the project to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of project, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three (3) years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three (3) years after the case has been settled.

The C.R.S. 24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the eight (8) steps just discussed.

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant

of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of

discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor

with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all

related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics.

The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage

determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the

Exhibit I

comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this

contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

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a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall

satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

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equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23

CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, **except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions.** The requirements of 49 CFR 18 include, without limitation:

1. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
2. the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
3. the Local Agency/Contractor shall comply with section 18.37 concerning any subgrants;
4. to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 subgrant procedures, as applicable;
5. the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

C. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

D. The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

G. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal

funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. 42 USC 6101 et seq., 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq.. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds;

K. The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of this contract.)

M. The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R. Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

1. Compliance with Regulations. The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations

either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

4. Information and Reports. The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

5. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
- b. Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, January 9, 2006. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the December 19, 2005 regular meeting were approved.

Council approved the following: payment of Colorado Municipal League annual membership dues; purchase of Dell server and computer replacements; purchase of excess workers' compensation insurance; exercise of option to purchase second parcel of the Family in Christ Church Property as open space; payment of City participation in Umatilla Court construction; 2006 extended Reclaimed Water Master Plan contract with HDR Engineering, Inc.; IGA with Jefferson County School District Risk Management for 3rd party claims administrative services; and final passage of Councillor's Bill No. 72 re Activant Solutions, Inc. business assistance package.

Council tabled a public hearing and introduction of Councillor's Bill No. 1 re TMUND land use category CLUP amendment to the January 23, 2006 Council meeting.

Council conducted public hearings to consider the Westminster Center District Center CLUP amendment; CLUP amendment and rezoning of 3 parcels at 7309-7319 Orchard Court; and the Camalick property annexation, CLUP amendment, and zoning.

The following Councillors' Bills were passed on first reading:

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN. Purpose: expansion of the "District Center" land use designation boundaries.

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN. Purpose: change land use designation of 3 parcels at 7309-7319 Orchard Court from Retail Commercial to Public Parks and from Retail Commercial to R-3.5 Residential.

A BILL FOR AN ORDINANCE AMENDING THE ZONING OF TWO PARCELS OF LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF 73RD AVE. AND ORCHARD CT. IN SECTION 31, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6TH P.M., ADAMS COUNTY, COLORADO FROM CITY OF WESTMINSTER C-1 (COMMERCIAL DISTRICT) TO CITY OF WESTMINSTER R-A (ONE-FAMILY RESIDENTIAL). Purpose: Rezone 3 parcels at 7309-7319 Orchard Court from commercial to one-family residential.

A BILL FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTIONS 11 AND 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO. Purpose: annex 9.7-acre Camalick property open space at the NW corner of Barber Dr/Zephyr St.

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN. Purpose: change the land use designation of the

Camalick property from Northeast Comprehensive Development Plan to City Owned Open Space.

A BILL FOR AN ORDINANCE AMENDING THE ZONING OF THE CAMALICK ANNEXATION PROPERTY, A 9.7 ACRE PARCEL LOCATED WEST OF THE BURLINGTON NORTHERN RAILROAD TRACKS AND NORTH OF THE 103RD AVENUE ALIGNMENT, JEFFERSON COUNTY, COLORADO FROM A-1 TO O-1.
Purpose: Zone the Camalick property O-1.

Council adopted the following resolutions: Resolution No. 1 re findings concerning Camalick property annexation and Resolution No. 2 re IGA with CDOT concerning Big Dry Creek Trail at Wadsworth Boulevard Project.

The meeting adjourned at 9:12 p.m.

By order of the Westminster City Council
Linda Yeager, City Clerk
Published in the Westminster Window on January 19, 2006

**A BILL
FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE
WITH ACTIVANT SOLUTIONS TO AID IN THEIR RELOCATION AND EXPANSION
IN WESTMOOR TECHNOLOGY PARK**

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, Activant Solutions plans to lease 35,000 square feet in Westmoor Technology Park in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and Activant Solutions is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Activant Solutions in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 19th day of December 2005. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of January 2006.