



CITY COUNCIL AGENDA

NOTICE TO READERS: City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration except when addressing the City Council during Section 12 of the 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. Employee Service Awards
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. Designation of Official Places to Post Public Notices
 - B. Special Legal Services Contract
 - C. Municipal Court Security Services Contract
 - D. Amendment to the Engineering Services Contract for Reclaimed Water Treatment Facility Improvements
 - E. 2010 Avaya IP PBX Phone System Purchase
 - F. Shaw Heights Well Sites Property Sale
 - G. Second Reading of Councillor's Bill No. 43 re 68th Avenue and Utica Street Project Supplemental Appropriation
 - H. Second Reading of Councillor's Bill No. 44 re Amendments to the W.M.C. Concerning Boards and Commissions
 - I. Second Reading of Councillor's Bill No. 46 re Delinquent Payments and Charges for Water and Sewer Service
9. Appointments and Resignations
 - A. Resolution No. 1 re Reappointments to Boards and Commissions
10. Public Hearings and Other New Business
 - A. Public Hearing re Proposed Amendments to the W.M.C. re Uses by Special Permit and Other Land Use Regulations
 - B. Councillor's Bill No. 1 re Amendments to the W.M.C. re Uses by Special Permit and Other Land Use Regulations
 - C. Councillor's Bill No. 2 re Appropriation to 80th Avenue/Federal Boulevard Project Account
 - D. Councillor's Bill No. 3 re Cost Recovery for the 112th Avenue – Federal Boulevard to Huron Street Project
 - E. Resolution No. 2 re Spring 2010 Adams County Open Space Grant Application for the Little Dry Creek Dog Park
 - F. Resolution No. 3 re 2010 Jefferson County Grant Application re Armed Forces Tribute Garden Shade Structures
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
 - A. City Council
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.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, DECEMBER 21, 2009 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Chris Dittman, and Councillors Bob Briggs, Mark Kaiser, Mary Lindsey, Scott Major, and Faith Winter were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Carla Koeltzow, Deputy City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Kaiser, to approve the minutes of the regular meeting of December 14, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that this was the last Council meeting of 2009 and that City offices would be closed Friday, December 25 and Friday, January 1, 2010 for the holidays. He noted that 2009 was a difficult year for the City but was very proud of City staff and the way they responded to the economic conditions. He and staff respected Council for their willingness to be pro-active and together the City had another successful year. He stated that he was very optimistic for a better 2010 and looked forward to the challenge.

Following the City Council meeting, there would be meetings of both the Westminster Economic Development Authority and the Mandalay Town Center General Improvement District.

CITY COUNCIL COMMENTS

Mayor Pro Tem Dittman congratulated the Parks, Recreation and Libraries Department for putting on a wonderful City employee Christmas party last Friday night. He also commented on the great entertainment.

Councillor Major reported that he and Councillor Briggs sat in as part of a panel for a mock congressional hearing at Betty Adams Elementary School. He thanked students and staff for a great time and found it to be very educational.

Councillor Briggs noted that this is the end of the first decade for the 21st Century. He stated that this decade has pretty much been in a depression but he was hopeful that the next decade would be better. .

Mayor McNally reported that last Thursday night she was invited by the Chabad House to light the Menorah at The Orchard Town Center. The event was well attended.

The Mayor and Mr. McFall commented with pride that the City employees contributed over \$25,000 for local charities serving Westminster. The Mayor continued that she shared this news with the KNUS listeners on Saturday, during a Mayor call in program. She also talked about the Fire Department Santa Clause visits and shop Westminster program and then wished everyone a very Merry Christmas and Happy Hanukah.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the financial report for November as presented; authorize the purchase of a Pierce Velocity "Pump Under Cab" fire engine from Front Range Fire Apparatus in an amount not to exceed \$576,416; authorize the trade-in of the 1995 Pierce engine (#5112) to Front Range Fire Apparatus for the minimum amount of \$25,000; based on the report and recommendation of the City Manager, determine that the public interest will be best served by awarding a contract

to Alpine Waste & Recycling, ratify past purchases and approve future 2009 expenses with Alpine Waste & Recycling up to a maximum \$60,000 and ratify and approve expenditures to Global Mounting Solutions up to a maximum of \$108,941; authorize the City Manager to execute a contract with DiTirro Building Services in the amount of \$54,555 to provide day porter and nightly custodial services at the Swim & Fitness Recreation Center; authorize the City Manager to execute the Second Amendment to Tower Site Lease Agreement with Pinnacle Towers, LLC, and the City of Arvada in an amount not to exceed \$27,946.44; authorize the City Manager to execute a contract with B & M Roofing of Colorado Inc. in the amount of \$229,992 for the roof replacement at the Semper Water Treatment Facility North Basin Buildings with a \$22,999 (10%) contingency amount bringing the total project budget to \$252,991 and authorize the transfer of \$102,991 from the Country Club Village Water Main Upsize Capital Improvement Budget into the Semper Water Treatment Facility North Basin Roof Replacement Capital Project account.

No requests were made to remove any items from the consent agenda for discussion purposes or separate vote. It was moved by Councillor Kaiser and seconded by Lindsey to approve the consent agenda as presented. The motion passed unanimously.

PUBLIC HEARING ON PDP AMENDMENT FOR THE BIVINS PLANNED UNIT DEVELOPMENT

At 7:10 p.m. Mayor McNally opened a public hearing to consider the amendment to the Preliminary Development Plan in the Bivins Planned Unit Development to add as an allowed use “Consignment Store of less than 5,000 square feet” on Lot 1 of Block 1 of the Plaza Northwest Plat. Mac Cummins, Planning Manager, began the public hearing and reported background information. Mr. Cummins entered the agenda memorandum and attached documents into the record and advised that the Planning Commission had voted unanimously to recommend that the City Council support the PDP amendment. Notice of this hearing had been published in the *Westminster Window*, posted on the property, and mailed to property owners within 300 feet of the property. Mayor McNally then opened the hearing for public comment.

Lisa Crouch, 9775 Carr Circle, spoke in favor of the amendment. She advised Council that she had been looking for a consignment store in Westminster and felt that such a store would be a good addition to the area.

Kathryn Erickson, co-owner of Retrospect at 6050 W. 92nd Avenue, explained to Council that this amendment would allow her consignment store to continue operating. She advised that the store targets selling on consignment, women’s clothing and accessories in the mid price range. She has received good feedback from her customers and believes there is a need in Westminster for this type of store.

No one else wished to speak and the Mayor closed the hearing at 7:25 p.m.

AMENDED PRELIMINARY DEVELOPMENT PLAN FOR THE BIVINS PUD

Mayor Pro Tem Dittman moved, seconded by Winter, to approve an amendment to the Preliminary Development Plan in the Bivins Planned Unit Development to add as an allowed use “consignment store of less than 5,000 square feet,” as defined within the amended Preliminary Development Plan for Lot 1 of Block 1 of the Plaza Northwest plat. This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met. The motion carried unanimously.

RESOLUTION NO. 57 RE RIGHT-OF-WAY ACQUISITION FOR 68TH AVE. AND UTICA STREET PROJECT

Councillor Major moved to adopt Resolution No. 57 authorizing City Staff to proceed with the acquisition of rights-of-way necessary for the construction of improvements for the 68th Avenue and Utica Street project, including the use of eminent domain, if necessary; and authorize an amount not to exceed \$100,000 to acquire the necessary property interests. The motion was seconded by Councillor Kaiser and passed unanimously at roll call.

IGA WITH ADAMS COUNTY SCHOOL DISTRICT 50 RE THE NEW WESTMINSTER HIGH SCHOOL

Mayor Pro Tem Dittman moved, seconded by Kaiser, authorizing the City Manager to sign an Intergovernmental Agreement between the City of Westminster and Adams County School District 50 pertaining to the new Westminster High School. The motion carried unanimously.

COUNCILLOR'S BILL NO. 43 RE 68TH AVE. & UTICA ST. PROJECT SUPPLEMENTAL APPROPRIATION

Mayor Pro Tem Dittman moved to pass on first reading Councillor's Bill No. 43 appropriating \$100,000 to the 68th Avenue and Utica Street project to advance the project's design costs. Councillor Major seconded the motion and it passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 44 RE BOARDS AND COMMISSIONS

Councillor Briggs moved to pass Councillor's Bill No. 44 on first reading amending Chapter 23 of Title I, repealing Chapters 6 and 7 of Title II, and amending Chapter 2 of Title II of the Westminster Municipal Code concerning the Transportation Commission, the Board of Adjustment and Appeals, and the Planning Commission. The motion was seconded by Mayor Pro Tem Dittman and passed unanimously at roll call.

COUNCILLOR'S BILL NO. 45 RE THE ORCHARD TOWN CENTER THIRD LETTER AGREEMENT

It was moved by Councillor Winter, seconded by Kaiser, to pass Councillor's Bill No. 45 as an emergency ordinance to extend via a Third Letter Amendment the existing residential Service Commitments as assigned in the Final Development Agreement Section 7.6 dated December 30, 2004 between the City of Westminster, the Westminster Economic Development Authority and Forest City Commercial Group, Inc. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 46 RE PAYMENTS AND CHARGES FOR WATER AND SEWER SERVICE

It was moved by Councillor Lindsey and seconded by Mayor Pro Tem Dittman to pass Councillor's Bill No. 46 on first reading amending provisions of the Westminster Municipal Code creating a lien upon the real property for unpaid sewer charges, and making modifications to current code provisions on liens for unpaid water charges. At roll the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Councillor Major, seconded by Kaiser, to adjourn. The motion passed unanimously, and the meeting adjourned at 7:30 p.m.

ATTEST:

Deputy City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, Human Resources Manager
Dee Martin, Human Resources Administrator

Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 25 or more years of service with the City and in five year increments thereafter.

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the first grouping of 2010, employees with 25, 30, and 35 years of service will be celebrated tonight.
 - Mayor McNally will present the 25-year certificates.
 - Faith Winter will present the 30-year certificates.
 - Mayor Pro Tem Dittman will present the 35-year certificate.

Expenditure Required: \$10,000

Source of Funds: General Fund - Police Department Operating Budget
Utility Fund - Public Works & Utilities Operating Budget

Policy Issue

None identified

Alternative

None identified

Background Information

The following 25-year employees will be presented with a certificate and service pin:

<u>Name</u>	<u>Position Title</u>	<u>Department</u>
Brian Nash	Senior Police Officer	Police
Doug Sgambelluri	Sergeant	Police
Keith Smith	Senior Police Officer	Police
Dan Strietelmeier	Senior Projects Engineer	Public Works & Utilities

The following 30-year employees will be presented with a certificate and service pin:

<u>Name</u>	<u>Position Title</u>	<u>Department</u>
Tim Burandt	Fire Lieutenant	Fire
Rand Farnsworth	Fire Paramedic	Fire
Matt Lutkus	Deputy City Manager	General Services
Philip Maimone	Senior Police Officer	Police
Ralph Moffat	Equipment Operator II	Public Works & Utilities
Tony Noce	Fire Engineer	Fire
Sandy Schwab	Administrative Coordinator	Police

The following 35-year employee will be presented with a certificate and service pin:

<u>Name</u>	<u>Position Title</u>	<u>Department</u>
Bill Work	Deputy Chief/Operations	Fire Department

On January 20, 2010, the City Manager will host an employee awards luncheon. During that time, four employees will receive their 15 year service pin, nine employees will receive their 10 year service pin, and one employee will receive their 5 year service pin. Recognition is also being given to those are celebrating their 25th, 30th and 35th anniversaries. This will be the first luncheon in 2010 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the first luncheon will be 465 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

The recognition of employee’s years of service addresses Council’s Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Designation of Official Places to Post Public Notices

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Designate the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the City Council, the Westminster Housing Authority, the Westminster Economic Development Authority, Special and General Improvement Districts, and Boards and Commissions pursuant to §24-6-402 (2)(c) C.R.S. of the Colorado Open Meetings Act.

Summary Statement

- The referenced section of the Colorado Open Meetings Act provides that the places where notices of official public meetings will be posted shall be designated annually by the governing body at its first regular meeting of each calendar year.
- City Staff posts all notices of City Council meetings and study sessions, all WEDA meetings, all WHA meetings, and other official public meetings on the bulletin board across from the cashiers' counter in the lobby of City Hall. Identical notifications are posted on the City's website.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council concur with the designation of the City Hall lobby bulletin board and City of Westminster website as the locations for posting public notices for official meetings?

Alternative

Identify other locations for posting public notices. This is not recommended as the City Hall bulletin board and City website serve the purpose of providing public notice.

Background Information

The Open Meetings Act, more commonly called the Colorado Sunshine Act, provides that the public place or places for posting public notice of meetings shall be designated annually at the local governing body's first regular meeting of each calendar year. Historically, notices have been posted in paper format on the City Hall lobby bulletin board and electronically on the City's website. This process appears to work well as a means of providing public notice of upcoming agenda items, and the Staff recommends the continuing designation of these locations. Remaining compliant with State statutes is key to our strategic objective of being a financially sustainable city government providing exceptional service.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Special Legal Services Contract

Prepared By: Walter Mathews, IV, Assistant City Attorney

Recommended City Council Action

Authorize the City Manager to sign a contract for legal services with Ferry, Joseph, & Pearce, P.A., to serve as local special legal counsel in Delaware to assist with the defense of the City's claim for sales and use tax in connection with the Muzak Holdings, LLC ("Muzak Holdings") bankruptcy litigation.

Summary Statement

- On February 10, 2009, Muzak Holdings filed for Chapter 11 bankruptcy in Delaware bankruptcy court.
- On July 14, 2009, the City filed a Proof of Claim in the amount of \$139,678 for delinquent sales and use taxes for the period of January 2005 to February 2009.
- On December 10, 2009, Muzak Holdings filed an objection to the City's claim that seeks to eliminate it. The City filed its response to the objection prior to the deadline of January 5, 2010, and a hearing is scheduled for January 12, 2010.
- Given the specialized nature of bankruptcy law, an attorney who specializes in bankruptcy law should be retained. Further, Delaware's local bankruptcy rules of procedure require affiliation with local counsel.
- City Council previously authorized the retention of Theodore J. Tacconelli at Ferry, Joseph, & Pearce, P.A., in Wilmington, Delaware to assist the City in the Ultimate Electronics bankruptcy case. Mr. Tacconelli has substantial experience in representing municipalities with secured tax claims in bankruptcy and comes highly recommended.
- Mr. Tacconelli has agreed to represent the City in this matter at his current hourly rate of \$295.
- The scope of Mr. Tacconelli's representation is uncertain at this time due to the unpredictability of litigation and possible settlement negotiations with Muzak Holdings. However, the proposed expenditure of \$10,000 is intended to cover legal services associated with providing legal advice in this matter and representing Westminster at the January 12, 2010, hearing and any subsequent hearings.

Expenditure Required: Not to exceed \$10,000

Source of Funds: Sales Tax Audit/Enforcement Contra Account

Policy Issue

Should the City retain local special legal counsel in Delaware to assist with the defense of the City's claim for sales and use tax in the Muzak Holdings bankruptcy litigation?

Alternative

Not hire local special legal counsel. This alternative is not recommended given the need for legal counsel affiliation and specialized legal services to fully analyze and advise the City in the defense of its sales and use tax claim.

Background Information

On February 10, 2009, Muzak Holdings filed for Chapter 11 bankruptcy in Delaware bankruptcy court. On July 14, 2009, the City filed a Proof of Claim in the amount of \$139,678 for delinquent sales and use taxes for the period of January 2005 to February 2009. On December 10, 2009, Muzak Holdings filed an objection to the City's claim and raised a number of legal and factual attacks, ultimately seeking to disallow the claim entirely. The City filed its response to the objection prior to the deadline of January 5, 2010, and a hearing is scheduled for January 12, 2010. Muzak Holdings' primary arguments are that Muzak Holdings has paid all sales and use tax due to the City and that documents attached to the Proof of Claim do not substantiate the amount that the City claims it is owed.

Given the complexities of the issues raised in Muzak Holdings' objection, Staff believes it is in the best interest of the City to retain local special legal counsel in Delaware with expertise in bankruptcy law regarding secured municipal taxes. The City previously retained Theodore J. Tacconelli at Ferry, Joseph, & Pearce P.A. in Wilmington, Delaware to assist with the Ultimate Electronics bankruptcy, based on recommendations from other taxing authorities that have used Mr. Tacconelli on similar matters. Mr. Tacconelli has substantial experience in representing municipalities with secured tax claims in bankruptcy, and was admitted to practice in the U.S. District Court, District of Delaware, in 1989. Mr. Tacconelli's current hourly rate is \$295.

At this point, it is difficult to estimate the scope of Mr. Tacconelli's representation given the unpredictable nature of litigation. The City has filed a response to Muzak Holdings' objection to the City's claim, and a hearing is scheduled for January 12, 2010. The assistance and experience of Mr. Tacconelli will be essential to provide legal advice and to ensure compliance with local bankruptcy rules of procedure.

The value of the City's claim and the complex legal issues posed by Muzak Holdings' objection merit the investment in outside counsel who not only specializes in bankruptcy law, but who also regularly practices in the Delaware bankruptcy court.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this _____ day of _____, 2010, by and between **FERRY, JOSEPH & PEARCE, P.A.**, 824 Market Street, Suite 904, P.O. Box 1351, Wilmington, Delaware, 19899 (the "Firm") and the **CITY OF WESTMINSTER, COLORADO** (the "City").

RECITALS

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Delaware.

AGREEMENT

1. The Firm shall furnish special legal services in connection with the Muzak Holdings, LLC, bankruptcy litigation.
2. Theodore J. Tacconelli of the Firm shall be principally responsible for the Services.
3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.
4. The City shall pay for the Services at an hourly rate not to exceed \$295 per hour.
5. This Contract may be terminated by the City with or without cause.
6. No payments to the Firm shall be made prior to the approval of this Contract by the Westminster City Council.
7. Payments pursuant to this Contract shall not exceed \$10,000 without further written authorization by the City.
8. The Westminster City Council authorized this contract on January 11, 2010.
9. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, the Firm shall not enter into a contract with a subcontractor that fails to certify to the Firm that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If the Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Firm shall notify the subcontractor and the City within three (3) days that the Firm has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, the Firm shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that the Firm shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

FERRY, JOSEPH & PEARCE, P.A.

By _____

CITY OF WESTMINSTER, COLORADO

By _____

Approved as to legal form:

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Municipal Court Security Services Contract

Prepared By: Carol J. Barnhardt, Municipal Court Administrator
Brian Poggenklass, Probation Supervisor
Joe Lachermeier, Purchasing Agent

Recommended City Council Action

Based on the report of the City Manager, the City Council finds that the public interest would be best served by awarding a one year contract with four one year renewals for Municipal Court Security Services to The Wackenhut Corporation.

Summary Statement

- Since 1998, the Municipal Court has utilized the services of The Wackenhut Corporation to screen the public entering the Court building for weapons and to provide a variety of other security-related services at the Municipal Court building.
- A security survey was completed in mid-2009 by the Municipal Court Administrator and in that survey five security companies were identified as providing security court services in the Metro Denver area and Colorado Springs.
- A Request for Proposals was developed and sent to these five companies. Four of the five companies submitted bids. These were: Am-Gard, Inc., Twin City Security, The Wackenhut Corporation, and GVK Protective Services. HSS did not submit a bid.
- The proposed costs submitted by the four firms for security services ranged from \$61,792.50 (\$15.33 per hour billing rate) to \$86,464.48 (\$21.53 per hour billing rate).
- Based on the Staff's research, The Wackenhut Corporation has the best qualifications to perform the high level of security services provided at the Municipal Court.
- Adequate funds are appropriated within the Municipal Court Budget. This is a one-year contract that is renewable for up to four additional years.

Expenditure Required: \$83,721.60 for 2010

Source of Funds: General Fund – Municipal Court Budget

Policy Issue

Should City Council award the bid for Court security services to a firm that is not the low bidder?

Alternative

Do not approve the bid for security services to a higher bidder. Staff does not recommend this option. Staff thoroughly evaluated the bids and companies. Based on the Staff’s research, the third lowest bidder has the best qualifications to perform the high level of security services provided at the Municipal Court.

Background Information

Safety and security are of the utmost importance for the Municipal Court staff and its customers. Judges and staff, jurors, witnesses, citizens, and vendors entering the Court facility should feel safe and secure. The Court’s first line of defense is security screening. The Municipal Court has over 40,000 customers per year entering the facility. With so many people walking through the doors, providing a secure environment means using adequate technology along with well-trained security personnel. The high quality of service that the Municipal Court, its staff, and citizens are accustomed to should be a primary factor of consideration.

As part of the 2009/2010 Budget, Council authorized funds for Court security services utilizing the services of a private security firm. The firm is required to provide 80 security guard hours weekly for screening all visitors to the building and assisting Police Department Court Marshalls working in the Court with prisoner supervision and courtroom security. The draft contract included in the RFP provides for a one-year agreement for security services that is renewable for four one year renewals.

Although the Court security guards do not have the same scope of day to day duties as Westminster Police Officers assigned as Court Marshalls, the level of responsibility required for these individuals is substantially greater than that normally associated with security personnel.

The Wackenhut Corporation has provided security services for the Municipal Court since 1998. Because of the number of years that have passed since the last security services contract was awarded, City Staff decided that an RFP should be prepared and sent out to obtain competitive bids. Based on survey information obtained in mid-2009 and compiled by the Court Administrator, five vendors were solicited to submit an RFP for security services (see Attachment A).

On November 5, 2009, an RFP was emailed and mailed to the five vendors below. Sealed bids were opened by the Purchasing Agent on December 3, 2009. The following chart indicates the total costs and hourly rates submitted by the bidders.

Company Name	Total Cost for Security for 2010	Hourly Rate
Am-Gard Inc. Security	\$61,792.50	\$15.33
Twin City Security	\$66,381.60	\$16.27
Wackenhut Corporation	\$83,721.60	\$20.52
GVK Protective Services	\$86,464.48	\$21.53
HSS Security	Did not submit	Did not submit

An oral board comprised of the Municipal Court Administrator Carol Barnhardt, Probation Supervisor Brian Poggenklass and Purchasing Agent Joe Lachermeier interviewed the four bidders on December 14 and 16, 2009. The bidders were asked 17 questions regarding their company’s operations.

In determining which of the firms submitted the best proposal overall, the following factors were considered:

1. Prior Experience in Municipal Courts
2. Company Operations and Procedures
3. Training and Recruitment of Employees
4. Customer Service / Public Relation Skills of Company
5. History of Claims and/or Litigations.

A summary of the oral board’s ratings are as follows:

<u>Date</u>	<u>Time</u>	<u>Vendor</u>	<u>Ratings</u>	
			Averages out of a total score of 50	Would you be comfortable recommending this company to City Council and to provide services to the Municipal Court?
Mon, Dec. 14	9:30 a.m.	GVK – Eugene Fischer	24.3	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 2 No <input checked="" type="checkbox"/> 1 With Reservation
Mon, Dec. 14	10:30 a.m.	Wackenhut – Dorothy Roth & John Miller	48	<input checked="" type="checkbox"/> 3 Yes <input type="checkbox"/> No <input type="checkbox"/> With Reservation
Wed, Dec. 16	10:30 a.m.	Twin Cities – Michael O’Neill	35	<input checked="" type="checkbox"/> 1 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2 With Reservation
Wed, Dec. 16	11:30 a.m.	Am-Gard – Pattie Larson & Ben Larson	25.3	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 2 No <input checked="" type="checkbox"/> 1 With Reservation

The oral board determined that The Wackenhut Corporation has the requisite qualifications to perform the high level of security services provided at the Municipal Court. The oral board further determined that:

1. The Wackenhut Corporation is the company whose business philosophy is most in line with the City’s philosophy of offering the competitive wages in order to draw the most qualified applicants. This philosophy translates into higher operating costs which translates into a higher bid, which in theory, would allow The Wackenhut Corporation the opportunity to hire and retain the most suitable and qualified security guards.
2. It should be noted that the hourly rate currently billed by The Wackenhut Corporation is \$21.11 per guard per hour for an annual cost of \$86,128.80. Their submitted bid rate is \$20.52 per guard per hour for an annual cost of \$83,721.60. The hourly rate bid submitted included an increased hourly rate to the guards while it decreased the company’s profit margin. This indicated Wackenhut’s sensitivity to the current economic situation, and recognized the value of the City of Westminster Municipal Court as a customer. It also indicated to Staff the philosophy of offering competitive wages in order to retain the most suitable and qualified security guards.
3. The Wackenhut Corporation recruits from the top of the commercial security officer labor pool. To become part of this Corporation, all candidates must meet at least one of the following qualifications in addition to basic qualifications required of their officers: former law enforcement experience with police training documentation; police reserve with police training documentation; former military or special forces, former correctional officer certification or P.O.S.T. Certification (Police Officer Standardized Training). While the other bidders prefer these qualifications, they are not prerequisites for hire within their companies.

4. It should also be noted that The Wackenhut Corporation has the greatest number of officers and armed protection officers. In Colorado, they have 667 officers and 330 armed protection officers. One competing bidder has 48 employees; one has 200 local employees; and one has 10 employees (4 full time and 6 part-time).
5. The Wackenhut Corporation is one of two submitters that require 80 hours of training prior to their staff being deployed. They are the only bidder to provide formal on-going training opportunities beyond annual firearms recertification to its employees. They have a vast network of on-line security courses and a leadership program that is available to all of their employees.
6. The Wackenhut Corporation demonstrated the most flexibility with regard to the duties of the security guards. They were open to having their officers complete any reasonable additional duties to assist the Municipal Court without restrictions and without Court Staff having to contact the site supervisor or company directly. Other bidders required that these duties be approved by the company and either required that an addition to the post orders be made or set limitations on what duties would be allowed to be performed by their employees.
7. The Municipal Court normally operates under the standard business hours of 8:00 a.m. to 5:00 p.m. However, trials and other court hearings frequently may continue later than the normal business hours that require Court Staff and the security guards to stay beyond their scheduled shifts. An advantage to continuing to work with the Wackenhut Corporation is their willingness to flex overtime hours and alleviate overtime costs. This flexibility is not provided by any of the other submitting bidders.
8. The Wackenhut Corporation has provided the Municipal Court with high quality customer service for over 10 years and has been sensitive to procedural or personnel issues that have arisen during that time, handling them professionally, promptly, efficiently, and effectively. Awarding them this bid would allow for a seamless continuation of operations, would allow the company to retain their current guards at this post, and would ensure that a high level of customer service is provided to the Municipal Court Staff and the citizens who appear at the Court.
9. The Wackenhut Corporation has the most experience in providing security services to Municipal Courts in Colorado. They currently maintain contracts with eight municipal courts with full time officers at five locations, and have provided their services to four of those locations for eight or more years. In addition to these eight municipal court contracts, they provide security services to three county courts.

Because of the nature of security services work, there is a wide range of qualifications and capabilities of the firms currently in the market. Municipal Court Staff are concerned that if either of the lower bids are accepted by City Council, that there could be a decrease in the level of security service that has been provided to the Municipal Court by the Wackenhut Corporation for over 10 years.

This Staff recommendation achieves the Strategic Plan Goals of Safe and Security Community by utilizing the services of The Wackenhut Corporation to ensure that Staff and citizens are safe while at the Court facility and that we utilize the services of this company that is well equipped with quality personnel. The Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services is attained by staying within the budgeted funds appropriated.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

2009 COURT SECURITY SURVEY

Prepared June 2009

Attachment A

CITY	POLICE OR PRIVATE	AGENCY PROVIDE R NAME	HOW OFTEN BID	HOURLY RATE	HOW MANY GUARDS	HOURS	HOW OFTEN SERVICES PROVIDED	DUTIES OR OTHER INFO
Westminster	Private	Wackenhut	Renew contract every 3 years.	\$21.11 p/hour. No pay increase since 2006.	2 guards	7:30-5:30. Night court once a month.	5 days p/week	Duties include screening, may assist court marshals, other duties as assigned. Company usually has 1- 2 persons trained as a backup in case of call off.
Littleton	Private	Wackenhut	Initially but not since bid	\$23.96 p/hour. Rate depends on whether they are armed or not and other duties. Officer is armed and doubles as bailiff.	1 guard	8-5 with 1 hour lunch		They seem to always be able to provide substitutes if the regular is sick. They always keep at least 1 other person trained for this position.
Lafayette	Private	Wackenhut	Lafayette has only had Wackenhut for a year. Not sure when the city will do with the contract ends.	Not sure	1 guard with 1 volunteer from their PD	8 hours twice a month.	Only on court days.	Duties are strictly security, does not check in people for court or any other court functions. Lafayette Court is very pleased with Wackenhut. Very professional and personable.
Louisville	Private	Wackenhut		\$26 p/hour; \$104 p/session or about \$2,496 annually.	1 guard	1-5 p.m. twice monthly.	1 st and 3 rd Monday afternoons of each month	Duties – operate security system, monitor activities in the courtroom. Just started with Wackenhut in March. Prior to that it was off-duty police officers.
Lonetree	Private	Wackenhut	The City Clerk surveyed courts. Started with Wackenhut in August 2008.	\$24 p/hour	1 guard	Once a week from 12:30 – 7 p.m.	Only when court is in session	Does security and bailiff duties. On their 4 th guard/bailiff. Have requested a guy who was a sub one night to be assigned to work court each week. Not happy with the people Wackenhut has provided.
Longmont	Private	Wackenhut	Purchasing takes care of this.	\$20.84 p/hour; \$29.18 OT rate. \$45,550 p/year	1 guard	8-5 M-F (45 hours p/week)	Anytime court is in session	Screen incoming customers. Doesn't have to worry about staffing for vacations, sick time, etc.
Elbert County	Private	Wackenhut						
Douglas County	Private	Wackenhut						
Thornton	Private	Twin Cities Security	Every few years	Approx \$20 p/guard. \$90-100,000 p/year (depends on sessions, OT, etc)	2 guards – 1 for weapons screening and 1 for Bailiff/Courtroom security, lunch coverage, weapons screener		5 days p/week	

Wheatridge	Private	Am-Gard	Every 4 years	\$20.95 p/hour. Last increase Sept. 2006.	1 part-time guard	Scheduled court sessions only: M, W, Th 8-5. Approx. 24 hrs p/week		Duties – screening, may watch prisoners if marshal not available, maintain order in courtroom. Same guard for length of contract. He handles his own scheduling. Administration provides add'l guard when 2 courtrooms are in session but this is rare.
Broomfield	Police Department							Every person entering court building is screened by officers. It is normally staffed with 3 officers and backup officers are next door. These officers also assist in remands and any problems in the courtrooms.
Boulder	Sheriff's Office							All security for Boulder Justice Center is provided through Boulder County Sheriff's Office
Castle Rock	Police Department							
Lakewood	Court Marshals who are POST certified with limited duties							Court Marshals do security and prisoner transports. They assist with warrant entry, make courtesy calls on warrants, help with stay of execution program and help with prisoner paperwork.

Colorado Springs	Private at entrance; Police at exterior and courtroom security	HSS & Police	City manages the bid process – unsure how often they issue bids but have used the same company since at least Sept. 2005.	Annual contract of \$70,000	2 officers and 1 after hours night rover	8-5 M-F. At times officers may work OT to accommodate court and teen court activities. They handle front door screening only. Building and courtroom security, warrants and subpoenas are provided or issued by Marshal's Unit		The HSS contract is city-wide and managed by the city as opposed to the court but court has input on the scope and quality of services provided. We've been satisfied with their performance overall. HSS provides a "rover officer" for downtown and monitors all city buildings at night.
Commerce City	Private	GVK Protective Services	RFP, advertised in the paper and city web site. Contract is for 1 year with option to extend for 2 years without rebid.	\$21.27 p/hour. \$18,000 p/year	1 guard	Scheduled 8-5 when court is in session. May leave when court is finished for the day.	2 days p/week	
Arvada	Police							Court Marshal as part of the staff who provides limited security with their PD as backup.
Parker	Police					Off duty officer on arraignments only.	1-2 times p/month	
Denver	Private & Police	HSS & Sheriff	Facilities Management contracts and pays for security in City buildings.				7 days p/week	Posted at entrances and operate X-ray machine and other security equipment. Sheriff's Deputies patrol halls.



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Amendment to the Engineering Services Contract for Reclaimed Water Treatment Facility Improvements

Prepared By: Kent W. Brugler, Senior Engineer
Mike Happe, Manager, Utilities Planning and Engineering Manager

Recommended City Council Action

Authorize the City Manager to execute a contract amendment with Black & Veatch Corporation in the amount of \$158,152 for the 30% design of the expansion of the Reclaimed Water Treatment Facility and authorize a 10% contingency in the amount of \$15,815, for a total project budget of \$173,967.

Summary Statement

- The Reclaimed Water Treatment Facility (RWTF) capacity must be expanded to meet current and future demands.
- City Council approved a design services contract with Black & Veatch on February 9, 2009 for design of the first phase of the planned improvements, including the influent storage tank and pump station. City Council has also approved the design/build contract with Overland Contracting, Inc., a design/build subsidiary of Black & Veatch, on August 24, 2009 for the construction of the phase 1 improvements, which are currently underway.
- Under the existing design services contract, Black & Veatch has also completed the preliminary design of the second phase of the planned improvements that include the expansion of the treatment capacity of the RWTF.
- Staff has negotiated a scope of services and fee with Black & Veatch for continuing the design of the plant expansion to the 30% level. Staff believes this scope of work is thorough, and the fee presented is reasonable and cost-effective for the work involved.
- Upon completion of the 30% design, Staff will evaluate the options for completing the project, including finishing the design and advertising the project for construction bids, or pursuing a design/build contract for the completion of the design and construction of the project. Staff will present the recommended option to City Council at a later date.
- The total budget for both phases of the improvements is \$15,575,000. City Council has previously appropriated \$1,389,000 for design services related to this project that include the funding for this contract amendment, and \$7,390,196 for construction of the phase 1 improvements. These funds have been appropriated from the Utility Capital Reserve Fund and are intended to be reimbursed by means of debt funding in 2010.

Expenditure Required: \$173,967

Source of Funds: Utility Fund Capital Improvements
- Reclaimed Water Treatment Facility Expansion Project

Policy Issue

Should the City proceed with the engineering design services related to the expansion of the Reclaimed Water Treatment Facility and authorize an amendment to the existing agreement with Black & Veatch for these services?

Alternatives

1. The City could choose to select a different engineering consulting firm to complete the design of the project. However, Black & Veatch has successfully provided engineering services on current and past reclaimed water system projects, including design work on the first phase of this project, and Staff believes they bring significant value to the project.
2. The City could delay the design of this project until the debt funding is secured; however, the schedule for the sale of bonds is not yet specified, and the construction of the facilities would be delayed. Based on the current favorable construction climate, a delay would likely result in higher construction costs.

Background Information

The Reclaimed Water Treatment Facility (RWTF) expansion has been an important component in reclaimed water system planning since its design in 1998. Black & Veatch designed the facility with an initial capacity of 6 million gallons per day (mgd) and the ability to easily expand its capacity to 10 mgd as the demand for reclaimed water grew.

In 2006, the Extended Reclaimed Water Master Plan (Master Plan) identified the RWTF expansion as one of the major improvements needed for a 2,600 acre-foot reclaimed water system. Other recommended improvements included the reclaimed/raw water interconnect (completed in 2009) and a 3 million gallon distribution storage tank. A 2008 Reclaimed Water System Evaluation recommended expediting construction of the RWTF expansion to 10 mgd. In July of 2008, the demand for reclaimed water met the existing capacity of 6 mgd, further signaling the need to expand the capacity of the RWTF.

In 2008 and early 2009, Black & Veatch completed the preliminary and final design of the Phase 1 improvements that included a 2.2 million gallon concrete influent storage tank and pump station currently under construction. As part of the final design services contract for the phase 1 improvements, Black & Veatch completed the preliminary design of the Phase 2 improvements that included identifying the required elements for the expansion of the RWTF treatment capacity to a firm yield of 10 mgd. City Council previously approved the design services contract with Black & Veatch on February 9, 2009 and the design/build contract for construction of the phase 1 improvements with Overland Contracting, Inc., a subsidiary of Black & Veatch, on August 24, 2009. The construction of the phase 1 improvements is currently underway and is scheduled for completion in August, 2010.

Under this proposed contract amendment, Black & Veatch will advance the design of the phase 2 improvements for the expansion of the RWTF to the 30% level. At the completion of this design, Staff will evaluate the options for completing the design and construction of the project and will present a recommendation to City Council at a later date. These options include completing the design of the project and advertising for construction bids, or pursuing a design/build contract for the completion of the final design and construction of the project.

City Council approved funding for these projects during the 2009/2010 budget cycle, authorizing \$1,389,000 in 2009 and \$14,186,000 in 2010, and approved the funding to be debt issued in 2010. In order to fund the work in 2009, ordinances authorizing the supplemental appropriation from the Utility Reserve totaling \$8,779,196 were enacted on February 23, 2009 and September 14, 2009. This funding is intended to be reimbursed once the debt funding is completed in 2010.

SUBJECT: Engineering Services Contract – RWTF Improvements

Page 3

The Reclaimed Water Treatment Facility Expansion project helps achieve the City Council’s Strategic Plan goals of “Financially Sustainable City Government” by contributing to the objective of well-maintained and operated City facilities and “Beautiful City” by enhancing the City’s reclaimed water treatment and distribution system.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: 2010 Avaya IP PBX Phone System Purchase

Prepared By: David Puntteney, Information Technology Director
Scott Magerfleisch, Sr. Telecommunications Administrator

Recommended City Council Action

Find that the US General Services Administration (GSA) pricing meets City Charter bidding requirements and authorize staff to proceed with 2010 calendar year purchases of replacement phone systems for College Hill and Irving Street Libraries, Court, Semper Water Treatment Plant, Countryside and Westview Recreation Centers, as well as license changes for City Hall through Axxess Communications in an amount not to exceed \$166,000.

Summary Statement

- The City uses 24 PBX phone switches from three manufacturers to provide telephone services at City facilities.
- Staff has completed the first two phases of a three year project. New equipment has been installed at Standley Lake, Swim and Fitness Center, City Park Recreation and Fitness Center and City Hall.
- The 2010 phase will include replacement or upgrades to phone equipment located at College Hill and Irving Street Libraries, Court, Semper Water Treatment Plant, Countryside and Westview Recreation Centers, as well as license changes for City Hall.
- The 2010 phase of this project includes installation of a City owned system for College Hill Library, which will reduce the annual phone expense by more than 50%. The City does not currently own a phone system at College Hill Library and leases phone services from the College. The cost of these services was \$9,180 in 2009.
- New replacement parts for some of the older phone systems in the City are no longer available.
- Systems at several facilities failed in 2008 and the vendor was unable to find complete replacement parts, leaving the systems to operate at less than original capacity.
- The City purchases telecommunication hardware through Axxess Communications at or below the GSA contract prices, therefore meeting the City Charter bidding requirements. The prices under this GSA contract are well below what the City could achieve purchasing on its own.
- The City upgraded/replaced seven phone switches since 2006 with new Avaya systems.
- Avaya phone switches and equipment purchased during the last 3-4 years is compatible with new Avaya switches and will continue to be used and integrated into this project.
- Selection of the Avaya solution supports a major Westminster business and employer.
- This project is included in the CIP budget and scheduled to be completed over a three year period at a cost not to exceed \$500,000.
- Following completion of this project, annual operating expenses for phone systems will decline by approximately \$15,000 annually.
- In February 2009, City Council authorized staff to proceed with the first and second phase of the project, which was successfully completed during 2009.
- Axxess Communications is the Value Added Reseller (VAR) for Avaya equipment and services. Further information on Axxess is provided in the background section of the agenda memorandum.

Expenditure Required: \$166,000

Source of Funds: General, Public Safety and Utility Fund Capital Improvement Project Budgets

Policy Issue

Should the City continue with phase three of the telephone system replacement project to ensure high availability, reliability, performance and capacity to support end users, while continuing to standardize on a specific vendor solution?

Alternative

Forgo the 2010 replacement of telephone systems at these locations. This alternative is not recommended for the following reasons:

- Continued maintenance and parts for older systems are not available.
- The City has already completed the first two phases of the project and discontinuing the project would significantly reduce or eliminate the benefits described in this agenda memo.
- The performance and reliability of these older systems have proven unacceptable.
- Older telephone systems do not support the standardized communications infrastructure or features that are available on newer systems.
- The City would not benefit from increased ease of administration, lower support cost and enhanced features available with the proposed solution.

Background Information

The City's telephone systems are used within every department, division and facility within the City. These systems are critical to departments in order to provide internal and external customer service and to conduct critical City operations. The City uses over 1,200 telephone extensions across 32 facilities and 24 PBX switches from three manufacturers. Some of these solutions have been in place for nearly 20 years.

In 2006, the City implemented limited Voice over Internet Protocol (VoIP) technologies to assess the capabilities and reliability of the technology and to provide more advanced telecommunication features for several locations. Staff concluded that the new technology features, ease of use, more efficient administration and lower support cost provided short and long term benefit for the City. Some of the enhanced services available with the new VoIP technologies include four digit dialing between facilities, integration with the centralized voicemail system and standardization of features between facilities. In addition to the enhanced end user features provided by the Avaya VoIP solution, the standardization of systems throughout all City facilities increases the ability for IT staff to support telecommunications equipment, reducing the need for expensive support and service contracts with vendors.

The City standardized on Avaya VoIP systems for all new PBX installations since 2006. Avaya has some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of the Avaya systems and the support provided to the City. The first two phases of the Avaya phone system installations went very smoothly in 2009, and staff is very pleased with the capabilities of the new system. Avaya is also a Westminster business and has worked hard to establish and maintain a good working relationship with the City over the past three years. Avaya (along with Axess) have worked diligently to ensure the City's telephone needs are addressed using the most appropriate and cost effective solution.

For customers and agencies the size of the City of Westminster, Avaya uses Value Added Resellers (VAR's) as a distributor for their products and services. The City uses Axess Communications to purchase all Avaya products and uses support engineers from both Axess and Avaya for support on product decisions and designs. Avaya also uses sales representatives to support the VAR and work with the customer and the VAR to provide access to Avaya Technical Experts when needed.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Shaw Heights Well Sites Property Sale

Prepared By: Dan Strietelmeier, Senior Engineer

Recommended City Council Action

Authorize the City Manager to execute two contracts for the sale of property at 9180 Grove Street, and property at 4460 Shaw Boulevard, to Habitat for Humanity of Metro Denver, Inc. for \$15,000 and \$25,000 respectively.

Summary Statement

- In 1998, the City of Westminster acquired the Shaw Heights Water District, which included the acquisition of eight wells and associated property. The wells previously supplied potable water for the Shaw Heights Water District. The City has been providing water and sewer service for Shaw Heights since 1998.
- The wells were never used by the City; the well sites are a maintenance burden and present some liability exposure. The wells would not provide a long term, reliable or economical water supply to the City.
- The Shaw Heights Well Abandonment Capital Improvement Project was completed in 2009. The wells were abandoned pursuant to Colorado State Engineer requirements with the exception of one well that was previously abandoned by the Shaw Heights Water District.
- The wells on the properties for sale have been officially abandoned pursuant to the State requirements and the properties were listed for sale through a real estate broker in May 2009.
- All of the Shaw Heights well sites are located in unincorporated Adams County. The wells not listed for sale are located in easements over private property.
- Offers to purchase the properties listed for sale were received from Habitat for Humanity of Metro Denver, Inc. in December 2009.
- Staff has concluded that there would be no benefit for continued ownership of these sites, and no other valid purchase offers have been received. The locations of the two properties are shown on the attached maps.

Expenditure Required: \$0 (\$40,000 to be returned to Utility Fund Capital Project Reserve)

Source of Funds: N/A

Policy Issue

Should the City approve the sale of the properties to Habitat for Humanity of Metro Denver, Inc.?

Alternatives

1. Do not authorize the sale of the property and continue to perform landscape maintenance on the sites.
2. Do not accept the purchase offer, delay the sale of the property and continue to list the properties for sale.

Staff does not recommend either of these alternatives because the recommended action will result in \$40,000 in revenue to the City and remove the liability for maintaining these properties from the City.

Background Information

The City of Westminster acquired the Shaw Heights Water District (the District) in 1998. Included in the acquisition were wells that the District used for a portion of their water supply. The wells were pumped directly into the potable water distribution system. The District, prior to 1998, was a wholesale water customer of Westminster, and the District used the wells to supplement the water supplied by Westminster. The wells, which ranged in depth from 350 feet to 1,320 feet, were not used by the District in recent years due to the high pumping and maintenance costs. Since 1998, the City assumed operation and maintenance of the District facilities, including the wells and well sites. The wells have never been used by the City as the groundwater from the wells did not provide a reliable or economical water supply to the City.

In October 2008, the City entered into a contract with Velocity Constructors, Inc. to abandon the wells pursuant to Colorado State Engineer requirements. The requirements included breaking apart the well casing, plugging and capping of the well below the ground surface and then covering with backfill. Above ground structures that had been targets for graffiti were also removed. The abandonment project was completed in June 2009, and the Grove Street and Shaw Boulevard properties were then listed for sale. The well at 8879 Newton Street was found to be previously abandoned by the District; however, no records were submitted to the Colorado State Engineer. Staff is in the process of petitioning the State for official abandonment of this well, at which time this property will also be listed for sale. Other sites are located on private property within easements.

The City listed the two vacant sites for sale with a broker who performed a market analysis to determine the price for the sites. The 9180 Grove Street property that is approximately 6,448 square feet was listed for \$20,000. The 4460 Shaw Boulevard property that is approximately 7500 square feet was listed for \$30,000. The only valid offer the City received for the two properties since June 2009 was from Habitat for Humanity of Metro Denver, Inc. The negotiated sale prices are fair and reasonable, and the properties are not wanted or needed by the City. The sale proceeds will be deposited into the Utility Capital Project Reserve Fund.

Completion of this project will help achieve the City Council's Strategic Plan Goal of Financially Sustainable City Government by contributing to the objective of a well-maintained City infrastructure and facilities. The project will also help maintain a Beautiful City by disposing of unsightly facilities and vandalism targets.

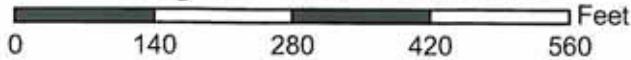
Respectfully submitted,

J. Brent McFall
City Manager
Attachments

Shaw Heights Well Property



City of Westminister

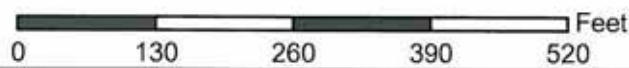


Shaw Heights Well Property

4460 Shaw Boulevard



City of Westminister



The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS1-5-09) (Mandatory 7-09)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE

Date: 12/11/2009

1. AGREEMENT. Buyer agrees to buy, and Seller agrees to sell, the Property defined below on the terms and conditions set forth in this contract (Contract).

2. DEFINED TERMS.

2.1.1 Buyer. Buyer, **Habitat for Humanity of Metro Denver, Inc.**

will take title to the real property described below as Joint Tenants Tenants In Common

Other **in severalty**

2.2. Property. The Property is the following legally described real estate in the County of Adams, Colorado:

Tract A, Shaw Heights Mesa

known as No. **9180 Grove St. Westminster CO 80031**

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

2.3. Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 4.2.1	Alternative Earnest Money Deadline	7 days after MEC
2	§ 5.1	Loan Application Deadline	n/a
3	§ 5.2	Loan Conditions Deadline	n/a
4	§ 5.3	Buyer's Credit Information Deadline	n/a
5	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a
6	§ 5.4	Existing Loan Documents Deadline	n/a
7	§ 5.4	Existing Loan Documents Objection Deadline	n/a
8	§ 5.4	Loan Transfer Approval Deadline	n/a
9	§ 6.2.2	Appraisal Deadline	29 days after CCA
10	§ 6.2.2	Appraisal Objection Deadline	30 days after CCA
11	§ 7.1	Title Deadline	7 days after MEC
12	§ 7.2	Document Request Deadline	7 days after MEC
13	§ 7.3	Survey Deadline	29 days after CCA
14	§ 7.4.4.1	CIC Documents Deadline	n/a
15	§ 7.4.5	CIC Documents Objection Deadline	n/a
16	§ 8.1	Title Objection Deadline	14 days after MEC
17	§ 8.2	Off-Record Matters Deadline	7 days after MEC
18	§ 8.2	Off-Record Matters Objection Deadline	14 days after MEC
19	§ 8.3.2	Survey Objection Deadline	30 days after CCA
20	§ 8.6	Right of First Refusal Deadline	n/a
21	§ 10.1	Seller's Property Disclosure Deadline	7 days after MEC
22	§ 10.2	Inspection Objection Deadline	30 days after CCA
23	§ 10.3	Inspection Resolution Deadline	33 days after CCA
24	§ 10.5	Property Insurance Objection Deadline	n/a
25	§ 12	Closing Date	45 days after CCA

26	§ 17	Possession Date	Closing Date	
27	§ 17	Possession Time	DOD	
28	§ 32	Acceptance Deadline Date	12/18/2009	Friday
29	§ 32	Acceptance Deadline Time	5:00 p.m. Mountain	
30	n/a	n/a	n/a	
31	n/a	n/a	n/a	

2.4. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable and when inserted on any line in Dates and Deadlines (§ 2.3), means that the corresponding provision of the Contract to which reference is made is deleted. The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

2.5. Day; Computation of Period of Days, Deadline.

2.5.1. Day. As used in this Contract, the term "day" shall mean the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

2.5.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline

Shall

Shall Not be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline shall not be extended.

3. INCLUSIONS AND EXCLUSIONS.

3.1. Inclusions. The Purchase Price includes the following items (Inclusions):

3.1.1. Fixtures. If attached to the Property on the date of this Contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including **n/a** remote controls; and

n/a

3.1.2. Personal Property. The following are included if on the Property whether attached or not on the date of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included: Water Softeners Smoke/Fire Detectors Security Systems Satellite Systems (including satellite dishes).

3.1.3. Other Inclusions.

n/a

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except **n/a**. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.4. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

n/a

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except **n/a**. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.5. Parking and Storage Facilities. Use Only Ownership of the following parking facilities: **n/a**; and Use Only Ownership of the following storage facilities:

n/a

3.1.6. Water Rights, Water Interests, Water and Sewer Taps. The following legally described water rights: **any surface or subsurface water rights**

Any water rights shall be conveyed by **n/a** Deed Other applicable legal instrument.

3.1.6.1. If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Water Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer shall complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer shall file the form with the Division within sixty days after Closing. The Well Permit # is **n/a**.

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- 3.1.6.2. Water Stock Certificates:
- 3.1.6.3. Water Tap Sewer Tap

Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the tap.

3.1.7. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows:

n/a

3.2. Exclusions. The following items are excluded:

n/a

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below shall be payable in U. S. Dollars by Buyer as follows

Item No.	Reference:	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$15,000.00	
2	§ 4.2	Earnest Money		\$1,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Seller or Private Financing		
6	<i>n/a</i>	<i>n/a</i>		
7	<i>n/a</i>	<i>n/a</i>		
8	§ 4.3	Cash at Closing		\$14,000.00
9		TOTAL	\$15,000.00	\$15,000.00

4.2. Earnest Money. The Earnest Money set forth in this section, in the form of company check is part payment of the Purchase Price and shall be payable to and held by Re/Max Alliance (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an Alternative Earnest Money Deadline (§ 2.3) for its payment. If Earnest Money Holder is other than the Brokerage Firm identified in § 34 or § 35 below, Closing Instructions signed by Buyer, Seller and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

4.2.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of the Contract is as set forth as the Alternative Earnest Money Deadline (§ 2.3).

4.3. Form of Funds; Time of Payment; Funds Available. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, shall be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds). All funds required to be paid at Closing shall be timely paid to allow disbursement by Closing Company at Closing OR SUCH PARTY SHALL BE IN DEFAULT. Buyer represents that Buyer, as of the date of this Contract, Does Does Not have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.4. Seller Concession. Seller, at Closing, shall pay or credit, as directed by Buyer, a total amount of \$ *n/a* to assist with Buyer's closing costs, loan discount points, loan origination fees, prepaid items (including any amounts that Seller agrees to pay because Buyer is not allowed to pay due to FHA, CHFA, VA, etc.), and any other fee, cost, charge, expense or expenditure related to Buyer's New Loan or other allowable Seller concession (collectively, Seller Concession). The Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. If the amount of Seller Concession exceeds the aggregate of what is allowed, Seller shall not pay or be charged such excess amount.

4.5. New Loan. (Omitted as inapplicable)

4.6. Assumption. (Omitted as inapplicable)

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4.7. Seller or Private Financing. (Omitted as inapplicable)

5. FINANCING CONDITIONS AND OBLIGATIONS. (Omitted as inapplicable)

5.3. Credit Information and Buyer,s New Senior Loan. (Omitted as inapplicable)

5.4. Existing Loan Review. (Omitted as inapplicable)

6. APPRAISAL PROVISIONS.

6.1. Property Approval. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller may terminate this Contract (notwithstanding § 10 of this Contract) by written notice to Buyer on or before three days following Seller's receipt of the Requirements. Seller's right to terminate in this § 6.1 shall not apply if on or before any termination by Seller pursuant to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the Requirements are completed by Seller; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

6.2. Appraisal Condition.

6.2.1. Not Applicable. This § 6.2 shall not apply.

6.2.2. Conventional/Other. Buyer shall have the sole option and election to terminate this Contract if the Purchase Price exceeds the Property's valuation determined by an appraiser engaged by **Buyer**. The appraisal shall be received by Buyer or Buyer's lender on or before Appraisal Deadline (§ 2.3). This Contract shall terminate by Buyer delivering to Seller written notice of termination and either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price, received by Seller on or before Appraisal Objection Deadline (§ 2.3). If Seller does not receive such written notice of termination on or before Appraisal Objection Deadline (§ 2.3), Buyer waives any right to terminate under this section.

6.2.3 FHA. It is expressly agreed, that notwithstanding any other provisions of this Contract, the Purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the Purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the appraised value of the Property of not less than \$ n/a. The Purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The Purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.

6.2.4 VA. It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

6.3. Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by Buyer Seller .

7. EVIDENCE OF TITLE, SURVEY AND CIC DOCUMENTS.

7.1. Evidence of Title. On or before Title Deadline (§ 2.3), Seller shall cause to be furnished to Buyer, at Seller,s expense, a current commitment for owner,s title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked, An Abstract of title certified to a current date. If title insurance is furnished, Seller shall also deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract) in Seller's possession. At Seller,s expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. The title insurance commitment Shall Shall Not commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) any unrecorded mechanics, liens, (5) gap period (effective date of commitment to date deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain this additional coverage shall be by Buyer Seller .

Note: The title insurance company may not agree to delete or insure over any or all of the standard exceptions.

297 Buyer shall have the right to review the Title Commitment. If the Title Commitment or its provisions are not
298 satisfactory to Buyer, Buyer may exercise Buyer's rights pursuant to § 8.1.
299

300 7.2 Copies of Exceptions. On or before Title Deadline (§2.3), Seller, at Seller.s expense,
301 shall furnish to Buyer and **Buyer's Representative if designated prior to Title Deadline**, (1) copies of
302 any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title
303 Commitment is required to be furnished, and if this box is checked Copies of any Other Documents
304 (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box
305 is not checked, Seller shall have the obligation to furnish these documents pursuant to this section if requested
306 by Buyer any time on or before Document Request Deadline (§2.3). This requirement shall pertain only to
307 documents as shown of record in the office of the clerk and recorder in the county where the Property is
308 located. The abstract or Title Commitment, together with any copies or summaries of such documents furnished
309 pursuant to this section, constitute the title documents (Title Documents).
310

311 7.3 Survey. On or before Survey Deadline (§2.3), Seller Buyer shall order or provide,
312 and cause Buyer (and the issuer of the Title Commitment or the provider of the opinion of title if an abstract) to
313 receive, a current Improvement Survey Plat Improvement Location Certificate n/a (the
314 description checked is known as Survey). An amount not to exceed \$ n/a for Survey shall be
315 paid by Buyer Seller . If the cost exceeds this amount, Buyer Seller shall pay the
316 excess on or before Closing. Buyer shall not be obligated to pay the excess unless Buyer is
317 informed of the cost and delivers to Seller, before Survey is ordered, Buyer.s written
318 agreement to pay the required amount to be paid by Buyer.
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320 7.4 Common Interest Community Documents. The term CIC Documents consists of all
321 owners, associations (Association) declarations, bylaws, operating agreements, rules and regulations, party wall
322 agreements, minutes of most recent annual owners, meeting and minutes of any directors, or managers,
323 meetings during the six month period immediately preceding the date of this Contract, if any (Governing
324 Documents), most recent financial documents consisting of (1) annual balance sheet, (2) annual income and
325 expenditures statement, and (3) annual budget (Financial Documents), if any (collectively CIC Documents).
326

327 7.4.1. Not Applicable. This § 7.4 shall not apply.
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329 7.4.2. Common Interest Community Disclosure. THE PROPERTY IS LOCATED
330 WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH
331 COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE
332 OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES
333 AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND
334 REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY,
335 INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT
336 PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND
337 POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS
338 OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY
339 WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE
340 ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE
341 COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS
342 OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE
343 COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.
344

345 7.4.3. Not Conditional on Review. Buyer acknowledges that Buyer has received a copy
346 of the CIC Documents. Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions that
347 they impose upon the Property and its owners and waives any right to terminate this Contract due to such
348 documents, notwithstanding the provisions of § 8.5.
349

350 7.4.4. CIC Documents to Buyer.

351 7.4.4.1. Seller to Provide CIC Documents. Seller shall cause the CIC Documents
352 to be provided to Buyer, at Seller's expense, on or before CIC Documents Deadline (§ 2.3).
353

354 7.4.4.2. Seller Authorizes Association. Seller authorizes the Association to
355 provide the CIC Documents to Buyer, at Seller's expense.
356

357 7.4.4.3. Seller's Obligation. Seller's obligation to provide the CIC Documents shall
358 be fulfilled upon Buyer's receipt of the CIC Documents, regardless of who provides such documents.
359

360 7.4.5. Conditional on Buyer's Review. If the box in either § 7.4.4.1 or § 7.4.4.2 is
361 checked, the provisions of this § 7.4.5 shall apply. Written notice of any unsatisfactory provision in any of the
362 CIC Documents, in Buyer's subjective discretion, signed by Buyer, or on behalf of Buyer, and delivered to Seller
363 on or before CIC Documents Objection Deadline (§ 2.3), shall terminate this Contract.
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365 Should Buyer receive the CIC Documents after CIC Documents Deadline (§ 2.3), Buyer
366 shall have the right, at Buyer's option, to terminate this Contract by written notice delivered to Seller on or
367 before ten days after Buyer's receipt of the CIC Documents. If Buyer does not receive the CIC Documents, or if
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371 such written notice to terminate would otherwise be required to be delivered after Closing Date (§ 2.3),
372 Buyer's written notice to terminate shall be received by Seller on or before three days prior to Closing Date (§
373 2.3). If Seller does not receive written notice from Buyer within such time, Buyer accepts the provisions of the
374 CIC Documents, and Buyer's right to terminate this Contract pursuant to this section is waived, notwithstanding
375 the provisions of § 8.5.
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377 NOTE: If no box in this § 7.4 is checked, the provisions of § 7.4.4.1 shall apply.
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380 8. TITLE AND SURVEY REVIEW.
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382 8.1. Title Review. Buyer shall have the right to inspect the Title Documents. Buyer shall provide
383 written notice of unmerchantability of title, unsatisfactory form or content of Title Commitment, or,
384 notwithstanding § 13, of any other unsatisfactory title condition shown by the Title Documents (Notice of Title
385 Objection). Such notice shall be signed by or on behalf of Buyer and delivered to Seller on or before Title
386 Objection Deadline (§ 2.3), provided such Title Documents are received by Buyer in a timely manner. If
387 there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new
388 Exception to title and the modified Title Commitment shall be delivered to Buyer. Provided however, Buyer shall
389 have five days to deliver the Notice of Title Objection after receipt by Buyer of the following documents: (1) any
390 required Title Document not timely received by Buyer, (2) any change to the Title Documents, or (3)
391 endorsement to the Title Commitment. If Seller does not receive Buyer's Notice of Title Objection by the
392 applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Title Documents as
393 satisfactory.
394

395 8.2. Matters Not Shown by the Public Records. Seller shall deliver to Buyer, on or before
396 Off-Record Matters Deadline (§ 2.3) true copies of all leases and surveys in Seller's possession pertaining
397 to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental
398 improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first
399 refusal and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the
400 right to inspect the Property to investigate if any third party has any right in the Property not shown by the
401 public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights).
402 Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection, notwithstanding
403 § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before Off-Record Matters
404 Objection Deadline (§ 2.3). If Seller does not receive Buyer's notice by said deadline, Buyer accepts title
405 subject to such rights, if any, of third parties of which Buyer has actual knowledge.
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407 8.3. Survey Review.
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409 8.3.1. Not Applicable. This § 8.3 shall not apply.
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411 8.3.2. Conditional on Survey. If the box in this § 8.3.2 is checked, Buyer shall have the right
412 to inspect the Survey. If written notice by or on behalf of Buyer of any unsatisfactory condition shown by the
413 Survey, notwithstanding § 8.2 or § 13, is received by Seller on or before Survey Objection Deadline (§
414 2.3) then such objection shall be deemed an unsatisfactory title condition. If Seller does not receive Buyer's
415 notice by Survey Objection Deadline (§ 2.3), Buyer accepts the Survey as satisfactory.
416

417 8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO
418 GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM
419 ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY
420 OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND
421 TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE
422 RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS
423 WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE
424 SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE
425 COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE
426 PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY
427 COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.
428

429 In the event the Property is located within a special taxing district and Buyer
430 desires to terminate this Contract as a result, if written notice, by or on behalf of Buyer, is
431 received by Seller on or before Off-Record Matters Objection Deadline (§ 2.3), this Contract
432 shall terminate. If Seller does not receive Buyer's notice by such deadline, Buyer accepts
433 the effect of the Property's inclusion in such special taxing district and waives the right to
434 terminate for that reason.
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436 8.5. Right to Object, Cure. Buyer's right to object shall include, but not be limited to, those
437 matters set forth in §§ 8 and 13. If Seller receives notice of unmerchantability of title or any other unsatisfactory
438 title condition or commitment terms as provided in §§ 8.1, 8.2 and 8.3, Seller shall use reasonable efforts to
439 correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title
440 condition is not corrected to Buyer's satisfaction on or before Closing, this Contract shall terminate; provided,
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445 however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

446 8.6. Right of First Refusal or Contract Approval. If there is a right of first refusal on the
447 Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms
448 and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right
449 to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly
450 or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly
451 notify Buyer of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not
452 occurred on or before Right of First Refusal Deadline (§ 2.3), this Contract shall terminate.

453 8.7. Title Advisory. The Title Documents affect the title, ownership and use of the Property and
454 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title,
455 ownership and use of the Property, including without limitation, boundary lines and encroachments, area, zoning,
456 unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws
457 and governmental regulations concerning land use, development and environmental matters. The surface
458 estate may be owned separately from the underlying mineral estate, and transfer of the
459 surface estate does not necessarily include transfer of the mineral rights or water rights.
460 Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on
461 or under the Property, which interests may give them rights to enter and use the Property.
462 Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely
463 consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract
464 [e.g., Title Objection Deadline (§ 2.3) and Off-Record Matters Objection Deadline (§ 2.3)].

465 9. LEAD-BASED PAINT. Unless exempt, if the improvements on the Property include one or more
466 residential dwellings for which a building permit was issued prior to January 1, 1978, this Contract shall be void
467 unless (1) a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller, the required real estate
468 licensees and Buyer, and (2) Seller receives the completed and fully executed form prior to the time when the
469 Contract is signed by all parties. Buyer acknowledges timely receipt of a completed Lead-Based Paint
470 Disclosure (Sales) form signed by Seller and the real estate licensees.

471 10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, BUYER 472 DISCLOSURE AND SOURCE OF WATER.

473 10.1. Seller's Property Disclosure Deadline. On or before Seller's Property Disclosure
474 Deadline (§ 2.3), Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real
475 Estate Commission's Seller's Property Disclosure form completed by Seller to the best of Seller's actual
476 knowledge, current as of the date of this Contract.

477 10.2. Inspection Objection Deadline. Buyer shall have the right to have inspections of the
478 physical condition of both the Property and Inclusions, at Buyer's expense. If (1) the physical condition of the
479 Property, (2) the physical condition of the Inclusions, (3) any proposed or existing transportation project, road,
480 street or highway, or (4) any other activity, odor or noise (whether on or off the Property) and its effect or
481 expected effect on the Property or its occupants is unsatisfactory in Buyer's subjective discretion, Buyer shall,
482 on or before Inspection Objection Deadline (§ 2.3):

483 10.2.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

484 10.2.2. Notice to Correct. Deliver to Seller a written description of any unsatisfactory
485 physical condition which Buyer requires Seller to correct.

486 If written notice is not received by Seller on or before Inspection Objection Deadline (§ 2.3), the physical
487 condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

488 10.3. Inspection Resolution Deadline. If a Notice to Correct is received by Seller and if Buyer
489 and Seller have not agreed in writing to a settlement thereof on or before Inspection Resolution Deadline
490 (§ 2.3), this Contract shall terminate one day following Inspection Resolution Deadline (§ 2.3), unless
491 before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

492 10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract, is
493 responsible for payment for all inspections, tests, surveys, engineering reports, or any other work performed at
494 Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of
495 such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the
496 Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any
497 liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity
498 includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability,
499 damage, cost or expense, or to enforce this section, including Seller's reasonable attorney and legal fees. The
500 provisions of this section shall survive the termination of this Contract.

501 10.5. Insurability. This Contract is conditional upon Buyer's satisfaction, in Buyer's subjective
502 discretion, with the availability, terms and conditions of and premium for property insurance. This Contract shall
503 terminate upon Seller's receipt, on or before Property Insurance Objection Deadline (§ 2.3), of Buyer's
504

519 written notice that such insurance was not satisfactory to Buyer. If said notice is not timely received, Buyer shall
520 have waived any right to terminate under this provision.

521 10.6. Buyer Disclosure. Buyer represents that Buyer Does Does Not need to sell and
522 close a property to complete this transaction.

523 Note: Any property sale contingency should appear in Additional Provisions (§ 26).

524 10.7. Source of Potable Water (Residential Land and Residential Improvements
525 Only). Buyer Does Does Not acknowledge receipt of a copy of Seller's Property Disclosure or
526 Source of Water Addendum disclosing the source of potable water for the Property. Buyer Does
527 Does Not acknowledge receipt of a copy of the current well permit. There is No Well.

528 Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE
529 GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE
530 DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S
531 WATER SUPPLIES.

532 10.8. Carbon Monoxide Alarms. Note: If the improvements on the Property have a fuel-fired
533 heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for
534 sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the
535 Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom
536 or in a location as required by the applicable building code.

537 11. METHAMPHETAMINE DISCLOSURE (Residential Property Only). If the Property is
538 residential, and Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of,
539 used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property
540 was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-
541 102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial
542 hygienist to test whether the Property has ever been used as a methamphetamine laboratory. If Buyer's test
543 results indicate that the Property has been contaminated with methamphetamine, but has not been remediated
544 to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102,
545 C.R.S., Buyer shall promptly give written notice to Seller of the results of the test, and Buyer may terminate this
546 Contract, notwithstanding any other provision of this Contract.

547 12. CLOSING. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the
548 date specified as the Closing Date (§ 2.3) or by mutual agreement at an earlier date. The hour and place of
549 Closing shall be as designated by mutual agreement of the parties.

550 13. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance
551 by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient
552 special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the
553 general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all
554 liens, including any governmental liens for special improvements installed as of the date of Buyer's signature
555 hereon, whether assessed or not. Title shall be conveyed subject to:

556 13.1. those specific Exceptions described by reference to recorded documents as reflected in the
557 Title Documents accepted by Buyer in accordance with Title Review (§ 8.1),

558 13.2. distribution utility easements (including cable TV),

559 13.3. those specifically described rights of third parties not shown by the public records of which
560 Buyer has actual knowledge and which were accepted by Buyer in accordance with Matters Not Shown by
561 the Public Records (§ 8.2) and Survey Review (§ 8.3).

562 13.4. inclusion of the Property within any special taxing district, and

563 13.5. other *n/a*

564 14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or
565 before Closing from the proceeds of this transaction or from any other source.

566 15. CLOSING COSTS, DOCUMENTS AND SERVICES.

567 15.1. Good Funds. Buyer and Seller shall pay, in Good Funds, their respective Closing costs
568 and all other items required to be paid at Closing, except as otherwise provided herein.

569 15.2. Closing Information and Documents. Buyer and Seller will furnish any additional
570 information and documents required by Closing Company that will be necessary to complete this transaction.
571 Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

572 15.3. Closing Services Fee. The fee for real estate closing services shall be paid at Closing
573 by Buyer Seller One-Half by Buyer and One-Half by Seller Other *n/a*.

593 15.4. Closing Instructions. Buyer and Seller agree to execute the Colorado Real Estate
594 Commission's Closing Instructions. Such Closing Instructions Are Are Not executed with this Contract.
595 Upon execution, Seller Buyer shall deliver such Closing Instructions to the Closing Company.
596
597 15.5. Status Letter and Transfer Fees. Any fees incident to the issuance of Association's
598 statement of assessments (Status Letter) shall be paid by Buyer Seller One-Half by Buyer and
599 One-Half by Seller . Any transfer fees assessed by the Association (Association's Transfer Fee) shall be
600 paid by Buyer Seller One-Half by Buyer and One-Half by Seller.
601
602 15.6. Local Transfer Tax. The Local Transfer Tax of *n/a* % of the Purchase Price
603 shall be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller.
604
605 15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction
606 shall be paid when due by Buyer Seller One-Half by Buyer and One-Half by Seller.
607
608 16. PRORATIONS. The following shall be prorated to Closing Date (§2.3), except as otherwise
609 provided:
610
611 16.1. Taxes. Personal property taxes, if any, and general real estate taxes for the year of
612 Closing, based on Taxes for the Calendar Year Immediately Preceding Closing Most
613 Recent Mill Levy and Most Recent Assessed Valuation, adjusted by any applicable qualifying seniors
614 property tax exemption, or Other ***no tax proration because Seller is tax-exempt*** .
615
616 16.2. Rents. Rents based on Rents Actually Received Accrued . At Closing, Seller
617 shall transfer or credit to Buyer the security deposits for all leases assigned, or any remainder after lawful
618 deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller
619 shall assign to Buyer all leases in effect at Closing and Buyer shall assume such leases.
620
621 16.3. Association Assessments. Current regular Association assessments and dues
622 (Association Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the
623 regular Association Assessments for deferred maintenance by the Association shall not be credited to Seller
624 except as may be otherwise provided by the Governing Documents. Any special assessment by the Association
625 for improvements that have been installed as of the date of Buyer's signature hereon shall be the obligation of
626 Seller. Any other special assessment assessed prior to Closing Date (§ 2.3) by the Association shall be the
627 obligation of Buyer Seller . Seller represents that the Association Assessments are currently payable at
628 \$ *n/a* per *n/a* and that there are no unpaid regular or special assessments against the Property except the
629 current regular assessments and *n/a* . Such assessments are subject to change as provided in the Governing
630 Documents. Seller agrees to promptly request the Association to deliver to Buyer before Closing Date (§ 2.3)
631 a current Status Letter.
632
633 16.4. Other Prorations. Water and sewer charges, interest on continuing loan, and ***storm***
634 ***sewer if applicable*** .
635
636 16.5. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.
637
638
639 17. POSSESSION. Possession of the Property shall be delivered to Buyer on Possession Date at
640 Possession Time (§ 2.3), subject to the following leases or tenancies: *n/a* .
641
642 If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall
643 be additionally liable to Buyer for payment of \$ *n/a* per day (or any part of a day notwithstanding) § 2.5.1) from
644 the Possession Date and Possession Time (§ 2.3) until possession is delivered.
645 Buyer Does Does Not represent that Buyer will occupy the Property as Buyer's principal residence.
646
647
648 18. ASSIGNABILITY AND INUREMENT. This Contract Shall Shall Not be assignable by
649 Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of
650 and be binding upon the heirs, personal representatives, successors and assigns of the parties.
651
652
653 19. CAUSES OF LOSS, INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND
654 INCLUSIONS AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property,
655 Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and
656 tear excepted.
657
658 19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire,
659 other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase
660 Price, Seller shall be obligated to repair the same before Closing Date (§ 2.3). In the event such damage is
661 not repaired within said time or if the damage exceeds such sum, this Contract may be terminated at the option
662 of Buyer by delivering to Seller written notice of termination on or before Closing. Should Buyer elect to carry out
663 this Contract despite such damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that
664 were received by Seller (but not the Association, if any) resulting from such damage to the Property and
665 Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed
666

667 the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, then Seller
668 shall assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such
669 insurance policy, but not to exceed the total Purchase Price.

670
671 19.2. Damage, Inclusions and Services. Should any Inclusion or service (including systems and
672 components of the Property, e.g. heating, plumbing) fail or be damaged between the date of this Contract and
673 Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of
674 such Inclusion or service with a unit of similar size, age and quality, or an equivalent credit, but only to the
675 extent that the maintenance or replacement of such Inclusion, service or fixture is not the responsibility of the
676 Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller
677 and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may
678 cover the repair or replacement of such Inclusions. The risk of loss for damage to growing crops by fire or other
679 casualty shall be borne by the party entitled to the growing crops as provided in § 3.1.7 and such party shall be
680 entitled to such insurance proceeds or benefits for the growing crops.

681
682 19.3. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, shall have
683 the right to walk through the Property prior to Closing to verify that the physical condition of the Property and
684 Inclusions complies with this Contract.
685
686
687

688 20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer and
689 Seller acknowledge that the respective broker has advised that this document has important legal consequences
690 and has recommended the examination of title and consultation with legal and tax or other counsel before
691 signing this Contract.
692
693

694 21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or
695 check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or
696 tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be
697 the following remedies:
698

699 21.1. If Buyer is in Default:

700 21.1.1. Specific Performance. Seller may elect to treat this Contract as canceled, in
701 which case all Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller and
702 retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this
703 Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or
704 both
705
706

707 21.1.2. Liquidated Damages. All Earnest Money (whether or not paid by Buyer) shall be
708 forfeited by Buyer, paid to Seller, and retained by Seller. Both parties shall thereafter be released from all
709 obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and
710 not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 19,
711 22, 23 and 24), said forfeiture shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the
712 obligations of this Contract. Seller expressly waives the remedies of specific performance and additional
713 damages.
714

715 21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all
716 Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper,
717 or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to
718 specific performance or damages, or both.
719
720

721 22. LEGAL FEES, COST AND EXPENSES. In the event of any arbitration or litigation relating to this
722 Contract, prior to or after Closing Date (§ 2.3), the arbitrator or court shall award to the prevailing party all
723 reasonable costs and expenses, including attorney and legal fees.
724
725

726 23. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved,
727 the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which
728 the parties meet with an impartial person who helps to resolve the dispute informally and confidentially.
729 Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any
730 settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of
731 such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not
732 resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other
733 at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.
734
735
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737

738 24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall
739 release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the
740

741 event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract),
742 Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole
743 discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of
744 competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice
745 to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim
746 (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days
747 of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be authorized to return the Earnest
748 Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interplead
749 the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the
750 Order of the Court. The parties reaffirm the obligation of Mediation (§ 23). The provisions of this § 24 apply
751 only if the Earnest Money Holder is one of the Brokerage Firms named in § 34 or § 35.
752
753
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755

756 25. TERMINATION. In the event this Contract is terminated, all Earnest Money received hereunder shall
757 be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 23 and 24.
758
759

760 26. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the
761 Colorado Real Estate Commission.)

762 **26.a. Seller agrees that Buyer shall have the right to conduct a feasibility review of the property**
763 **through the Inspection Objection deadline. Such review may include, but is not limited to the**
764 **following: environmental, soils, asbestos, cost and availability of utility services, review of**
765 **services and/or amenities required by Adams County or the City of Westminster.**

766 **26.b. If Buyer is not satisfied with the results of its reviews, then Buyer shall have the right**
767 **to terminate this contract by providing written notice to the Seller on or before the Inspection**
768 **Objection Deadline. If Buyer elects to terminate this contract prior to or on the Inspection**
769 **Objection Deadline, the Buyer's earnest money deposit shall be returned in full within five days.**

770 **26.c. This offer is subject to Buyer receiving grant funding and approval for such funding by the**
771 **Inspection Objection deadline.**

772 **26.d. The Buyer intends to build one single family unit on the subject property. If Buyer learns**
773 **that approval to build said units may not or will not be approved by Adams County or the City of**
774 **Westminster, Buyer will terminate the contract on or before the expiration of the Inspection**
775 **Objection Deadline.**

776 **26.e. The parties agree to execute the following form required by Buyer: Pre-Acquisition**
777 **Agreement, unless otherwise agreed upon.**

778 **26.f. The City of Westminster has capped a well on the property in accordance with State of**
779 **Colorado regulations and requirements.**

780 **26.g. Seller shall provide Buyer an Improvement Location Certificate within 15 days of MEC at**
781 **Seller's expense. Buyer shall still have the option to obtain a full survey at Buyer's expense per**
782 **7.3.**

783 **26.h. This contract shall be contingent on Seller obtaining Westminster City Council Approval,**
784 **("CCA") which is expected by the Seller to be obtained on January 11, 2010. If the City Council**
785 **denies the request to proceed with this transaction, this contract shall terminate and the earnest**
786 **money shall be returned to the Buyer within 5 business days of City Council denial. If CCA is not**
787 **received by 2/28/2010, Buyer may, in Buyer's sole discretion, terminate this contract, and Buyer's**
788 **earnest money shall be returned within 5 business days after Buyer termination.**

789 ~~**26.i. Prior to the Acceptance Deadline, in lieu of a Seller signature on this contract, Seller shall**~~
790 ~~**provide Buyer with a letter of preliminary approval of this contract signed by the City Manager,**~~
791 ~~**subject to the CCA in 26.h. Seller shall sign this contract if CCA is obtained.**~~

800 27. ATTACHMENTS. The following are a part of this Contract:
801
802

803 **Closing Instructions when executed**

804 Note: The following disclosure forms are attached but are not a part of this Contract:

805 **Seller's Property Disclosure and Source of Water Addendum, When Executed**

806 28. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith,
807 including but not limited to exercising the rights and obligations set forth in the provisions of Financing
808 Conditions and Obligations (§ 5) and Property Disclosure, Inspection, Indemnity, Insurability,
809 Buyer Disclosure and Source of Water (§ 10).
810
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812 29. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This Contract, its exhibits and specified
813 addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior
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agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

30. COLORADO FORECLOSURE PROTECTION ACT. If the Colorado Foreclosure Protection Act (Act) applies, then a different contract that complies with the provisions of the Act is required, and this Contract shall be void and of no effect. The Act generally requires that (1) the Property is residential, (2) any loan secured by the Property is at least thirty days delinquent or in default, (3) Buyer does not reside in the Property for at least one year and (4) Buyer is subject to the Act. Buyer Will Will NOT occupy the Property as Buyer's personal residence for at least one year. The parties are further advised to consult with their own attorney.

31. NOTICE, DELIVERY, AND CHOICE OF LAW.

31.1. Physical Delivery. All notices must be in writing, except as provided in § 31.2. Any document, including a signed document or notice, delivered to Buyer shall be effective when physically received by Buyer, any signator on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 31.2 below. Any document, including a signed document or notice, delivered to Seller shall be effective when physically received by Seller, any signator on behalf of Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 31.2 below.

31.2. Electronic Delivery. As an alternative to physical delivery, any document, including any signed document or written notice may be delivered in electronic form only by the following indicated methods: Facsimile E-mail Internet No Electronic Delivery. Documents with original signatures shall be provided upon request of any party.

31.3. Choice of Law. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property located in Colorado.

32. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 31 on or before Acceptance Deadline Date (§ 2.3) and Acceptance Deadline Time (§ 2.3). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.



Date: 12/11/2009 

Buyer : **Habitat for Humanity of Metro Denver, Inc.**
By: Heather Lafferty Executive Director
Address: **1500 W 12th Ave. Denver CO 80204-3410**
Phone: Fax:
Email:

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 33]

Seller: _____ Date: _____

City of Westminster, A Municipal Corporation
By

Address:
Phone: Fax:
Email:

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33. COUNTER; REJECTION. This offer is Countered Rejected. (clear selection)
Initials only of party (Buyer or Seller) who countered or rejected offer

END OF CONTRACT TO BUY AND SELL REAL ESTATE

34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
(To be completed by Broker working with Buyer)

Broker Does Does Not acknowledge receipt of Earnest Money deposit specified in § 4.1 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 34 or § 35, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Buyer as a Buyer's Agent Seller's Agent Transaction-Broker in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Listing Brokerage Firm
 Buyer Other *n/a*

Brokerage Firm's Name: *RE/MAX Professionals*

Broker:  Date: 12/11/2009
Beth Hoffman

Address: *1745 Shea Center Dr. Suite 100 Highlands Ranch, CO 80129*
Ph: *303-981-9336* Fax: *303-568-4980* Email: *beth@bethhoffmanhomes.com*

35. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
(To be completed by Broker working with Seller)

Listing Broker Does Does Not (n/a) acknowledge receipt of Earnest Money deposit specified in § 4.1 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 34 or § 35, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with the Seller as a Seller's Agent Buyer's Agent Transaction-Broker (n/a) in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Seller Buyer Other
Brokerage Firm's Name: *Re/Max Alliance*

Broker: *Tammy Camalick*
Address: *, CO*
Ph: Fax: Email: *tammycamalick@comcast.net*

CBS1-5-09. CONTRACT TO BUY AND SELL REAL ESTATE
CTM eContracts - ©2009 CTM Software Corp.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS1-5-09) (Mandatory 7-09)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE

Date: 12/11/2009

1. AGREEMENT. Buyer agrees to buy, and Seller agrees to sell, the Property defined below on the terms and conditions set forth in this contract (Contract).

2. DEFINED TERMS.

2.1.1 Buyer. Buyer, **Habitat for Humanity of Metro Denver, Inc.**

will take title to the real property described below as Joint Tenants Tenants In Common

Other **in severalty**

2.2. Property. The Property is the following legally described real estate in the County of Adams, Colorado:

Lot 1 Block 79A Shaw Heights 6th Filing

known as No. **4460 Shaw Blvd. Westminster CO 80031**

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

2.3. Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 4.2.1	Alternative Earnest Money Deadline	7 days after MEC
2	§ 5.1	Loan Application Deadline	n/a
3	§ 5.2	Loan Conditions Deadline	n/a
4	§ 5.3	Buyer's Credit Information Deadline	n/a
5	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a
6	§ 5.4	Existing Loan Documents Deadline	n/a
7	§ 5.4	Existing Loan Documents Objection Deadline	n/a
8	§ 5.4	Loan Transfer Approval Deadline	n/a
9	§ 6.2.2	Appraisal Deadline	29 days after CCA
10	§ 6.2.2	Appraisal Objection Deadline	30 days after CCA
11	§ 7.1	Title Deadline	7 days after MEC
12	§ 7.2	Document Request Deadline	7 days after MEC
13	§ 7.3	Survey Deadline	29 days after CCA
14	§ 7.4.4.1	CIC Documents Deadline	n/a
15	§ 7.4.5	CIC Documents Objection Deadline	n/a
16	§ 8.1	Title Objection Deadline	14 days after MEC
17	§ 8.2	Off-Record Matters Deadline	7 days after MEC
18	§ 8.2	Off-Record Matters Objection Deadline	14 days after MEC
19	§ 8.3.2	Survey Objection Deadline	30 days after CCA
20	§ 8.6	Right of First Refusal Deadline	n/a
21	§ 10.1	Seller's Property Disclosure Deadline	7 days after MEC
22	§ 10.2	Inspection Objection Deadline	30 days after CCA
23	§ 10.3	Inspection Resolution Deadline	33 days after CCA
24	§ 10.5	Property Insurance Objection Deadline	n/a
25	§ 12	Closing Date	45 days after CCA

26	§ 17	Possession Date	Closing Date	
27	§ 17	Possession Time	DOD	
28	§ 32	Acceptance Deadline Date	12/18/2009	Friday
29	§ 32	Acceptance Deadline Time	5:00 p.m. Mountain	
30	n/a	n/a	n/a	
31	n/a	n/a	n/a	

2.4. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable and when inserted on any line in Dates and Deadlines (§ 2.3), means that the corresponding provision of the Contract to which reference is made is deleted. The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

2.5. Day; Computation of Period of Days, Deadline.

2.5.1. Day. As used in this Contract, the term "day" shall mean the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

2.5.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline

Shall

Shall Not be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline shall not be extended.

3. INCLUSIONS AND EXCLUSIONS.

3.1. Inclusions. The Purchase Price includes the following items (Inclusions):

3.1.1. Fixtures. If attached to the Property on the date of this Contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including n/a remote controls; and
n/a

3.1.2. Personal Property. The following are included if on the Property whether attached or not on the date of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included: Water Softeners Smoke/Fire Detectors Security Systems Satellite Systems (including satellite dishes).

3.1.3. Other Inclusions.

n/a

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except n/a. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.4. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

n/a

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except n/a. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.5. Parking and Storage Facilities. Use Only Ownership of the following parking facilities: n/a; and Use Only Ownership of the following storage facilities:

n/a

3.1.6. Water Rights, Water Interests, Water and Sewer Taps. The following legally described water rights: **any surface or subsurface water rights**

Any water rights shall be conveyed by n/a Deed Other applicable legal instrument.

3.1.6.1. If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Water Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer shall complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer shall file the form with the Division within sixty days after Closing. The Well Permit # is n/a.

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- 3.1.6.2. Water Stock Certificates:
- 3.1.6.3. Water Tap Sewer Tap

Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the tap.

3.1.7. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows:

n/a

3.2. Exclusions. The following items are excluded:

n/a

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below shall be payable in U. S. Dollars by Buyer as follows

Item No.	Reference:	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$25,000.00	
2	§ 4.2	Earnest Money		\$1,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Seller or Private Financing		
6	<i>n/a</i>	<i>n/a</i>		
7	<i>n/a</i>	<i>n/a</i>		
8	§ 4.3	Cash at Closing		\$24,000.00
9		TOTAL	\$25,000.00	\$25,000.00

4.2. Earnest Money. The Earnest Money set forth in this section, in the form of **company check** is part payment of the Purchase Price and shall be payable to and held by **Re/Max Alliance** (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an Alternative Earnest Money Deadline (§ 2.3) for its payment. If Earnest Money Holder is other than the Brokerage Firm identified in § 34 or § 35 below, Closing Instructions signed by Buyer, Seller and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

4.2.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of the Contract is as set forth as the Alternative Earnest Money Deadline (§ 2.3).

4.3. Form of Funds; Time of Payment; Funds Available. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, shall be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds). All funds required to be paid at Closing shall be timely paid to allow disbursement by Closing Company at Closing OR SUCH PARTY SHALL BE IN DEFAULT. Buyer represents that Buyer, as of the date of this Contract, Does Does Not have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.4. Seller Concession. Seller, at Closing, shall pay or credit, as directed by Buyer, a total amount of \$ *n/a* to assist with Buyer's closing costs, loan discount points, loan origination fees, prepaid items (including any amounts that Seller agrees to pay because Buyer is not allowed to pay due to FHA, CHFA, VA, etc.), and any other fee, cost, charge, expense or expenditure related to Buyer's New Loan or other allowable Seller concession (collectively, Seller Concession). The Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. If the amount of Seller Concession exceeds the aggregate of what is allowed, Seller shall not pay or be charged such excess amount.

4.5. New Loan. (Omitted as inapplicable)

4.6. Assumption. (Omitted as inapplicable)

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4.7. Seller or Private Financing. (Omitted as inapplicable)

5. FINANCING CONDITIONS AND OBLIGATIONS. (Omitted as inapplicable)

5.3. Credit Information and Buyer,s New Senior Loan. (Omitted as inapplicable)

5.4. Existing Loan Review. (Omitted as inapplicable)

6. APPRAISAL PROVISIONS.

6.1. Property Approval. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller may terminate this Contract (notwithstanding § 10 of this Contract) by written notice to Buyer on or before three days following Seller's receipt of the Requirements. Seller's right to terminate in this § 6.1 shall not apply if on or before any termination by Seller pursuant to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the Requirements are completed by Seller; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

6.2. Appraisal Condition.

6.2.1. Not Applicable. This § 6.2 shall not apply.

6.2.2. Conventional/Other. Buyer shall have the sole option and election to terminate this Contract if the Purchase Price exceeds the Property's valuation determined by an appraiser engaged by **Buyer**. The appraisal shall be received by Buyer or Buyer's lender on or before Appraisal Deadline (§ 2.3). This Contract shall terminate by Buyer delivering to Seller written notice of termination and either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price, received by Seller on or before Appraisal Objection Deadline (§ 2.3). If Seller does not receive such written notice of termination on or before Appraisal Objection Deadline (§ 2.3), Buyer waives any right to terminate under this section.

6.2.3 FHA. It is expressly agreed, that notwithstanding any other provisions of this Contract, the Purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the Purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the appraised value of the Property of not less than \$ n/a. The Purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The Purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.

6.2.4 VA. It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

6.3. Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by Buyer Seller .

7. EVIDENCE OF TITLE, SURVEY AND CIC DOCUMENTS.

7.1. Evidence of Title. On or before Title Deadline (§ 2.3), Seller shall cause to be furnished to Buyer, at Seller,s expense, a current commitment for owner,s title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked, An Abstract of title certified to a current date. If title insurance is furnished, Seller shall also deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract) in Seller's possession. At Seller,s expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. The title insurance commitment Shall Shall Not commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) any unrecorded mechanics, liens, (5) gap period (effective date of commitment to date deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain this additional coverage shall be by Buyer Seller .

Note: The title insurance company may not agree to delete or insure over any or all of the standard exceptions.

297 Buyer shall have the right to review the Title Commitment. If the Title Commitment or its provisions are not
298 satisfactory to Buyer, Buyer may exercise Buyer's rights pursuant to § 8.1.
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300 7.2 Copies of Exceptions. On or before Title Deadline (§2.3), Seller, at Seller.s expense,
301 shall furnish to Buyer and **Buyer's Representative if designated prior to Title Deadline**, (1) copies of
302 any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title
303 Commitment is required to be furnished, and if this box is checked Copies of any Other Documents
304 (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box
305 is not checked, Seller shall have the obligation to furnish these documents pursuant to this section if requested
306 by Buyer any time on or before Document Request Deadline (§2.3). This requirement shall pertain only to
307 documents as shown of record in the office of the clerk and recorder in the county where the Property is
308 located. The abstract or Title Commitment, together with any copies or summaries of such documents furnished
309 pursuant to this section, constitute the title documents (Title Documents).
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311 7.3 Survey. On or before Survey Deadline (§2.3), Seller Buyer shall order or provide,
312 and cause Buyer (and the issuer of the Title Commitment or the provider of the opinion of title if an abstract) to
313 receive, a current Improvement Survey Plat Improvement Location Certificate n/a (the
314 description checked is known as Survey). An amount not to exceed \$ n/a for Survey shall be
315 paid by Buyer Seller . If the cost exceeds this amount, Buyer Seller shall pay the
316 excess on or before Closing. Buyer shall not be obligated to pay the excess unless Buyer is
317 informed of the cost and delivers to Seller, before Survey is ordered, Buyer.s written
318 agreement to pay the required amount to be paid by Buyer.
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320 7.4 Common Interest Community Documents. The term CIC Documents consists of all
321 owners, associations (Association) declarations, bylaws, operating agreements, rules and regulations, party wall
322 agreements, minutes of most recent annual owners, meeting and minutes of any directors, or managers,
323 meetings during the six month period immediately preceding the date of this Contract, if any (Governing
324 Documents), most recent financial documents consisting of (1) annual balance sheet, (2) annual income and
325 expenditures statement, and (3) annual budget (Financial Documents), if any (collectively CIC Documents).
326

327 7.4.1. Not Applicable. This § 7.4 shall not apply.
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329 7.4.2. Common Interest Community Disclosure. THE PROPERTY IS LOCATED
330 WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH
331 COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE
332 OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES
333 AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND
334 REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY,
335 INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT
336 PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND
337 POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS
338 OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY
339 WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE
340 ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE
341 COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS
342 OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE
343 COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.
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345 7.4.3. Not Conditional on Review. Buyer acknowledges that Buyer has received a copy
346 of the CIC Documents. Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions that
347 they impose upon the Property and its owners and waives any right to terminate this Contract due to such
348 documents, notwithstanding the provisions of § 8.5.
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350 7.4.4. CIC Documents to Buyer.

351 7.4.4.1. Seller to Provide CIC Documents. Seller shall cause the CIC Documents
352 to be provided to Buyer, at Seller's expense, on or before CIC Documents Deadline (§ 2.3).
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354 7.4.4.2. Seller Authorizes Association. Seller authorizes the Association to
355 provide the CIC Documents to Buyer, at Seller's expense.
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357 7.4.4.3. Seller's Obligation. Seller's obligation to provide the CIC Documents shall
358 be fulfilled upon Buyer's receipt of the CIC Documents, regardless of who provides such documents.
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360 7.4.5. Conditional on Buyer's Review. If the box in either § 7.4.4.1 or § 7.4.4.2 is
361 checked, the provisions of this § 7.4.5 shall apply. Written notice of any unsatisfactory provision in any of the
362 CIC Documents, in Buyer's subjective discretion, signed by Buyer, or on behalf of Buyer, and delivered to Seller
363 on or before CIC Documents Objection Deadline (§ 2.3), shall terminate this Contract.
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365 Should Buyer receive the CIC Documents after CIC Documents Deadline (§ 2.3), Buyer
366 shall have the right, at Buyer's option, to terminate this Contract by written notice delivered to Seller on or
367 before ten days after Buyer's receipt of the CIC Documents. If Buyer does not receive the CIC Documents, or if
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371 such written notice to terminate would otherwise be required to be delivered after Closing Date (§ 2.3),
372 Buyer's written notice to terminate shall be received by Seller on or before three days prior to Closing Date (§
373 2.3). If Seller does not receive written notice from Buyer within such time, Buyer accepts the provisions of the
374 CIC Documents, and Buyer's right to terminate this Contract pursuant to this section is waived, notwithstanding
375 the provisions of § 8.5.
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377 NOTE: If no box in this § 7.4 is checked, the provisions of § 7.4.4.1 shall apply.
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380 8. TITLE AND SURVEY REVIEW.
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382 8.1. Title Review. Buyer shall have the right to inspect the Title Documents. Buyer shall provide
383 written notice of unmerchantability of title, unsatisfactory form or content of Title Commitment, or,
384 notwithstanding § 13, of any other unsatisfactory title condition shown by the Title Documents (Notice of Title
385 Objection). Such notice shall be signed by or on behalf of Buyer and delivered to Seller on or before Title
386 Objection Deadline (§ 2.3), provided such Title Documents are received by Buyer in a timely manner. If
387 there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new
388 Exception to title and the modified Title Commitment shall be delivered to Buyer. Provided however, Buyer shall
389 have five days to deliver the Notice of Title Objection after receipt by Buyer of the following documents: (1) any
390 required Title Document not timely received by Buyer, (2) any change to the Title Documents, or (3)
391 endorsement to the Title Commitment. If Seller does not receive Buyer's Notice of Title Objection by the
392 applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Title Documents as
393 satisfactory.
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395 8.2. Matters Not Shown by the Public Records. Seller shall deliver to Buyer, on or before
396 Off-Record Matters Deadline (§ 2.3) true copies of all leases and surveys in Seller's possession pertaining
397 to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental
398 improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first
399 refusal and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the
400 right to inspect the Property to investigate if any third party has any right in the Property not shown by the
401 public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights).
402 Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection, notwithstanding
403 § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before Off-Record Matters
404 Objection Deadline (§ 2.3). If Seller does not receive Buyer's notice by said deadline, Buyer accepts title
405 subject to such rights, if any, of third parties of which Buyer has actual knowledge.
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407 8.3. Survey Review.
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409 8.3.1. Not Applicable. This § 8.3 shall not apply.
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411 8.3.2. Conditional on Survey. If the box in this § 8.3.2 is checked, Buyer shall have the right
412 to inspect the Survey. If written notice by or on behalf of Buyer of any unsatisfactory condition shown by the
413 Survey, notwithstanding § 8.2 or § 13, is received by Seller on or before Survey Objection Deadline (§
414 2.3) then such objection shall be deemed an unsatisfactory title condition. If Seller does not receive Buyer's
415 notice by Survey Objection Deadline (§ 2.3), Buyer accepts the Survey as satisfactory.
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417 8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO
418 GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM
419 ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY
420 OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND
421 TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE
422 RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS
423 WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE
424 SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE
425 COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE
426 PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY
427 COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.
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429 In the event the Property is located within a special taxing district and Buyer
430 desires to terminate this Contract as a result, if written notice, by or on behalf of Buyer, is
431 received by Seller on or before Off-Record Matters Objection Deadline (§ 2.3), this Contract
432 shall terminate. If Seller does not receive Buyer's notice by such deadline, Buyer accepts
433 the effect of the Property's inclusion in such special taxing district and waives the right to
434 terminate for that reason.
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436 8.5. Right to Object, Cure. Buyer's right to object shall include, but not be limited to, those
437 matters set forth in §§ 8 and 13. If Seller receives notice of unmerchantability of title or any other unsatisfactory
438 title condition or commitment terms as provided in §§ 8.1, 8.2 and 8.3, Seller shall use reasonable efforts to
439 correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title
440 condition is not corrected to Buyer's satisfaction on or before Closing, this Contract shall terminate; provided,
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445 however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

446 8.6. Right of First Refusal or Contract Approval. If there is a right of first refusal on the
447 Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms
448 and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right
449 to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly
450 or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly
451 notify Buyer of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not
452 occurred on or before Right of First Refusal Deadline (§ 2.3), this Contract shall terminate.

453 8.7. Title Advisory. The Title Documents affect the title, ownership and use of the Property and
454 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title,
455 ownership and use of the Property, including without limitation, boundary lines and encroachments, area, zoning,
456 unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws
457 and governmental regulations concerning land use, development and environmental matters. The surface
458 estate may be owned separately from the underlying mineral estate, and transfer of the
459 surface estate does not necessarily include transfer of the mineral rights or water rights.
460 Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on
461 or under the Property, which interests may give them rights to enter and use the Property.
462 Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely
463 consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract
464 [e.g., Title Objection Deadline (§ 2.3) and Off-Record Matters Objection Deadline (§ 2.3)].

465 9. LEAD-BASED PAINT. Unless exempt, if the improvements on the Property include one or more
466 residential dwellings for which a building permit was issued prior to January 1, 1978, this Contract shall be void
467 unless (1) a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller, the required real estate
468 licensees and Buyer, and (2) Seller receives the completed and fully executed form prior to the time when the
469 Contract is signed by all parties. Buyer acknowledges timely receipt of a completed Lead-Based Paint
470 Disclosure (Sales) form signed by Seller and the real estate licensees.

471 10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, BUYER 472 DISCLOSURE AND SOURCE OF WATER.

473 10.1. Seller's Property Disclosure Deadline. On or before Seller's Property Disclosure
474 Deadline (§ 2.3), Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real
475 Estate Commission's Seller's Property Disclosure form completed by Seller to the best of Seller's actual
476 knowledge, current as of the date of this Contract.

477 10.2. Inspection Objection Deadline. Buyer shall have the right to have inspections of the
478 physical condition of both the Property and Inclusions, at Buyer's expense. If (1) the physical condition of the
479 Property, (2) the physical condition of the Inclusions, (3) any proposed or existing transportation project, road,
480 street or highway, or (4) any other activity, odor or noise (whether on or off the Property) and its effect or
481 expected effect on the Property or its occupants is unsatisfactory in Buyer's subjective discretion, Buyer shall,
482 on or before Inspection Objection Deadline (§ 2.3):

483 10.2.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

484 10.2.2. Notice to Correct. Deliver to Seller a written description of any unsatisfactory
485 physical condition which Buyer requires Seller to correct.

486 If written notice is not received by Seller on or before Inspection Objection Deadline (§ 2.3), the physical
487 condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

488 10.3. Inspection Resolution Deadline. If a Notice to Correct is received by Seller and if Buyer
489 and Seller have not agreed in writing to a settlement thereof on or before Inspection Resolution Deadline
490 (§ 2.3), this Contract shall terminate one day following Inspection Resolution Deadline (§ 2.3), unless
491 before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

492 10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract, is
493 responsible for payment for all inspections, tests, surveys, engineering reports, or any other work performed at
494 Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of
495 such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the
496 Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any
497 liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity
498 includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability,
499 damage, cost or expense, or to enforce this section, including Seller's reasonable attorney and legal fees. The
500 provisions of this section shall survive the termination of this Contract.

501 10.5. Insurability. This Contract is conditional upon Buyer's satisfaction, in Buyer's subjective
502 discretion, with the availability, terms and conditions of and premium for property insurance. This Contract shall
503 terminate upon Seller's receipt, on or before Property Insurance Objection Deadline (§ 2.3), of Buyer's
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519 written notice that such insurance was not satisfactory to Buyer. If said notice is not timely received, Buyer shall
520 have waived any right to terminate under this provision.

521 10.6. Buyer Disclosure. Buyer represents that Buyer Does Does Not need to sell and
522 close a property to complete this transaction.

523 Note: Any property sale contingency should appear in Additional Provisions (§ 26).

524 10.7. Source of Potable Water (Residential Land and Residential Improvements
525 Only). Buyer Does Does Not acknowledge receipt of a copy of Seller's Property Disclosure or
526 Source of Water Addendum disclosing the source of potable water for the Property. Buyer Does
527 Does Not acknowledge receipt of a copy of the current well permit. There is No Well.

528 Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE
529 GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE
530 DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S
531 WATER SUPPLIES.

532 10.8. Carbon Monoxide Alarms. Note: If the improvements on the Property have a fuel-fired
533 heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for
534 sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the
535 Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom
536 or in a location as required by the applicable building code.

537 11. METHAMPHETAMINE DISCLOSURE (Residential Property Only). If the Property is
538 residential, and Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of,
539 used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property
540 was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-
541 102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial
542 hygienist to test whether the Property has ever been used as a methamphetamine laboratory. If Buyer's test
543 results indicate that the Property has been contaminated with methamphetamine, but has not been remediated
544 to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102,
545 C.R.S., Buyer shall promptly give written notice to Seller of the results of the test, and Buyer may terminate this
546 Contract, notwithstanding any other provision of this Contract.

547 12. CLOSING. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the
548 date specified as the Closing Date (§ 2.3) or by mutual agreement at an earlier date. The hour and place of
549 Closing shall be as designated by mutual agreement of the parties.

550 13. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance
551 by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient
552 special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the
553 general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all
554 liens, including any governmental liens for special improvements installed as of the date of Buyer's signature
555 hereon, whether assessed or not. Title shall be conveyed subject to:

556 13.1. those specific Exceptions described by reference to recorded documents as reflected in the
557 Title Documents accepted by Buyer in accordance with Title Review (§ 8.1),

558 13.2. distribution utility easements (including cable TV),

559 13.3. those specifically described rights of third parties not shown by the public records of which
560 Buyer has actual knowledge and which were accepted by Buyer in accordance with Matters Not Shown by
561 the Public Records (§ 8.2) and Survey Review (§ 8.3).

562 13.4. inclusion of the Property within any special taxing district, and

563 13.5. other *n/a*

564 14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or
565 before Closing from the proceeds of this transaction or from any other source.

566 15. CLOSING COSTS, DOCUMENTS AND SERVICES.

567 15.1. Good Funds. Buyer and Seller shall pay, in Good Funds, their respective Closing costs
568 and all other items required to be paid at Closing, except as otherwise provided herein.

569 15.2. Closing Information and Documents. Buyer and Seller will furnish any additional
570 information and documents required by Closing Company that will be necessary to complete this transaction.
571 Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

572 15.3. Closing Services Fee. The fee for real estate closing services shall be paid at Closing
573 by Buyer Seller One-Half by Buyer and One-Half by Seller Other *n/a*.

593 15.4. Closing Instructions. Buyer and Seller agree to execute the Colorado Real Estate
594 Commission's Closing Instructions. Such Closing Instructions Are Are Not executed with this Contract.
595 Upon execution, Seller Buyer shall deliver such Closing Instructions to the Closing Company.
596
597 15.5. Status Letter and Transfer Fees. Any fees incident to the issuance of Association's
598 statement of assessments (Status Letter) shall be paid by Buyer Seller One-Half by Buyer and
599 One-Half by Seller . Any transfer fees assessed by the Association (Association's Transfer Fee) shall be
600 paid by Buyer Seller One-Half by Buyer and One-Half by Seller.
601
602 15.6. Local Transfer Tax. The Local Transfer Tax of *n/a* % of the Purchase Price
603 shall be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller.
604
605 15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction
606 shall be paid when due by Buyer Seller One-Half by Buyer and One-Half by Seller.
607
608 16. PRORATIONS. The following shall be prorated to Closing Date (§2.3), except as otherwise
609 provided:
610
611 16.1. Taxes. Personal property taxes, if any, and general real estate taxes for the year of
612 Closing, based on Taxes for the Calendar Year Immediately Preceding Closing Most
613 Recent Mill Levy and Most Recent Assessed Valuation, adjusted by any applicable qualifying seniors
614 property tax exemption, or Other ***no tax proration because Seller is tax-exempt*** .
615
616 16.2. Rents. Rents based on Rents Actually Received Accrued . At Closing, Seller
617 shall transfer or credit to Buyer the security deposits for all leases assigned, or any remainder after lawful
618 deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller
619 shall assign to Buyer all leases in effect at Closing and Buyer shall assume such leases.
620
621 16.3. Association Assessments. Current regular Association assessments and dues
622 (Association Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the
623 regular Association Assessments for deferred maintenance by the Association shall not be credited to Seller
624 except as may be otherwise provided by the Governing Documents. Any special assessment by the Association
625 for improvements that have been installed as of the date of Buyer's signature hereon shall be the obligation of
626 Seller. Any other special assessment assessed prior to Closing Date (§ 2.3) by the Association shall be the
627 obligation of Buyer Seller . Seller represents that the Association Assessments are currently payable at
628 \$ *n/a* per *n/a* and that there are no unpaid regular or special assessments against the Property except the
629 current regular assessments and *n/a* . Such assessments are subject to change as provided in the Governing
630 Documents. Seller agrees to promptly request the Association to deliver to Buyer before Closing Date (§ 2.3)
631 a current Status Letter.
632
633 16.4. Other Prorations. Water and sewer charges, interest on continuing loan, and ***storm***
634 ***sewer if applicable*** .
635
636 16.5. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.
637
638
639 17. POSSESSION. Possession of the Property shall be delivered to Buyer on Possession Date at
640 Possession Time (§ 2.3), subject to the following leases or tenancies: *n/a* .
641
642 If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall
643 be additionally liable to Buyer for payment of \$ *n/a* per day (or any part of a day notwithstanding) § 2.5.1) from
644 the Possession Date and Possession Time (§ 2.3) until possession is delivered.
645 Buyer Does Does Not represent that Buyer will occupy the Property as Buyer's principal residence.
646
647
648 18. ASSIGNABILITY AND INUREMENT. This Contract Shall Shall Not be assignable by
649 Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of
650 and be binding upon the heirs, personal representatives, successors and assigns of the parties.
651
652
653 19. CAUSES OF LOSS, INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND
654 INCLUSIONS AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property,
655 Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and
656 tear excepted.
657
658 19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire,
659 other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase
660 Price, Seller shall be obligated to repair the same before Closing Date (§ 2.3). In the event such damage is
661 not repaired within said time or if the damage exceeds such sum, this Contract may be terminated at the option
662 of Buyer by delivering to Seller written notice of termination on or before Closing. Should Buyer elect to carry out
663 this Contract despite such damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that
664 were received by Seller (but not the Association, if any) resulting from such damage to the Property and
665 Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed
666

667 the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, then Seller
668 shall assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such
669 insurance policy, but not to exceed the total Purchase Price.

670
671 19.2. Damage, Inclusions and Services. Should any Inclusion or service (including systems and
672 components of the Property, e.g. heating, plumbing) fail or be damaged between the date of this Contract and
673 Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of
674 such Inclusion or service with a unit of similar size, age and quality, or an equivalent credit, but only to the
675 extent that the maintenance or replacement of such Inclusion, service or fixture is not the responsibility of the
676 Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller
677 and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may
678 cover the repair or replacement of such Inclusions. The risk of loss for damage to growing crops by fire or other
679 casualty shall be borne by the party entitled to the growing crops as provided in § 3.1.7 and such party shall be
680 entitled to such insurance proceeds or benefits for the growing crops.

681
682 19.3. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, shall have
683 the right to walk through the Property prior to Closing to verify that the physical condition of the Property and
684 Inclusions complies with this Contract.
685
686
687

688 20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer and
689 Seller acknowledge that the respective broker has advised that this document has important legal consequences
690 and has recommended the examination of title and consultation with legal and tax or other counsel before
691 signing this Contract.
692
693

694 21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or
695 check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or
696 tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be
697 the following remedies:
698

699 21.1. If Buyer is in Default:

700 21.1.1. Specific Performance. Seller may elect to treat this Contract as canceled, in
701 which case all Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller and
702 retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this
703 Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or
704 both
705
706

707 21.1.2. Liquidated Damages. All Earnest Money (whether or not paid by Buyer) shall be
708 forfeited by Buyer, paid to Seller, and retained by Seller. Both parties shall thereafter be released from all
709 obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and
710 not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 19,
711 22, 23 and 24), said forfeiture shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the
712 obligations of this Contract. Seller expressly waives the remedies of specific performance and additional
713 damages.
714

715 21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all
716 Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper,
717 or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to
718 specific performance or damages, or both.
719
720

721 22. LEGAL FEES, COST AND EXPENSES. In the event of any arbitration or litigation relating to this
722 Contract, prior to or after Closing Date (§ 2.3), the arbitrator or court shall award to the prevailing party all
723 reasonable costs and expenses, including attorney and legal fees.
724
725

726 23. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved,
727 the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which
728 the parties meet with an impartial person who helps to resolve the dispute informally and confidentially.
729 Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any
730 settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of
731 such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not
732 resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other
733 at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.
734
735
736
737

738 24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall
739 release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the
740

741 event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract),
742 Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole
743 discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of
744 competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice
745 to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim
746 (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days
747 of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be authorized to return the Earnest
748 Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpleaded
749 the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the
750 Order of the Court. The parties reaffirm the obligation of Mediation (§ 23). The provisions of this § 24 apply
751 only if the Earnest Money Holder is one of the Brokerage Firms named in § 34 or § 35.
752
753
754
755

756 25. TERMINATION. In the event this Contract is terminated, all Earnest Money received hereunder shall
757 be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 23 and 24.
758
759

760 26. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the
761 Colorado Real Estate Commission.)

762 **26.a. Seller agrees that Buyer shall have the right to conduct a feasibility review of the property**
763 **through the Inspection Objection deadline. Such review may include, but is not limited to the**
764 **following: environmental, soils, asbestos, cost and availability of utility services, review of**
765 **services and/or amenities required by Adams County or the City of Westminster.**

766 **26.b. If Buyer is not satisfied with the results of its reviews, then Buyer shall have the right**
767 **to terminate this contract by providing written notice to the Seller on or before the Inspection**
768 **Objection Deadline. If Buyer elects to terminate this contract prior to or on the Inspection**
769 **Objection Deadline, the Buyer's earnest money deposit shall be returned in full within five days.**

770 **26.c. This offer is subject to Buyer receiving grant funding and approval for such funding by the**
771 **Inspection Objection deadline.**

772 **26.d. The Buyer intends to build one single family unit on the subject property. If Buyer learns**
773 **that approval to build said units may not or will not be approved by Adams County or the City of**
774 **Westminster, Buyer will terminate the contract on or before the expiration of the Inspection**
775 **Objection Deadline.**

776 **26.e. The parties agree to execute the following form required by Buyer: Pre-Acquisition**
777 **Agreement, unless otherwise agreed upon.**

778 **26.f. The City of Westminster has capped a well on the property in accordance with State of**
779 **Colorado regulations and requirements.**

780 **26.g. Seller shall provide Buyer an Improvement Location Certificate within 15 days of MEC at**
781 **Seller's expense. Buyer shall still have the option to obtain a full survey at Buyer's expense per**
782 **7.3.**

783 **26.h. This contract shall be contingent on Seller obtaining Westminster City Council Approval,**
784 **("CCA") which is expected by the Seller to be obtained on January 11, 2010. If the City Council**
785 **denies the request to proceed with this transaction, this contract shall terminate and the earnest**
786 **money shall be returned to the Buyer within 5 business days of City Council denial. If CCA is not**
787 **received by 2/28/2010, Buyer may, in Buyer's sole discretion, terminate this contract, and Buyer's**
788 **earnest money shall be returned within 5 business days after Buyer termination.**

789 ~~**26.i. Prior to the Acceptance Deadline, in lieu of a Seller signature on this contract, Seller shall**~~
790 ~~**provide Buyer with a letter of preliminary approval of this contract signed by the City Manager,**~~
791 ~~**subject to the CCA in 26.h. Seller shall sign this contract if CCA is obtained.**~~

800 27. ATTACHMENTS. The following are a part of this Contract:
801
802

803 **Closing Instructions when executed**

804 Note: The following disclosure forms are attached but are not a part of this Contract:

805 **Seller's Property Disclosure and Source of Water Addendum, When Executed**

806 28. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith,
807 including but not limited to exercising the rights and obligations set forth in the provisions of Financing
808 Conditions and Obligations (§ 5) and Property Disclosure, Inspection, Indemnity, Insurability,
809 Buyer Disclosure and Source of Water (§ 10).
810
811

812 29. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This Contract, its exhibits and specified
813 addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior
814

815 agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No
816 subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or
817 enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms,
818 is intended to be performed after termination or Closing shall survive the same.
819
820

821 30. COLORADO FORECLOSURE PROTECTION ACT. If the Colorado Foreclosure Protection Act
822 (Act) applies, then a different contract that complies with the provisions of the Act is required, and this Contract
823 shall be void and of no effect. The Act generally requires that (1) the Property is residential, (2) any loan
824 secured by the Property is at least thirty days delinquent or in default, (3) Buyer does not reside in the Property
825 for at least one year and (4) Buyer is subject to the Act. Buyer Will Will NOT occupy the Property as
826 Buyer's personal residence for at least one year. The parties are further advised to consult with their own
827 attorney.
828
829

830
831 31. NOTICE, DELIVERY, AND CHOICE OF LAW.

832 31.1. Physical Delivery. All notices must be in writing, except as provided in § 31.2. Any document,
833 including a signed document or notice, delivered to Buyer shall be effective when physically received by Buyer,
834 any signator on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm
835 of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation described in
836 § 23) and except as provided in § 31.2 below. Any document, including a signed document or notice, delivered
837 to Seller shall be effective when physically received by Seller, any signator on behalf of Seller, any named
838 individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller (except for
839 delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 31.2
840 below.
841

842 31.2. Electronic Delivery. As an alternative to physical delivery, any document, including any signed
843 document or written notice may be delivered in electronic form only by the following indicated methods:
844 Facsimile E-mail Internet No Electronic Delivery. Documents with original signatures
845 shall be provided upon request of any party.
846

847 31.3. Choice of Law. This Contract and all disputes arising hereunder shall be governed by and
848 construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents
849 who sign a contract in Colorado for property located in Colorado.
850
851

852
853 32. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in
854 writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of
855 such acceptance pursuant to § 31 on or before Acceptance Deadline Date (§ 2.3) and Acceptance
856 Deadline Time (§ 2.3). If accepted, this document shall become a contract between Seller and Buyer. A copy
857 of this document may be executed by each party, separately, and when each party has executed a copy
858 thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.
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 Date: 12/11/2009 

880 Buyer : **Habitat for Humanity of Metro Denver, Inc.**
881 **By: Heather Lafferty Executive Director**
882 Address: **1500 W 12th Ave. Denver CO 80204-3410**
883 Phone: Fax:
884 Email:

885 [NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 33]

886 Seller: _____ Date: _____

887 **City of Westminster, A Municipal Corporation**
888 **By**
889 Address:
890 Phone: Fax:
891 Email:

892

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33. COUNTER; REJECTION. This offer is Countered Rejected. (clear selection)
Initials only of party (Buyer or Seller) who countered or rejected offer

END OF CONTRACT TO BUY AND SELL REAL ESTATE


34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
(To be completed by Broker working with Buyer)

Broker Does Does Not acknowledge receipt of Earnest Money deposit specified in § 4.1 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 34 or § 35, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Buyer as a Buyer's Agent Seller's Agent Transaction-Broker in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Listing Brokerage Firm
 Buyer Other *n/a*

Brokerage Firm's Name: *RE/MAX Professionals*

Broker:  Date: 12/11/2009
Beth Hoffman

Address: *1745 Shea Center Dr. Suite 100 Highlands Ranch, CO 80129*
Ph: *303-981-9336* Fax: *303-568-4980* Email: *beth@bethhoffmanhomes.com*

35. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
(To be completed by Broker working with Seller)

Listing Broker Does Does Not (n/a) acknowledge receipt of Earnest Money deposit specified in § 4.1 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 34 or § 35, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with the Seller as a Seller's Agent Buyer's Agent Transaction-Broker (n/a) in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Seller Buyer Other
Brokerage Firm's Name: *Re/Max Alliance*

Broker: *Tammy Camalick*
Address: *, CO*
Ph: *Fax: Email: tammycamalick@comcast.net*

CBS1-5-09. CONTRACT TO BUY AND SELL REAL ESTATE
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WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Second Reading on Councillor’s Bill No. 43 re 68th Avenue and Utica Street Project Supplemental Appropriation

Prepared By: John Carpenter, Director of Community Development
Jane Greenfield, Assistant City Attorney

Recommended City Council Action

Pass Councillor’s Bill No. 43 on second reading appropriating \$100,000 to the 68th Avenue and Utica Street project to advance the project’s design costs.

Summary Statement:

- School District 50 is constructing a new Westminster High School at the northwest corner of 68th Avenue and Utica Street, due west of existing Westminster High School. The new school is designed to accommodate up to 2,900 students and the building will house the School District 50 administrative offices. The construction of the new school raises several matters relating to annexation, building use tax, needed road improvements, etc. The IGA approved by City Council on December 21, 2009 addresses these matters.
- The IGA includes provisions for the design and construction of approximately 2,640 linear feet of roadway widening along 68th Avenue and Utica Street.
- The IGA includes provisions for the School District to pay \$1,200,000 to the City as the estimated sales and use tax amount that would otherwise be due on construction materials, which the City has agreed to apply to the design and construction of this roadway project. \$100,000 will be paid to the City upon execution of this IGA and the remaining \$1,100,000 will be paid to the City by March 31, 2010. At that time, staff will request Council approval of a separate supplemental appropriation for the \$1,100,000 of funds to be used for construction.
- No additional City funds are anticipated to be used for this roadway widening project.
- This Councillor’s Bill was approved on fist reading by City Council on December 21, 2009.

Expenditure Required: \$ 100,000

Source of Funds: Payment from Adams County School District 50

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2009

INTRODUCED BY COUNCILLORS
Dittman - Major

A BILL

**FOR AN ORDINANCE AMENDING THE 2009 BUDGET OF THE GENERAL CAPITAL
IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM
THE 2009 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3432 is hereby increased by \$100,000. This increase is due to the appropriation of cost participation from Adams County School District 50 for design costs necessary for the 68th Avenue and Utica Street roadway widening project.

Section 2. The \$100,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda, Item 10 D&E, dated December 21, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$100,000</u>
Total	<u>\$100,000</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. 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 shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

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

Section 5. 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 21st day of December, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 11th day of January, 2010.

ATTEST:

Mayor

City Clerk



Agenda Item 8 H

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Second Reading of Councillor's Bill No. 44 re Amending Chapter 23 of Title I, Repealing Chapters 6 and 7 of Title II, and Amending Chapter 2 of Title II of the Westminster Municipal Code Concerning the Transportation Commission, the Board of Adjustment and Appeals, and the Planning Commission

Prepared By: Jana Easley, Principal Planner

Recommended City Council Action

Pass Councillor's Bill No. 44 on second reading amending Chapter 23 of Title I, repealing Chapters 6 and 7 of Title II, and amending Chapter 2 of Title II of the Westminster Municipal Code concerning the Transportation Commission, the Board of Adjustment and Appeals, and the Planning Commission.

Summary Statement

- The Board of Adjustment and Appeals and the Transportation Commission would be dissolved by the passing of this Councillor's Bill.
- This proposed reduction in boards is not a result of performance-related concerns; it is simply in order to utilize the City's boards and commissions more effectively and efficiently.
- The Board of Adjustment and Appeals currently acts upon variance requests. The Planning Commission currently makes certain land use related decisions and would be an appropriate commission to decide variance requests upon the dissolution of the Board of Adjustment and Appeals.
- The function of the Transportation Commission could be handled by an adhoc citizen advisory group as needed and staff.
- The Board of Adjustment and Appeals and Transportation Commission have been conferred with on this recommendation and have been extended the offer to be put in the pool for future Boards and Commissions positions.
- This Councillor's Bill was approved on first reading by City Council on December 21, 2009.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager
Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **44**

SERIES OF 2009

INTRODUCED BY COUNCILLORS
Briggs - Dittman

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 23 OF TITLE I, REPEALING CHAPTERS 6 AND 7 OF TITLE II AND AMENDING CHAPTER 2 OF TITLE II OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE TRANSPORTATION COMMISSION, THE BOARD OF ADJUSTMENT AND APPEALS, AND THE PLANNING COMMISSION

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Sections 1-23-2, subsection (A), 1-23-3, subsection (C), 1-23-6, subsections (D) and (F), 1-23-7, 1-23-8, and 1-23-10, W.M.C., are hereby AMENDED as follows:

CHAPTER 23

ADMINISTRATIVE PENALTY CITATIONS FOR CODE VIOLATIONS

- 1-23-1: GENERAL INTENT
- 1-23-2: DEFINITIONS
- 1-23-3: AUTHORITY
- 1-23-4: PROCEDURES FOR ISSUANCE OF AN ADMINISTRATIVE CITATION
- 1-23-5: CONTENTS OF ADMINISTRATIVE CITATION
- 1-23-6: APPEAL OF ADMINISTRATIVE CITATION
- 1-23-7: PROCEDURES AND STANDARDS AT ADMINISTRATIVE CITATION APPEAL HEARINGS
- 1-23-8: DUTIES AND POWERS OF THE ADMINISTRATIVE HEARING OFFICER~~PEALS BOARD~~
- 1-23-9: FALSE INFORMATION OR REFUSAL PROHIBITED**
- 1-23-10: FAILURE TO OBEY SUBPOENA
- 1-23-11: FAILURE TO ATTEND ADMINISTRATIVE CITATION APPEAL HEARING
- 1-23-12: FAILURE TO COMPLY WITH ADMINISTRATIVE ENFORCEMENT ORDER
- 1-23-13: PENALTIES ASSESSED
- 1-23-14: FAILURE TO PAY PENALTIES

1-23-2: DEFINITIONS: ~~When used in this Chapter, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:~~

(A) ~~The following words, terms and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise: **Board of Adjustment and Appeals** shall mean that Board created and authorized pursuant to Westminster Municipal Code Title II, Chapter 6.~~

~~(1B)~~ **“(Administrative hearing officer)”** shall mean a person appointed by the City Manager to hear and determine administrative citation appeals. The Manager may appoint an employee of the city or another person possessing qualifications acceptable to the Manager as a hearing officer to hear and receive evidence and render a decision on the law and the facts. The hearing officer may not have personally determined, in the first instance, the factual issues in controversy and may have no personal or financial interest in the outcome of the hearing.

~~(2)~~ **“City”** shall mean the City of Westminster.

~~(3C)~~ **“Code”** shall mean those provisions of the Westminster Municipal Code enumerated in Section 1-23-1(B).

~~(4D)~~ **“Enforcement official”** shall mean an employee or agent of the City authorized to enforce the ordinances of the City.

~~(5E)~~ **“Manager”** shall mean the City Manager or the Manager's designee.

(6F) **"Responsible party"** shall mean a person or entity who has violated the Code or, in the case of property violations, the responsible party may also be the property owner, the occupant, or an individual or an entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to an administrative citation under this Chapter.

1-23-3: AUTHORITY:

(C) Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate administrative citation may be issued. However, once an administrative citation has been issued for a violation of the Code, no additional administrative citation shall be issued for the same violation for ten (10) days or, if the responsible party appeals, until after the appeal has been heard and the responsible party has not complied with an administrative enforcement order of the Administrative Hearing Officer~~Board of Adjustment and Appeals ("Appeals Board")~~ within ten (10) days of its issuance or such other time as the Administrative Hearing Officer~~Appeals Board~~ has specified.

1-23-6: APPEAL OF ADMINISTRATIVE CITATION:

(D) If, in the opinion of the Manager, the appeal meets all of the requirements of subparagraphs (A) – (C) of this Section, the Manager shall appoint an Administrative Hearing Officer and forward the notice of appeal to that person~~the Secretary of the Appeals Board~~.

(F) As soon as practicable after receiving the written notice of appeal, the Administrative Hearing Officer appointed for that appeal~~Secretary to the Appeals Board~~ shall schedule a date, time and location for the hearing, unless, if requested by the appellant and in the sole discretion of the Administrative Hearing Officer~~Appeals Board~~, it is submitted on written brief and supporting material.

1-23-7: PROCEDURES AND STANDARDS AT ADMINISTRATIVE CITATION APPEAL HEARINGS:

(A) The procedure and format of the administrative citation appeal hearing shall follow procedures as set forth herein,~~and in W.M.C. section 2-6-4.~~

(B) Administrative citation appeal hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of discovery may be required by the Administrative Hearing Officer~~Appeals Board~~ or requested by any party. The request must be in writing. Failure to request discovery shall not be a basis for a continuance.

(C) The parties to an administrative citation appeal hearing shall be the responsible party and the City.

(D) The Administrative Hearing Officer~~Appeals Board~~, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness fees in the amount of \$5.00 per witness, and mileage fees at the rate provided for witnesses by statute, shall be borne by the party requesting the subpoena.

(E) The City bears the burden of proof at an administrative citation appeal hearing to establish the existence of a violation of the Code. In the case of an abatement hearing the City bears the burden of proof to establish the existence of a public nuisance.

(F) The standard of proof to be used by the Administrative Hearing Officer~~Appeals Board~~ in deciding the issues at an administrative citation appeal hearing is by a preponderance of the evidence.

(G) The Administrative Hearing Officer shall cause to be made a record of the hearing, either stenographically or by sound recording, and shall make available a transcript of the hearing to any person upon request and payment in advance of the estimated cost of the production of the transcript.

(H) The Administrative Hearing Officer shall render written decisions, accompanied by findings of fact and conclusions based thereon.

(I) All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record.

1-23-8: DUTIES AND POWERS OF THE APPEALS BOARD~~ADMINISTRATIVE HEARING OFFICER:~~

(A) The Administrative Hearing Officer~~Appeals Board~~ shall determine whether appeals of administrative citations are valid. In doing so the Administrative Hearing Officer~~Appeals Board~~ shall determine whether the administrative citation under appeal was issued in compliance with the requirements of the City ordinances. In each case, the Administrative Hearing Officer~~Appeals Board~~ shall be charged with performing all functions relating to the final determination and order, and entertaining petitions or motions made in writing. The Administrative Hearing Officer~~Appeals Board~~ shall perform those duties and functions necessary and incidental to determining the matter, issuing

subpoenas, authorizing depositions, administering oaths, hearing all evidence, examining all documents, ruling on evidentiary questions, and generally conducting the hearing as a quasi-judicial proceeding.

(B) In the discretion of the ~~Appeals Board~~Administrative Hearing Officer, parties to the hearing may be required to file a pre-hearing statement before the case is set for hearing. The pre-hearing statement may include: the issues raised by the appeal; agreed and disputed facts; copies of exhibits not previously included in the record; names of witnesses with a brief statement summarizing their testimony; an estimate of the time necessary to present a party's evidence and other matters as requested by the ~~Appeals Board~~Administrative Hearing Officer.

(C) All hearings or, when an appeal is submitted for determination based on written argument and written facts and figures, all examination of such written petitions and papers shall be conducted by the ~~Administrative Hearing Officer~~Appeals Board assigned to conduct the hearing or to examine the written material submitted.

(D) The admissibility of evidence shall be encouraged and the ~~Appeals Board~~Administrative Hearing Officer shall consider all evidence of probative value. The ~~Appeals Board~~Administrative Hearing Officer may utilize its experience, technical competence, and specialized knowledge in the evaluation of evidence presented.

(E) Copies, photographs and photocopies may be admitted into evidence or substituted in evidence in place of original documents.

(F) Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the ~~Appeals Board~~Administrative Hearing Officer.

(G) Whenever it appears that an appeal is not properly before the ~~Appeals Board~~Administrative Hearing Officer, or that the appellant for some other reason lacks jurisdiction or standing, the case may be dismissed on the motion of any party or the ~~Appeals Board~~Administrative Hearing Officer.

(H) Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of particular law or ordinance involved.

(I) The written decision of the ~~Appeals Board~~Administrative Hearing Officer shall be known as an Administrative Enforcement Order.

(J) The parties may enter into a stipulated agreement which must be signed by both parties. Upon approval and acceptance by the ~~Appeals Board~~Administrative Hearing Officer, this agreement shall be entered as the administrative enforcement order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.

(K) The ~~Appeals Board~~Administrative Hearing Officer may uphold the administrative citation and all penalties, or dismiss the administrative citation and all penalties, or may waive or conditionally reduce the penalties assessed by the administrative citation. The ~~Appeals Board~~Administrative Hearing Officer may also impose conditions and deadlines to correct the violation or require payment of any outstanding penalties.

(L) If the ~~Appeals Board~~Administrative Hearing Officer dismisses the administrative citation and all penalties due to the City's failure to satisfy its obligations under this Chapter, the appellant's \$35 processing fee shall be promptly refunded.

(M) The ~~Appeals Board~~Administrative Hearing Officer has continuing jurisdiction over the subject matter of an administrative citation appeal hearing for the purposes of granting a continuance, ordering compliance by issuing an administrative enforcement order, ensuring compliance of that order, modifying an administrative enforcement order, or, where extraordinary circumstances exist, granting a new hearing. The ~~Appeals Board~~Administrative Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.

1-23-10: FAILURE TO OBEY SUBPOENA: It is unlawful for any person to refuse to obey a subpoena issued by the ~~Appeals Board~~Administrative Hearing Officer. Any person who fails to obey a subpoena shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Section 1-8-1 of this Code.

Section 2: Section 2-2-2, subsection (D) is AMENDED and NEW SUBSECTIONS (E) AND (F) ARE ADDED, Sections 2-2-4, subsection (B), and 2-2-7, W.M.C., are hereby AMENDED AND A NEW SECTION 2-2-8, W.M.C., IS ADDED to Title II, Chapter 2, PLANNING AND ZONING COMMISSION, as follows:

CHAPTER 2

PLANNING AND ZONING COMMISSION

- 2-2-1: CREATION
- 2-2-2: POWERS AND DUTIES
- 2-2-3: POLICY FROM COUNCIL
- 2-2-4: RULES AND REGULATIONS
- 2-2-5: REFERRALS TO PLANNING COMMISSION
- 2-2-6: COMMISSION RECOMMENDATIONS
- 2-2-7: ~~ACTING CHAIRPERSON, QUORUM, PROCEDURE~~
- 2-2-8: VARIANCE PROCEDURE AND STANDARDS

2-2-2: POWERS AND DUTIES: The powers and duties of the Planning Commission shall include, but not be limited to, the following: (319 1741 1970 2068)

(D) ~~The Review~~ of all zoning and rezoning requests to determine compliance with existing ordinances, resolutions, plans and policies of the City and their conformance with good planning practices.

(E) The review of requests for variances from the following provisions of Title XI, Land Development and Growth Management Procedures, W.M.C.:

- (1) Section 11-7-4, on Off-Street Parking Standards;
- (2) Those portions of Chapter 11 specified in Section 11-11-5(F)(2) on Sign Regulations;
- (3) Section 11-4-5 regarding density schedule and Section 11-4-6 regarding special regulations;
- (4) Section 11-4-11, regarding Antennae Towers;
- (5) Those portions of Section 11-4-12 specified in Section 11-4-12(I), on Satellite Earth Stations.
- (6) Section 11-4-15 as it applies to nonconforming structures.
- (7) Section 11-4-6 (O) regarding fence regulations.

(F) The interpretation of the Zoning Map and the Zoning District boundary lines thereon.

2-2-4: RULES AND REGULATIONS: (319 2068 2768)

(B) The Commission shall make and adopt its own bylaws, subject to the approval of the City Council, which shall include, but not be limited to, the following procedures:

- ~~(1).~~ The election of officers and establishment of the duties of such officers.
- ~~(2).~~ The scheduling and conduct of regular and special meetings and public hearings.
- ~~(3).~~ The submittal of applications and petitions for annexations, development plan approvals, amendments to development plans, zonings and rezonings, variances and any matter within the jurisdiction of the Planning Commission.
- ~~(4).~~ The exercise of any of the duties of the Planning Commission set forth in this Code.

2-2-7: ~~ACTING CHAIRPERSON; QUORUM; PROCEDURE:~~ (2768) In the absence of the elected chairperson, the vice-chairperson shall assume the duties of the chairperson for that respective meeting.. A quorum shall consist of four (4) members, and a decision of a majority of the members present shall control. Any absent member may join in a pending decision of the board subject to section 2-1-3. ~~All public hearings shall at a minimum be recorded electronically, or as deemed necessary by the chairperson, may be stenographically recorded by a court reporter engaged by the city and paid out of fees paid by the applicant~~

2-2-8: VARIANCE PROCEDURE AND STANDARDS:

(A) In addition to any procedural hearing requirements the Commission may adopt by rule, the Commission shall conduct hearings and make decisions in accordance with the following requirements:

(1) The public, the applicant and the Planning Commission shall be given notice of all variance hearings and, except as provided by Section 2-1-5(A), all hearings shall be open to the public.

(2) The Commission shall render written decisions, accompanied by findings of fact and conclusions based thereon. Conclusions based on any provision of this Chapter, Code, or any City rules or regulations shall contain a reference to such provision, rule or regulation and shall also contain the reason the conclusion is deemed appropriate in light of the facts found.

(3) All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record.

(4) The Commission shall decide on any matter within thirty-five (35) days after date of hearing thereon. Decision in favor of any applicant shall be approval of the matter requested and shall be an order to the Chief Building Inspector to carry out such action subject to any conditions imposed by the Commission.

(B) The Commission may grant a variance if it finds that all of the following requirements are satisfied, where applicable:

(1) That the strict application of the provisions of Title XI of this Code would result in practical difficulties or unnecessary hardship which is inconsistent with the general purpose and intent of this Code.

(2) That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property.

(3) That these unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located.

(4) That because of such physical circumstances or conditions, the property cannot be reasonably developed in conformity with the provisions of this Code.

(5) That the special conditions and circumstances do not result from the present or prior actions of the applicant.

(6) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property.

Any application not meeting such criteria shall be denied. In approving an application meeting the above criteria, the Commission may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of this Title or the various adopted codes.

(C) Decisions of the Board are final subject only to an appeal to District Court.

Section 3: Title II, Chapter 6, BOARD OF ADJUSTMENT AND APPEALS and Chapter 7, TRANSPORTATION COMMISSION, W.M.C., are hereby REPEALED.

Section 4. This ordinance shall take effect upon its passage after second reading. 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 21st day of December, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of January, 2010.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Second Reading of Councillor's Bill No. 46 re Delinquent Payments and Service Charges for Water and Sewer Service

Prepared By: Walter Mathews, IV, Assistant City Attorney

Recommended City Council Action

Adopt Councillor's Bill No. 46 on second reading amending provisions of the Westminster Municipal Code creating a lien upon the real property for unpaid sewer charges, and making modifications to current code provisions on liens for unpaid water charges.

Summary Statement

- During this economic downturn, the City has received an increase in bankruptcy filings. The majority of the bankruptcy filings that the City receives involve delinquent utility billing charges for water and sewer service.
- Currently, the City Code creates a lien for unpaid water charges. Liens for water utilities, penalties and charges become effective immediately upon the supplying of such water and are not discharged until payment in full is made. However, the Code does not expressly provide that this lien shall be first and prior to any other liens, claims, or encumbrances. Liens for City services and improvements are "governmental liens," which may be made first and prior to other liens and encumbrances.
- Currently, the City Code does not provide for a lien for unpaid sewer charges. As a result, the City is finding it difficult to pursue such "unsecured debts" in the increasing number of bankruptcies that have occurred recently.
- Therefore, Staff is recommending that the Code be amended to make both water and sewer service charges first and prior claims that are superior to all other liens, claims, and encumbrances, thereby making the claims secured in bankruptcy and other proceedings, such as foreclosures.
- This Councillor's Bill was passed on first reading on December 21, 2009.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 46

SERIES OF 2009

INTRODUCED BY COUNCILLORS
Lindsey - Dittman

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 8-7-9 AND 8-8-5 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING DELINQUENT PAYMENTS AND SERVICE CHARGES FOR WATER AND SEWER SERVICE

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-7-9, subsection (C), W.M.C., is hereby AMENDED to read as follows:

8-7-9: DELINQUENT PAYMENTS AND SERVICE CHARGES; LIEN ON PROPERTY:

(C) The City shall have as security for the collection of such water ~~service charges and utility rates, penalties and charges~~ a lien upon the real property served by such water service, which lien shall become effective immediately upon the supplying of such water and shall not be discharged until the payment is made of all the water service bills, penalties and charges as herein provided. Such liens shall be governed by Title I, Chapter 31 of the Westminster Municipal Code.

(1) The lien shall include all charges prescribed by this Code relating to the provision of water services, together with the cost of collecting such charges, including court costs and attorneys' fees. The lien shall be first and prior to all other liens, claims, titles, and encumbrances, whether prior in time or not, except liens for general taxes, and shall remain a lien upon the real property served by the water connection from the date such charges and the cost of collecting them, if any, become due, until they are paid.

(2) The City may enforce the lien against the property or the liability against the property owner in any action at law or an action to enforce the lien. If any person in possession of any premises, building, lot, house, or other dwelling unit pays the entire charges due and owing, the payment relieves the property owner from such liability and the premises from the lien. However, the City is not required to look to any person other than the owner of the premises, building, lot, house, or other dwelling unit for the payment of the charges.

Section 2. Section 8-8-5, W.M.C., is hereby AMENDED BY THE ADDITION OF NEW SUBSECTIONS (H) THROUGH (L) to read as follows:

8-8-5: SERVICE AND USER CHARGES WITHIN THE CITY OF WESTMINSTER AND SHAW HEIGHTS; LIEN ON PROPERTY:

(H) Delinquent sewer bills shall be collected in the same manner as delinquent water charges, including the discontinuance of water service for nonpayment of sewer charges. Any payments received for combined water and sewer bills, which are for less than the sum of water and sewer bills, shall be first applied to the sewer charge, and any remainder to the water charge.

For customers not receiving City water service, these same provisions shall apply, except that instead of discontinuance of water, a five dollar (\$5) late charge shall be added to the next bill at the time of billing, to cover additional accounting charges. If a sewer charge is not paid in nine (9) months, a lien shall be ~~filed~~ recorded against ~~on~~ the property for the balance then due, plus a ~~ten~~ twelve dollar (\$12) filing fee. If the lien is not paid in fifteen (15) months, the service line shall be disconnected from the City's main and plugged. Service shall not be restored until the account is paid in full plus the actual cost to the City of disconnecting the service line. Reconnection shall be the responsibility of the owner. If such

disconnection is required, the City shall notify the Health Department and agency furnishing water to the premise of the action to be taken.

(I) The City shall have as security for the collection of such sewer service charges and penalties, a lien upon the real property served by sewer service, which lien shall become effective immediately upon the supplying of such sewer service and shall not be discharged until the payment is made of all the sewer service bills, penalties and charges as herein provided. Such liens shall be governed by Title I, Chapter 31 of the Westminster Municipal Code.

(1) All charges prescribed by this Code relating to the provision of sewer service, together with the cost of collecting such charges, including court costs and attorneys' fees, are a lien that is first and prior to all other liens, claims, titles, and encumbrances, whether prior in time or not, except liens for general taxes, and shall remain a lien upon the real property served by the sewer connection from the date such charges and the cost of collecting them, if any, become due, until they are paid.

(2) The City may enforce the lien against the property or the liability against the property owner in any action at law or an action to enforce the lien. If any person in possession of any premises, building, lot, house, or other dwelling unit pays the entire charges due and owing, the payment relieves the property owner from such liability and the premises from the lien. However, the City is not required to look to any person other than the owner of the premises, building, lot, house, or other dwelling unit for the payment of the charges.

~~(H)(J)~~ Owners or agents in charge of business blocks or other buildings occupied by more than one tenant using water from the same service pipe and/or discharging sewage through the same service sewer shall be required to pay the same rate for the whole of such building, unless a separate water meter is installed for each tenant.

~~(I) — (Repealed by Ordinance 1430)~~

~~(J)(K)~~ These rates and charges are established so that each user class pays its proportionate share of the costs of wastewater treatment services and the City Manager is hereby directed to annually review the charge structure to assure that proportionality between user classes is maintained and to recommend modifications as appropriate. Each user shall be notified annually by the City of its user charges.

~~(K)(L)~~ Reduction of Tap Fee: A nonresidential customer requesting a reduction in the assignment of the tap fee may apply for such reduction to the Building Division. The request must provide calculations showing the actual sewage discharge level. If approved, the reduction in tap fee may only be reduced to the next lowest full water tap size.

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 21st day of December, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 11th day of January, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 9 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Resolution No. 1 re Reappointments to Boards and Commissions

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 1 reappointing members whose terms expired December 31, 2009 to two-year terms and appointing alternate members to regular membership, where applicable, on the Board of Building Code Appeals, the Election Commission, the Environmental Advisory Board, the Historic Landmark Board, the Human Services Board, the Open Space Advisory Board, the Parks, Recreation and Libraries Advisory Board, the Personnel Board, the Planning Commission, and the Special Permit and License Board.

Summary Statement

- City Council action is requested to reappoint citizens who are serving as members of the aforementioned established City Boards and Commissions whose terms of appointment expired on December 31, 2009, and to appoint alternate members to regular membership where vacancies exist.
- All affected Board members were contacted to determine interest and willingness to continue serving. New terms are for two-year periods.
- Other vacancies on City Boards and Commissions will be filled at a later date after City Council has had the opportunity to conduct interviews with interested Westminster citizens.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council want to reappoint those individuals on Boards and Commissions whose terms of office expired on December 31, 2009, and fill vacancies through the appointment of alternate members to regular membership?

Alternative

None identified

Background Information

The terms of office of three members on the Board of Building Code Appeals expired on December 31. Jonathan Talbott and Jacob Starkovich (alternate) are interested in being reappointed to the Board. Stephen Fenimore submitted his resignation to pursue retirement and part-time residency in a warmer climate. If the attached resolution is adopted, Mr. Talbott will be reappointed and Mr. Starkovich will be appointed a regular member to fill the vacancy created by Mr. Fenimore's resignation. The term of appointment of both Mr. Talbott and Mr. Starkovich will expire December 31, 2011. Both alternate memberships to this Board are vacant and will need to be filled at a later date.

The terms of office of all members of the Election Commission expired December 31. Denis DuFresne, Paul Gannon, Jeanne Nearing, and William Nooning would like to be reappointed. Their terms of office will expire December 31, 2011, if the attached resolution is adopted.

The terms of Lisa Bressler, Steve Breitzka (alternate), Yvonne Martin, and Nick Pizzuti on the Environmental Advisory Board expired December 31. All would like to be reappointed to another two-year term. Belinda Butler-Veytia resigned from the Board in September of 2009. If the attached resolution is adopted, Mr. Breitzka will be appointed a regular member to fill the balance of Ms. Butler-Veytia's unexpired term, which will expire December 31, 2010. The terms of the three people being reappointed will expire December 31, 2011. There is an alternate member vacancy on this Board that will need to be filled at a later date.

The terms of office of Linda Cherrington, Stephen Graziano, and Laura Vandenbosch on the Historic Landmark Board expired on December 31. Ms. Cherrington and Ms. Vandenbosch would like to be reappointed; however, Mr. Graziano tendered his resignation due to work commitments. The attached resolution will reappoint Ms. Cherrington and Ms. Vandenbosch to the Board with terms to expire December 31, 2011. Vacancies exist in a regular membership and the alternate membership and will need to be filled at a later date.

The terms of office of four Human Services Board members expired December 31. Kristin Burns, Tom Bruchmann (alternate), Kathleen Dodaro, and Dennis White are interested in being reappointed to terms that will expire December 31, 2011.

The terms of four members of the Open Space Advisory Board expired December 31, and Ben Beaty, Ed Getsch, JoAnn Price, and Randal Tucker have expressed interest in being reappointed. The alternate membership on this Board is vacant and will need to be filled at a later date.

The terms of office of three members on the Parks, Recreation and Libraries Advisory Board expired at year end. Janet Bruchmann and Paula Saunders would like to be reappointed, and Beverly Bishop decided after much contemplation to resign so she can devote more time to other interests. The attached resolution will reappoint Ms. Bruchmann and Ms. Saunders to the Board with terms to expire December 31, 2011. This Board has a regular member and an alternate member vacancy to be filled at a later date.

The terms of office of John Brann, Julie Marino (alternate), Wesley Underwood, Candee Wells (alternate), and Stacy Worthington on the Personnel Board expired on December 31. All are interested in being reappointed, and the attached resolution accomplishes reappointment to terms that will expire December 31, 2011.

The terms of three members of the Planning Commission expired on December 31. James Boschert and Richard Mayo (alternate) would like to be reappointed. Joseph Barsoom resigned with regrets. If adopted, the attached resolution reappoints Mr. Boschert and names Mr. Mayo a regular member. Both terms of office will expire December 31, 2011. There are two alternate member vacancies on the Planning Commission that will need to be filled at a later date.

The terms of office of four members of the Special Permit and License Board expired on December 31. Martha Brundage, Mildred DeSmet, Steve Marlin, and BJ Sanchez have all expressed interest in being reappointed. There is an alternate member vacancy on this Board that will need to be filled at a later date.

The commitment of citizens volunteering for boards and commissions is an important component of our strategic goal to be a Financially Sustainable City Government providing Exceptional Service.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **1**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**CITY OF WESTMINSTER BOARD AND COMMISSION REAPPOINTMENTS
AND NEW APPOINTMENTS**

WHEREAS, each member of the City's ten Boards and Commissions whose term expired on December 31, 2009 has been contacted and a number of them have confirmed the desire to be re-appointed to the Board where they are currently serving; and

WHEREAS, it is important to have each City Board or Commission working with its full complement of authorized members to carry out the business of the City of Westminster with citizen representation; and

WHEREAS, resignations have been received from Stephen Fenimore (regular member) on the Board of Building Code Appeals; Stephen Graziano (regular member) on the Historic Landmark Board, Beverly Bishop (regular member) on the Parks, Recreation and Libraries Advisory Board; and Joseph Barsoom (regular member) on the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the following individuals are hereby reappointed to the City of Westminster Board or Commission listed below with the terms of office to expire December 31, 2011.

BOARD/COMMISSION	NAMES OF RE-APPOINTEES
Board of Building Code Appeals	Jonathan Talbott
Election Commission	Denis DuFresne, Paul Gannon, Jeanne Nearing, and William Nooning
Environmental Advisory Board	Lisa Bressler, Yvonne Martin, and Nick Pizzuti
Historic Landmark Board	Linda Cherrington and Laura Vandenbosch
Human Services Board	Kristin Burns, Tom Bruchmann (alternate), Kathleen Dodaro, and Dennis White
Open Space Advisory Board	Ben Beaty, Ed Getsch, JoAnn Price, and Randal Tucker
Parks, Recreation and Libraries Advisory Board	Janet Bruchmann and Paula Saunders
Personnel Board	John Brann, Julie Marino (alternate), Wesley Underwood, Candee Wells (alternate), and Stacy Worthington
Planning Commission	James Boschert
Special Permit and License Board	Martha Brundage, Mildred DeSmet, Steve Marlin, and BJ Sanchez

BE IT FURTHER RESOLVED that the following appointments of alternate members are being made to fill vacancies in regular memberships:

BOARD/COMMISSION	NAMES OF APPOINTEES	TERM EXPIRES
Board of Building Code Appeals	Jacob Starkovich	December 31, 2011
Environmental Advisory Board	Steve Breitzka	December 31, 2010
Planning Commission	Richard Mayo	December 31, 2011

PASSED AND ADOPTED this 11th day of January, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Item 10 A&B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Councillor's Bill No. 1 re Proposed Amendments to the Westminster Municipal Code regarding Uses by Special Permit and Other Land Use Regulations

Prepared By: Terri Hamilton, Planner III

Recommended City Council Action

1. Hold a public hearing.
2. Adopt Councillor's Bill No. 1 on first reading making revisions to the Westminster Municipal Code regarding Uses by Special Permit and various conforming changes to procedures, definitions, use categories, special regulations and enforcement.

Summary Statement

- On May 11, 2009 City Council imposed a 180-day moratorium on the submittal and processing of applications for Special Use Permits (SUP) to allow for the review and development by City staff of possible amendments to the City's special use permit process and criteria.
- Due to the volume of changes considered, and the need to meet with various board and commissions prior to bringing ordinance changes forward, City Council extended the moratorium by 90 days, through February 6, 2010.
- Proposed Westminster Municipal Code (Code) revisions will bring consistency between local, state and federal requirements regarding residential group facilities and will eliminate ambiguity between the special use process and the Planned Unit Development (PUD) zoning process.
- Proposed Code revisions primarily relate to policy and procedures relevant to the SUP process and criteria; however, a number of ancillary Code revisions that are "housekeeping" in nature are also required to ensure the policy changes can be implemented (i.e. definition changes, etc.).

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues

1. Should the City amend the Code regarding the type of land use, location, and approval criteria regulated by the Special Use Permit process?
2. Should the City amend the Code to transfer the approval authority for Special Use Permits to the Planning Commission?

Alternatives

1. Do not amend the Code regarding land use, location and approval criteria pertaining to the Special Use Permit (SUP) process. This alternative is not recommended because the existing SUP regulations require updating as they relate to residential group homes and because the relationship between the SUP process and PUD zoning process needs clarification.
2. Do not amend the Code to change the approval authority for Special Use Permits. This alternative is not recommended because SUPs are a type of land use decision and land use decisions are a regular function of the Planning Commission.

Background Information

There has not been a comprehensive review and update of Sections 11-4-8 and 11-4-9 of the Code pertaining to the issuance of SUPs since 1997. In the meantime, there have been numerous changes in the interpretation of state and federal laws that cover the approval or denial of certain SUPs, particularly as they apply to group residential uses of property.

The current Code allows SUPs to be approved in all zoning districts, including the PUD district. PUDs allow for the potential addition of any type of use, as long as the use is approved by the City Council. The SUP category should apply only to straight-zoned areas (areas not zoned PUD), since uses in straight-zoned areas are specifically allowed or not allowed, unlike the flexibility of considering any type of use in a PUD. The SUP section of the Code requires clarification so that the SUP process supplements, not supplants, the City's PUD zoning system.

Because SUPs are land use in nature and the Planning Commission reviews most land use applications, including annexation, zoning and rezoning requests, proposed Preliminary Development Plans, and reviews and approves Official Development Plans and planning documents such as the Comprehensive Land Use Plan for the City, staff is recommending that the review and approval of SUPs are more appropriately considered by the Planning Commission, rather than the Special Permits and License Board. SUPs are relatively limited in number, typically ranging from one to four applications per year.

The Special Permits and License Board is responsible currently for various licensing duties – liquor licensing, massage parlor licenses, escort service licenses, special use permits, amusement center licenses, dance hall and cabaret licenses, business licenses including contractor registrations under review for denial, revocation or suspension, and suspension or revocation of licenses to operate solid waste or recyclable materials collection. The Special Permits and License Board is also responsible for renewals, appeals, and revocation of a number of licenses, including appeals of licensing decisions by the City Manager. The licensing function of the Special Permits and License Board would continue.

The proposed change in the approval authority of SUPs has been discussed with both the Special Permit and License Board and the Planning Commission. The Special Permits and License Board reaction was mixed – four members confirmed support and one member did not want the variety in functions of the Board reduced. The Planning Commission unanimously expressed support for this concept (7 members present, 1 absent).

Proposed Revisions

Proposed Code revisions are both substantive (policy, procedure) and non-substantive housekeeping in nature (organization, conforming wording changes, and minor revisions). Below are descriptions of the proposed Code revisions. Substantive changes are discussed, while housekeeping revisions are noted as such.

a. Title II: Commissions and Boards**• Chapter 2: Planning and Zoning Commission**

The review and approval of SUPs is proposed to be added to the powers and duties of the Planning Commission.

• Chapter 5: Special Permit and License Board

The review and approval of SUPs is proposed to be removed from the powers and duties of the Special Permit and License Board.

b. Title V: Licensing Regulations**• Chapter 20: Family Care Homes, Child Care Centers, and Residential Care Facilities**

This chapter would be removed from the licensing process of the City, as such uses are already subject to a more rigorous state licensing process that provides for on-going monitoring and supervision. The land use related criteria and definitions would be moved to Title XI, with family care homes and child care centers recognized as permitted uses in appropriate zones and residential care facilities (now called "group care facilities") being permitted by special use review.

c. Title XI: Land Development and Growth Management Procedures**• Chapter 1: General Provisions, Administration and Enforcement**

Minor revisions and clarifications are proposed (housekeeping), such as modifying the language in the violations section to be consistent with revisions to occupancy limitations.

• Chapter 2: Definitions

A number of definitions are proposed to be added or revised. The majority of changes reflect adding definitions that are currently missing from the Code.

The definitions for group homes and residential care facilities are proposed to be revised to reflect current law and simplified in an effort to encompass the wide variety of state licensed facilities.

The "Family" definition is proposed to be revised to allow foster children placed by a state institution or licensed child placement agency to be included. Current City regulations require a SUP for more than four foster children. Foster care homes would no longer require SUP review.

The Household definition is proposed to be removed and replaced with a regulation "Occupancy of Dwelling Units" in §11-4-6, Special Regulations. (Refer to §11-4-6, Special Regulations, later in this memo for discussion on this regulation.)

Distinctions are proposed to be made in the definitions of antique store, consignment store, and thrift store to reflect different categories of used merchandise with potentially different impacts on the retail mix and neighborhood compatibility. "Thrift/Used Merchandise" and "Antique Shop" are defined in the current Code. Staff is recommending adding a definition of "Consignment Store" and amending the definitions of "Thrift Store" and "Antique Shop" in order to clarify the differences between these three uses. A definition of "Used Merchandise" is also proposed. Refer to Attachment 1 - Summary of proposed changes to Definitions

- **Chapter 4: Zoning, Special Regulation, Uses by Special Permit, Applications for Special Permit**

§11-4-4: The Permitted Uses section of the Code will be repealed in its entirety and re-enacted so the use chart can be revised to reflect the addition of land uses not currently indicated, reformatted for ease in use and interpretation, and modified to reflect uses that are (P) permitted within a zoning district, (C) conditionally permitted, or (S) permitted only by special use permit. The description of these three approaches to allowable uses will be reflected in the Permitted Use Chart and text. For reference to discussion regarding special uses see §11-4-8 below, and for conditional uses see §11-4-9 below.

§11-4-6: Special Regulations will be amended by the addition of occupancy standards including the continued regulation of the number of registered sex offenders. The regulation regarding the "Occupancy of a Dwelling Unit" proposes to limit the number of unrelated individuals living together in a single dwelling unit to four persons (in lieu of previous language in the Household definition regarding calculation of habitable rooms which was difficult to interpret). Sex offender limitations noted in the existing Household definition are proposed to be relocated to §11-4-6, Special Regulations, "Occupancy of Dwelling Units," where it is better suited. No change is proposed in the allowed number of registered sex offenders. Refer to Attachment 2 - Comparison of communities and limits on the number of unrelated persons within the family definition.

§11-4-7: Planned Unit Development District will be amended to better clarify allowable uses as described on a Preliminary Development Plan and/or Official Development Plan (housekeeping).

§11-4-8: Uses by Special Permit will be repealed in its entirety and re-enacted. Proposed revisions to SUPs are summarized as follows:

1. A number of uses currently require SUP approval, including Day Care Facilities, Indoor Entertainment Establishments, and Places of Assembly (which includes churches and private schools). These uses are proposed to be removed from the SUP process and made permitted uses (use by right) within the B1, C1, and C2 zone districts (business and commercial zone districts). The Code also allows these uses to be considered in the Planned Unit Development (PUD) zoning classification through the rezoning process, which is consistent with the vast majority of zoning and development in Westminster.
2. Several uses currently allowed by SUP approval within various zoning classifications are proposed to become Conditional Uses, including certain types of group homes (see §11-4-9 below). A Conditional Use is a use allowed within certain zoning districts as long as certain conditions are met (i.e. buffer requirements). The approval for a conditional use would be administrative, once all conditions of approval are met. Examples include Group Homes with eight or fewer residents for the Aged, Developmentally Disabled, and Mentally Ill, which are protected residential uses in low density zones under state law. Staff also recommends changing the existing 1,000-foot separation for Group Homes for the Aged and Mentally Ill to 750 feet, which is the maximum allowable separation for these types of homes pursuant to state law.
3. Special Use Permits will remain, or be proposed as a regulatory process for land use approval for Ambulance Services, Tattoo/Body Piercing Parlors, Thrift Stores (5,000 sf or greater), Group Care Facilities (those not protected by state law), and Institutional Care Facilities. Tattoo/Body Piercing Parlor is currently allowed only in the PUD zone. Staff recommends tattoo/body piercing parlor to be regulated as a SUP to address the potential impacts of these uses in straight zoned districts.
4. Staff is also proposing removing certain residential care facility uses that are of a commercial nature from single family and duplex zones, such as Group Care Facilities, Institutional Care Facilities, and large day care homes (5 to 15 children), since these uses are considered too intensive for operation in these low density residential areas. Also, for consistency among all

- group residential uses, the existing 1,000-foot separation between group care facilities is proposed to be reduced to 750 feet. Refer to Attachment 3 - Non-Residential Uses, and Attachment 4 - Residential Uses, for further detail in comparing the proposed changes in Section 11-4-8 to current Code.
5. Both cemeteries and hospitals are proposed to be removed from the SUP process. It is more appropriate for these land uses to be regulated by PUD zoning, as is the case for the vast majority of zoning and development in Westminster.
 6. The procedures and criteria used in the review and approval of SUPs are proposed to be modified and updated. Thrift stores 5,000 square feet or larger would require SUP approval, and the 500-foot separation requirement between thrift stores (5,000 sf or larger) would be increased to 1,000 feet in order to minimize the potential impacts to the shopping center and surrounding area. Tattoo/Body Piercing Parlors are also proposed to be separated by a distance of 1,000 feet.
 7. §11-4-9: Applications by Special Permit will be repealed in its entirety and re-enacted as Conditional Uses. This section of the Code will then be used to explain and address the conditional use process. A Conditional Use is a use allowed within specified zoning districts if certain conditions are met. Conditional Uses are proposed for Thrift Stores with less than 5,000 square feet of gross floor area, statutorily protected Group Homes (eight residents or fewer - see Attachment 4 for residential uses), and Domestic Violence Shelters. The existing 1,000-foot separation between residential facilities and Domestic Violence Shelters is proposed to be eliminated because implementation would negate the intent for confidentiality regarding the location of these shelters.

Planning Commission Review

The rationale behind the proposed amendments was discussed with the Planning Commission on October 13, 2009. Staff generally explained that the changes are needed to address changes in state and federal law, to clean up outdated portions of the code, to add and update definitions, and to create a conditional use category. The charts found in Attachments 3 and 4 herein were also reviewed. Commissioners asked about noticing requirements, how other communities handle special and conditional uses, and what training would be provided. All seven commissioners stated their support or strong support for the code revisions and change of venue.

Public Notification

Published Notice: Notice of public hearings scheduled before City Council are published at least four days prior to City Council public hearings. Notice was published in the Westminster Window on December 31, 2009.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Attachment 1 - Summary of proposed changes to Definitions
- Attachment 2 - Comparison of Communities
- Attachment 3 - Non-Residential Uses
- Attachment 4 - Residential Uses

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **1**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING TITLES II, V AND XI OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING SPECIAL USE PERMITS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 2-2-2, W.M.C., is hereby AMENDED BY THE ADDITION OF NEW SUBSECTION (G) to read as follows:

2-2-2: POWERS AND DUTIES: The powers and duties of the Planning Commission shall include, but not be limited to, the following:

(G) The review and determination of all special use permit applications.

Section 2. Section 2-2-4, W.M.C., subsection (B), is hereby AMENDED as follows:

2-2-4: RULES AND REGULATIONS:

(B) The Commission shall make and adopt its own bylaws, subject to the approval of the City Council, which shall include, but not be limited to, the following procedures:

- (1) The election of officers and establishment of the duties of such officers.
- (2) The scheduling and conduct of regular and special meetings and public hearings.
- (3) The submittal of applications and petitions for annexations, development plan approvals, amendments to development plans, zonings and rezonings, variances, special use permits and any matter within the jurisdiction of the Planning Commission.
- (4) The exercise of any of the duties of the Planning Commission set forth in this Code.

Section 3. Section 2-5-2, subsection (B), W.M.C., is hereby AMENDED as follows:

2-5-2: POWERS AND DUTIES:

(B) The Special Permit and License Board shall conduct public hearings, approve or deny applications for licenses, renew or deny renewal of licenses, and cancel, suspend or revoke the following licenses. All decisions of the Board on these licenses are final, subject only to appeal to a court of competent jurisdiction.

- ~~(1) Massage pParlor Hlicenses, pursuant to Chapter 15 of Title V of this Code;~~
- ~~(2) Escort sService Hlicenses, pursuant to Chapter 19 of Title V of this Code;~~
- ~~3. Special Use Permits, pursuant to Section 8, Chapter 4 of Title XI of this Code.~~
- ~~(34) Amusement center licenses, pursuant to Chapter 9 of Title V of this Code; and~~
- ~~(45) Dance hall and cabaret licenses, pursuant to Chapter 16 of Title V of this Code.~~
- ~~(56) Business licenses, including contractor registrations under review for denial, revocation, or suspension shall be reviewed in a public meeting conducted by the Special Permit and License Board.~~

Section 4. Chapter 20 of Title V, W.M.C., "FAMILY CARE HOMES, CHILD CARE CENTERS, AND RESIDENTIAL CARE FACILITIES," is hereby DELETED IN ITS ENTIRETY.

Section 5. Sections 11-1-1, 11-1-3, 11-1-4, and 11-1-6, W.M.C., are hereby AMENDED as follows:

11-1-1: PURPOSE: (2534) This Title is enacted to preserve and promote the public health, safety, and welfare of the inhabitants of the City of Westminster and of the public generally and to encourage and facilitate the orderly growth and expansion of the City. This Title combines the provisions more commonly found in separate zoning, subdivision, growth management, building, floodplain, and numerous other ordinances into a single land use and development code that will cover all phases of development from annexation through certificate of occupancy. The intent of the unified approach is to:

(A) Address the changes in the way land development occurs. Current land development practices blur the traditional distinctions between zoning, plan approval, and subdivision and, typically, contain a variety of residential and non-residential uses in a single development plan.

(B) Include all types and stages of development under one title ordinance and provide ~~only one set of regulations and standards with which for the convenience of those using the development process need to become familiar.~~

(C) Avoid overlapping, conflicting, or inconsistent code provisions ~~that frequently occur as a result of numerous individual ordinances.~~

11-1-3: VIOLATIONS: (2534 2797)

(A) It shall be unlawful for any person ~~or entity~~ to:

(1) ~~Use, occupy, or sell any land or building, or authorize or permit the use, occupancy, or sale of any land or building under the person's control except in conformance with all applicable provisions of this Title.~~

(2) ~~Use, occupy, or sell any land or building or authorize or permit the use, occupancy, or sale of any land or buildings except in conformance with all applicable provisions of this Title, as well as all applicable requirements, development plans and/or restrictions including, but not limited to:~~

(a) any zoning district requirements and restrictions, including PUD (Planned Unit Development) zones, restrictions,

(b) the contents of any Preliminary Development Plan (PDP), Official Development Plan (ODP), or Final Plat,

(c) the contents of any approved engineering construction drawings, building construction drawings, and any all public and private improvement drawings,

(d) the terms, conditions and covenants of any and annexation agreements, public and/or private improvements agreement, development agreement, or any agreement entered into pursuant to the provisions of this Title,

(e) the contents of any approved drainage, traffic, or utility studies, and

(f) the terms and conditions of any approved, applicable, duly granted variances or exceptions.

(3) ~~Construct, reconstruct or alter any building or structure or authorize the construction, reconstruction or alteration of any building or structure under the person's control except in conformance with all applicable provisions of this Title and with, as well as all applicable requirements, development plans and/or restrictions including, but not limited to:~~

(a) any zoning district requirements and restrictions, including PUD (Planned Unit Development) zones, restrictions,

(b) the contents of any Preliminary Development Plan (PDP), Official Development Plan (ODP), or Final Plat,

(c) the contents of any approved engineering construction drawings, building construction drawings, and any all public and private improvement drawings,

~~(d) the terms, conditions and covenants of any and annexation agreements, public and/or private improvements agreement, development agreement, or any agreement entered into pursuant to the provisions of this Title;~~

~~(e) the contents of any approved drainage, traffic, or utility studies;~~ and

~~(f) the terms and conditions of any approved/eligible/duly granted variances or exceptions.~~

(4) Utilize any yard or other open space provided about any building for the purpose of complying with provisions of this Title to provide a yard or other open space for any other building. No yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.

(5) Construct, reconstruct, alter, or change the use of any building or other structure, including signage, within the City without obtaining a building permit from the Building Official or his authorized representative. No permit shall be issued unless the plans of and for the proposed construction, reconstruction, alteration, demolition, or use fully conform to the zoning regulations then in effect. No business license shall be issued by the City Clerk without being furnished a written notice from the Planning Manager and Building Official that the use of the premises proposed is in conformance with the requirements of the provisions of this Title.

~~6 To establish or maintain or permit to be established or maintained, any household not in compliance with the definition of "household" established in section 11-2-9. Any member of the household may be found to be in violation of this section, including but not limited to, a person required to register as a sex offender.~~

~~7. It shall be an affirmative defense to a violation of this action that the defendant's only violation which required registration as a sex offender was a conviction or plea of guilty to a charge which consisted only of public indecency as defined in section 6-4-1(a) 6, W.M.C.~~

(B) For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

11-1-4: INTERPRETATION: (2534) The provisions of this Title shall be held to be minimum requirements adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this Title are at variance with any other provision of this Code, any other duly adopted City ordinance, or any duly promulgated rule or regulation of the City, the more restrictive, or that imposing the higher standards, shall govern. Any action or approval authorized in this Title to be taken or granted by the City Manager, may be taken or granted by the City Manager's designated representative.

11-1-6: LAND USE AND DEVELOPMENT REVIEW FEE SCHEDULE: (2598 3031 3152)

(A) An applicant for any of the following land use or development reviews shall pay in advance the corresponding fee or fees:

(1) (A) Review Fees:

PDP or amendment – Concept Review	\$350 (x) sq. rt. of acres (\$350 min.)
PDP or amendment – Technical Review	\$350 (x) sq. rt. of acres (\$350 min.)
ODP or amendment – Concept Review	\$400 (x) sq. rt. of acres (\$400 min.)
ODP or amendment – Technical Review	\$400 (x) sq. rt. of acres (\$400 min.)
Combined PDP/ODP (including amendments)	
Concept Review	\$550 (x) sq. rt. of acres (\$550 min.)
Technical Review	\$550 (x) sq. rt. of acres (\$550 min.)
Rezoning	\$500
Annexation	\$300
Comprehensive Land Use Plan Amendments	\$500
Minor Administrative Amendment	\$250
Public Hearing	\$350
ODP Waiver	\$250

Special Use Permit	\$450
Temporary Use Permit	\$100
Board of Adjustment and Appeals	\$250
Conditional Use	\$250
Construction Drawing Reviews	\$750 + \$75 (x) sq. rt. of acres (\$1125 max)
<u>(Construction Drawing Reviews include, but are not limited to, Final Plats, Address Plats, Construction Drawings, and Public Improvements Agreements)</u>	
Minor Replat (Lot Line Adjustment)	\$300
Vacations (R.O.W. and Easements)	\$300
Land Disturbance Permits	\$250
R.O.W./Street Cut Permit	\$-50
Development Sign Posting Fee	\$-50
<u>(2)(B) Other Service Fees:</u>	
Zoning Verification Letter	\$50
Affidavit of Correction	\$100
Recording Fees <u>for plats and plans</u>	\$50 + \$20/Page
Flood Plain Information (non-residential only)	\$20
<u>(3)(C) Document Fees:</u>	
Plan submittal document	\$20
Comprehensive Land Use Plan	\$25
Northeast Comprehensive Development Plan	\$5
Copies of plans on file	\$5/Page

(B) Applications requiring additional or modified submittals will be considered abandoned if the required submittal or re-submittal is not made within 180 days of the last submittal and a new application and payment of a new fee will be required.

~~Construction Drawing Reviews include, but are not limited to, Final Plats, Address Plats, Construction Drawings, and Public Improvements Agreements (PIA)~~

Section 5. Chapter 2 of Title XI, W.M.C., is hereby REPEALED AND REENACTED as follows:

CHAPTER 2

DEFINITIONS

11-2-1: DEFINITIONS:

(A) The following words, terms and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) **“ACCESSORY BUILDING”** shall mean any non-habitable building, structure, or portion thereof located on the same principal lot as a habitable structure that is clearly incidental to the principal structure, such as a garage or a storage shed.

(2) **“AMBULANCE SERVICE”** shall mean a privately-owned facility for the dispatch, storage, and maintenance of emergency medical care vehicles.

(3) **“ANTIQUÉ”** shall mean an article of glass, china, furniture, musical instrument, or similar furnishing or decoration that has been used by one or more persons and which has greater value than when it was originally created and sold and has significance as a result of age, design, quality, historical association, or affiliation with a well-known person.

(4) **“ANTIQUÉ SHOP”** shall mean a shop or store that devotes more than 75 percent of its retail floor area to the sale of antiques.

(5) **“APPEAL”** shall mean a request for a review of the interpretation of any provisions of this ordinance, or a request for review of the identification of any floodplain or floodway as indicated in any Official Flood Study.

(6) **“APPLICANT”** shall mean a person, partnership, company, corporation, public agency, or the assigns of such entities that request permission to engage in land development activity.

(7) **“ARCHITECTURAL PROJECTION”** shall mean any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, including roof overhangs, mansards, unenclosed exterior balconies, marquees, bay windows, immovable awnings, canopies, pilasters, fascias, and the like, but not including signs.

(8) **“ASSISTED LIVING RESIDENCE”** shall mean a state licensed residential facility that provides impaired adults with room and board, personal services, protective oversight and supervision, and social care due to impaired capacity, but not to the extent that regular 24-hour medical or nursing care is required and subject to the limitations in Section 25-27-102, C.R.S., as amended.

(9) **“ATTACHED SENIOR HOUSING UNIT”** shall mean an attached residential dwelling unit within a housing project restricted to persons 60 years of age or over, or as may otherwise be determined by Council.

(10) **“AWNING”** shall mean a roof-like cover that projects from the wall of a building as an architectural detail or for the purpose of shielding an area, doorway, or window from the elements.

(11) **“BASE FLOOD (100-YEAR FLOOD)”** shall mean the flood having a 1 percent probability of being equaled or exceeded in any given year.

(12) **“BASE FLOOD ELEVATION (BFE)”** shall mean the water surface elevation of the base flood (100-year flood) as indicated in the official flood studies.

(13) **“BILLBOARD”** shall mean a sign and its structure, advertising an establishment, merchandise, service, or entertainment that is not sold, produced, manufactured or furnished on the property, where the said sign is located.

(14) **“BODY PIERCING/TATTOO PARLOR”** shall mean an establishment that engages in the non-medical act of penetrating the skin other than the ears, to make, generally permanent in nature, a hole, mark, or scar. The term “body piercing/tattoo” shall apply to body illustrations but exclude permanent cosmetics such as lip liner, eyeliner, or eyebrow enhancement.

(15) **“BUILDING CODE”** shall mean the latest edition of the Building Code as amended and adopted by the City Council of the City of Westminster.

(16) **“BUILDING OFFICIAL”** shall mean the officer or other person charged with the administration and enforcement of the Building Code and Sign Code or the Building Official's duly authorized representative.

(17) **“BUILDING SERVICE EQUIPMENT”** shall mean the plumbing, mechanical, and electrical equipment, including piping, wiring, fixtures, and other accessories that provide sanitation, lighting, heating, ventilation, cooling, refrigeration, fire protection, and facilities essential for the habitable occupancy of a mobile home, building, or structure.

(18) **“CANOPY”** shall mean a structure of rigid or non-rigid material on a framework sheltering an area or forming a sheltered walk to the entrance of building.

(19) **“CITY ENGINEER”** shall mean and include any engineer, or firm of engineers, or corporation engaged in the practice of engineering, which may be under contract with the City with respect to local public improvements contracted for or installed pursuant to this Chapter.

(20) **“CEMETERY”** shall mean land used or intended to be used for the burial of the dead and dedicated for cemetery purposes including columbariums, crematoriums, mausoleums, and funeral establishments, when operated in conjunction with and within the boundary of such cemetery.

(21) **“CHURCH”** shall mean a building or structure or group of buildings or structures that are primarily intended for the conducting of organized religious services and accessory uses normally associated therewith.

(22) **“CONDITIONAL USE”** shall mean a use that may be an appropriate use in a specific zoning district because it is subject to certain conditions prescribed in this Title.

(23) **“CONSIGNMENT”** shall mean the placing of used merchandise, by the owner of such goods, in the bailment of another, while retaining ownership until the goods are sold. Consignment of goods differs from donation of goods in that, with consignment, the owner of the goods retains ownership until he or she receives payment for them, and the goods have generally not lost a significant amount of value due to their original quality and limited wear.

(24) **“CONSIGNMENT STORE”** shall mean a shop or store that devotes more than 75 percent of its retail sales floor area to the sale of consignment items.

(25) **“CONSTRUCT”** shall mean “constructed,” “construction,” or words of similar import and shall be deemed to include “acquire,” “acquired,” “acquisition,” or similar import in districts created to acquire improvements already constructed.

(26) **“CORRECTION HOME”** shall mean a state licensed facility housing residents for purposes of rehabilitation, special care, supervision, or treatment for social, behavioral, or disciplinary problems. A “Correction Home” includes adult or juvenile “halfway houses”, community corrections facilities and law offender division facilities.

(27) **“CUT”** shall mean an act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced, or relocated.

(28) **“DAY CARE FACILITY”** shall mean a state licensed facility maintained for the care of five or more persons not related to the owner, operator or manager thereof, providing care, supervision, or education for less than 24 hours. The term includes facilities commonly known as “Child Care Center”, “Day Care Center”, “Adult Day Care Facility”, “Day Nursery”, “Preschool”, “Kindergarten”, and “Summer Camp”, except that “Kindergarten” does not include a kindergarten maintained in connection with a public or private elementary school.

(29) **“DETENTION POND”** shall mean a pond constructed for the temporary storage of runoff waters where the opening for release is of a relatively fixed capacity and not manually operated.

(30) **“DEVELOPED FLOW”** shall mean the amount of rainfall runoff generated by a parcel of land that has been developed to its ultimate use with no retention or detention facilities by which the runoff volume or flow rate is altered.

(31) **“DEVELOPER”** shall mean any person, persons, company, partnership, or corporation who subdivides, constructs, or provides any type of improvements or in any way engages in the development of land.

(32) **“DEVELOPMENT”** shall mean any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drilling operations.

(33) **“DISCOUNT STORE”** shall mean a retail establishment that sells new merchandise at discounted prices.

(34) **“DIVERSION CHANNEL”** shall mean a channel with a supporting ridge on the lower side constructed across the slope.

(35) **“DOMESTIC VIOLENCE SHELTER HOME”** shall mean a residential facility providing special care for victims of domestic violence.

(36) **“DUPLEX”** shall mean a building designed as a single free-standing structure, containing two separate living units, each of which is designed to be occupied as a separate residence for one family or household. Each living unit has direct access to the outside.

(37) **“DWELLING UNIT”** shall mean a single residential unit providing complete independent living facilities for one or more persons including permanent provisions for sleeping, eating, cooking, and sanitation.

(38) **“DWELLING UNIT, MULTI-FAMILY”** shall mean a dwelling unit contained in a structure also containing other dwelling units in which each unit is attached to another at one or more party walls and at either the floor or the ceiling. For purposes of Chapter 3 of this Title, no dwelling units shall be classified as multi-family if they contain more than two bedrooms. A dwelling unit otherwise meeting this definition but containing more than two bedrooms shall be considered a single-family attached dwelling unit for purposes of said Chapter only. A structure could contain both multi-family dwelling units and single-family attached dwelling units as defined herein.

(39) **“DWELLING UNIT, RESIDENTIAL”** shall mean a building or part of a building including cooking, bath, toilet and general living facilities and spaces and designed and intended for occupancy as a primary residence by one family or by a group living essentially as a family. The term "dwelling unit" is synonymous with "residential" and also includes such uses as dormitories and nursing homes but not hospitals, hotels, and motels.

(40) **“DWELLING UNIT, SINGLE-FAMILY ATTACHED”** shall mean a dwelling unit contained in its own structure from ground to roof, which structure shares one or more party walls with one or more similar units. Includes duplex dwellings.

(41) **“DWELLING UNIT, SINGLE-FAMILY DETACHED”** shall mean a single dwelling unit contained in a free-standing structure that has no party walls with other structures.

(42) **“ENCROACHMENT LINES”** shall mean lines that establish the floodway by the "equal conveyance reduction method" that differentiate those areas of the floodplain that must be preserved for the conveyance of flood flows and those areas of the floodplain that can be used for purposes other than flood flow conveyance.

(43) **“EQUAL CONVEYANCE REDUCTION METHOD”** shall mean the procedure for determining the "encroachment lines." This method establishes encroachment lines by reducing equal proportions of flood conveyance from both sides of a floodplain until the water surface elevation of the 100-year floodplain is increased by 1 foot.

(44) **“EROSION”** shall mean the wearing away of land surface by detachment and transportation of soil or rock material through the action of moving water, wind, ice, or gravity.

(45) **“EROSION CONTROL PLAN”** shall mean the plan required as an application for a land disturbance permit. Such document illustrates grading plans and includes necessary land treatment measures, including construction schedules of treatment installations that will minimize soil erosion and sedimentation.

(46) **“EXISTING CONSTRUCTION”** shall mean, for the purposes of determining flood insurance rates, structures for which the "start of construction" commenced before the effective date of this Ordinance. "Existing construction" may also be referred to as "existing structures."

(47) **“EXISTING RESIDENTIAL SUBDIVISIONS”** shall mean a platted and duly recorded residential subdivision or a residential subdivision for which an application for final plat was submitted by July 1, 1994, in accordance with Ordinance No. 2223. Any other subdivision shall be deemed to be a new residential subdivision within the meaning of this Chapter.

(48) **“FAMILY”** shall mean a head of household plus, if applicable, any individuals related to the head of household by blood, marriage, adoption, or guardianship, including foster children placed by a state institution or a licensed child placement agency.

(49) **“FAMILY CARE HOME”** shall mean a state licensed facility in the residence of the provider that provides less than 24 hour care, training, education, or supervision for two to four children who are not related by blood, marriage, or adoption to the care provider.

(50) **“FAST FOOD RESTAURANT”** shall mean any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state for consumption either within the restaurant building or for carry-out with consumption off the premises, and whose design or principal method of operation includes one or both of the following characteristics:

(1) Foods, frozen desserts, or beverages are usually served in paper, plastic, edible, or other disposable containers.

(2) Facilities for on-premises consumption of the food are insufficient for the volume of food sold in the establishment.

(51) **“FINAL PLAT”** shall mean the map or plan of record of a subdivision and any accompanying material, as described in this Code or in rules and regulations promulgated hereto.

(52) **“FLOOD OR FLOODING”** shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation of runoff of surface waters from any source.

(53) **“FLOOD HAZARD AREA”** shall mean the area that will be inundated during the occurrence of the 100-year flood (base flood).

(54) **“FLOOD INSURANCE RATE MAP (FIRM)”** shall mean the map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community for the purpose of insurance rating only.

(55) **“FLOOD INSURANCE STUDY (FIS)”** shall mean the report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary, floodway map, and the water surface elevation of the base flood for the purpose of insurance rating only.

(56) **“FLOODPLAIN”** shall mean the area that will be inundated during the occurrence of a storm of a given magnitude or frequency.

(57) **“FLOODPLAIN DEVELOPMENT PERMIT”** shall mean the permit required under Section 11-9-13, W.M.C..

(58) **“FLOODPLAIN MANAGEMENT”** shall mean a program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

(59) **“FLOODPLAIN VARIANCE”** shall mean a grant of relief by the City from the terms of the floodplain ordinance.

(60) **“FLOODPROOFING”** shall mean any combination of structural and non-structural additions, changes, or adjustments to proposed or existing structures that reduce or substantially eliminate the potential for flood damage to real estate or improved real property, public or private facilities, structures and their contents.

(61) **“FLOOD PROFILE”** shall mean a graph or longitudinal profile showing the relationship of the water surface elevation of a flood event to the ground surface along a stream or river.

(62) **“FLOOD PROTECTION ELEVATION”** shall mean an elevation one foot above the water surface elevation or flood profile of the 100-year flood under existing channel and floodplain conditions. This elevation is applicable to development within the "flood storage area."

(63) **“FLOOD STORAGE AREA”** shall mean those portions of the floodplain that may serve as a temporary storage area for floodwaters from the 100-year flood that are outside the floodway area.

(64) **“FLOOD STUDY”** shall mean an engineering study utilizing hydrologic and hydraulic analyses to identify storm runoff characteristics including flow rates and the extent of inundation for a specified storm recurrence interval.

(65) **“FLOODWAY”** shall mean the channel of a river, stream, or other water course and the adjacent land area that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation of the 100-year flood more than 1 foot assuming an equal degree of conveyance reduction from both sides of a floodplain for a significant reach of channel. The floodway is located within the floodplain.

(66) **“FOOD SERVICE”** shall mean both full service and fast food restaurants with or without liquor service, as well as specialty stores such as doughnut shops and ice cream parlors.

(67) **“FRONTAGE, BUILDING”** shall mean the horizontal, linear dimension of that side of a building that abuts a street, a parking area, a mall, or other circulation area that is open to the general public; and having either a main window display of the enterprise or a public entrance to the building. In industrial districts a building side with an entrance open to employees shall also qualify as a building frontage. Where more than one use occupies a building, each use having a public entrance or main window display for its exclusive use shall be considered to have its own building frontage, which shall be the front width of the portion of the building occupied by that use.

(68) **“FRONTAGE, LOT”** shall mean that side of a lot abutting on a street or way ordinarily regarded as the front of the lot.

(69) **“FRONTAGE, STREET”** shall mean the linear frontage(s) of a lot or parcel abutting on a private or public street that provides principal access to, or visibility of, the premises.

(70) **“GRADING”** shall mean the practice of changing the ground level or slope.

(71) **“GROSS FLOOR AREA”** shall mean the sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two (2) buildings, excluding the following areas: attic areas with head room of less than seven (7) feet; unenclosed building exterior walks, stairs, or fire escapes; elevator structures on the roof;

areas devoted exclusively to air conditioning, ventilating, and other building machinery and equipment; and parking structures and enclosed pedestrian walks of over thirty (30) feet in width and one hundred (100) feet in length.

(72) **“GROUP CARE FACILITY”** shall mean a state licensed residential facility providing accommodations, personal services or special care for individuals of any age, not related to the owner or operator thereof, and who seek or require a protective living environment, but who do not require 24-hour medical or nursing services. Group Care Facilities shall include, but are not limited to, Group Homes of more than eight (8) persons, Residential Child Care Facilities, Specialized Group Facilities, and Youth Shelter Facilities.

(73) **“GROUP HOME FOR DEVELOPMENTALLY DISABLED PERSONS”** shall mean a group living situation accommodating, and for the exclusive use of, at least four but no more than eight persons, licensed by the state as a community residential home, where services and supports are provided to persons with developmental disabilities. For the purposes of this definition, “developmental disability” means a disability that constitutes a substantial disability to the affected individual and that is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism, or other neurological conditions when those conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation.

(74) **“GROUP HOME FOR PERSONS WITH MENTAL ILLNESS”** shall mean a group living situation, licensed by the state, providing for the care and treatment and for the exclusive use of not more than eight persons with mental illness, which shall not include persons who have committed a violent offense.

(75) **“GROUP HOME FOR THE AGED”** shall mean a group living situation for the exclusive use of not more than eight persons sixty years of age or older. Group homes for the aged do not include nursing facilities or institutions providing life care.

(76) **“HOME OCCUPATION”** shall mean any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling unit.

(77) **“HOTEL, FULL SERVICE”** shall mean any establishment that provides temporary lodging for compensation, generally providing between 100-600 guest rooms and may include suites providing larger living space separate from the bedroom. Hotels in this category shall have large internal lobbies sufficient to handle check-in and checkout functions associated with conference traffic. This type of facility shall provide conference, meeting or banquet rooms. Access to rooms shall be through internal corridors. The facility may provide retail space for newsstands, gift shops, and business service centers. Food and beverage outlets, including formal restaurants offering various styles of food across a range of prices will be available. The establishment shall provide daily housekeeping, room, maid, linen, telephone and other similar services. Hotels of this type shall provide a swimming pool and a fully equipped fitness center and may provide whirlpools, sauna and steam rooms. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

(78) **“HOTEL, EXTENDED STAY”** shall mean any establishment that provides temporary lodging for compensation, providing larger rooms (greater than 400 square feet) with a living space separate from the bedroom. Extended Stay Hotels shall provide seventy-five (75) percent of all suites with Pullman kitchens (sink, built-in cook top or stove, microwave oven and refrigerator). Ninety (90) percent of all rooms within this category shall be available to guests staying ninety (90) days or less. Hotels in this category shall have a main office providing check-in, checkout and customer service functions at all hours. Housekeeping/maid service shall be provided. Ingress and egress to units shall be either internal or through a secured internal courtyard. This type of facility shall provide hospitality lounge and/or meeting rooms and may provide limited retail space for newsstands, gift shops, and business service center. Extended Stay Hotels are encouraged to provide a formal restaurant or cafe and a

fully equipped fitness center for use by guests, on-site or through co-op. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

(79) **“HOTEL, MID-TIER”** shall mean any establishment that provides temporary lodging for compensation, generally providing between 80-500 guest rooms and may include suites. Ingress and egress shall be through an internal lobby with an office providing check-in, checkout and related services at all hours. Access to rooms shall be through an internal corridor. This type of facility may provide limited retail space for gift shops or other similar uses. A formal restaurant or cafe is encouraged. Separate meeting rooms should be provided for conferences or banquets. Mid-Tier hotels shall provide, on-site, a swimming pool and are encouraged to provide whirlpool, sauna, steam room and a fully equipped fitness center. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

(80) **“HOTEL, LIMITED SERVICE”** shall mean any establishment that provides temporary lodging, for compensation, generally providing between 50-125 rooms at rates below the prevailing rates of full-service facilities in the same area. Hotels in this category shall have a main office providing check-in, checkout and customer service functions at all hours. Ingress and egress to rooms can be either internal or external (internal will be encouraged). Hotels in this category are encouraged to provide on-site or through co-op, a fully equipped fitness center for use by guests. The establishment shall provide daily housekeeping, room, maid, linen, telephone and other similar services. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

(81) **“HOSPITAL”** shall mean an institution, licensed by the State Department of Health, providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions, and including as an integral part of the institution, related facilities such as laboratories, outpatient facilities, training facilities, or ambulance service.

(82) **“ILLUMINATION, DIRECT”** shall mean lighting by means of an unshielded light source, including neon tubing, that is effectively visible as a part of the sign where light travels directly from the source to the viewer's eye.

(83) **“ILLUMINATION, INDIRECT”** shall mean lighting by means of a light source that is directed at a reflecting surface in such a way as to illuminate the sign from the front, or a light source that is primarily designed to illuminate the entire building facade upon which a sign is displayed. Indirect illumination does not include lighting that is primarily used for purposes other than sign illumination such as parking lot lights or lights inside a building that may silhouette a window sign but that are primarily installed to serve as inside illumination.

(84) **“ILLUMINATION, INTERNAL”** shall mean lighting by means of a light source that is within a sign having a translucent background, silhouetting opaque letters or designs, or that is within letters or designs that are themselves made of a translucent material.

(85) **“INDOOR ENTERTAINMENT”** shall mean an establishment where entertainment, either passive or active, is provided on a temporary or permanent basis for the pleasure of the patrons and is contained entirely within a closed building. Entertainment establishments include but are not limited to movie theatres, comedy clubs, laser tag, bowling, billiards, live performances, karaoke, dance, and similar activities.

(86) **“INSTITUTIONAL CARE FACILITY”** shall mean a state-licensed facility housing residents for purposes of rehabilitation, special care, supervision, treatment for behavioral or disciplinary

problems or alcohol or substance abuse. Institutional Care Facilities include Secure Residential Treatment Centers, Correction Homes, Home Detention Facilities, and Halfway Houses.

(87) **“INTEREST RATE”** shall mean that interest rate on recoverable costs that is officially established by the City Council from time to time.

(88) **“LAND DISTURBANCE”** shall mean an activity involving the clearing, grading, transporting, filling, or other activity that causes land to be exposed to erosion.

(89) **“LIGHT SOURCE”** shall mean neon, fluorescent or similar tube lighting, the incandescent bulb, including the light producing elements therein, and any reflecting surface that, by reason of its construction and/or placement, becomes, in effect, the light source.

(90) **“LOT”** shall mean a tract, plot, or portion of a subdivision or other parcel of land in single ownership and not divided by a public street.

(91) **“LOT LINE, FRONT”** shall mean the lot line on the frontage side of the lot.

(92) **“LOT, REVERSE CORNER”** shall mean a corner lot having as its side lot line a continuation of the front lot line of the adjacent lots.

(93) **“LOWEST FLOOR”** shall mean the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure that is usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of any portion of this Ordinance.

(94) **“MAINTENANCE, SIGN”** shall mean the replacing, repairing or repainting of a portion of a sign structure, periodic changing of bulletin board panels or the renewing of copy that has become no longer usable through ordinary wear and tear, weather or accident. The replacing or repairing of a sign or sign structure that has been damaged to an extent exceeding fifty percent (50%) of the replacement cost, as determined by the Building Official, shall be considered as "maintenance" only when said sign conforms to all of the applicable provisions of this Code and when the damage has been caused by an act of God or violent accident.

(95) **“MANAGEMENT”** shall mean the owner or person responsible for operating and managing the mobile home park or an agent, employee, or representative authorized to act on said management's behalf in connection with matters relating to tenancy and the overall operation and maintenance of the mobile home park.

(96) **“MANUFACTURED HOME”** shall mean a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

(97) **“MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION”** shall mean a parcel, or contiguous parcels, of land divided into two or more manufactured home lots for rent or sale.

(98) **“MARQUEE”** shall mean any hood, canopy, awning, or permanent roof-like construction that is supported wholly or in part by a building and projects from a wall of a building.

(99) **“MOBILE HOME”** shall mean any dwelling unit built on a permanent, wheeled chassis exceeding either 8 feet in width or 32 feet in length and designed for long-term residential occupancy in a

temporary or permanent location that is capable of being towed over public streets or highways as a unit or in sections and duly licensable as such.

(100) **“MOBILE HOME PARK”** shall mean a parcel of land under single ownership that has been planned and approved for the placement of a mobile home, occupied for dwelling purposes, and for transient and non-transient uses.

(101) **“MOBILE HOME SPACE”** shall mean a plot of land within a mobile home park designed and intended to accommodate one mobile home.

(102) **“NATIONAL FLOOD INSURANCE PROGRAM (NFIP)”** shall mean a federal regulatory program created by Congress through the National Flood Insurance Act of 1968 (P.L. 90-449). This program was established within the Federal Insurance Administration (FIA) for the purpose of providing federally subsidized flood insurance for those property owners located within communities participating in the NFIP.

(103) **“NEW CONSTRUCTION”** shall mean, for the purpose of determining flood insurance rates, structures for which the "start of construction" commenced on or after September 30, 1988, and includes any subsequent improvements to such structures.

(104) **“NURSING HOME/FACILITY”** shall mean a state licensed facility that meets the state nursing home standards and is maintained primarily for the care and treatment of inpatients under the direction of a physician and have the availability of a licensed nurse on a 24-hour basis. For the purposes of the use categories in Section 11-4-4, W.M.C., nursing home shall include convalescent homes, rest homes, and assisted living residences, even though such uses do not provide 24-hour nursing or physician services.

(105) **“OFFICIAL FLOOD STUDIES”** shall mean flood studies adopted by official action of the City Council.

(106) **“ONE-HUNDRED YEAR FLOOD (BASE FLOOD)”** shall mean the flood having a 1 percent probability of being equaled or exceeded in any given year.

(107) **“ONE-HUNDRED YEAR FLOODPLAIN”** shall mean the area of land that will be inundated during the occurrence of 100-year flood (base flood).

(108) **“ONE-HUNDRED YEAR FLOOD ELEVATION”** shall mean the water surface elevation of the 100-year flood (base flood) as indicated in the Official Flood Studies.

(109) **“OWNER”** shall mean a natural person or persons, a company, a corporation, a partnership or other legal entity recorded as such on the real property records of the Adams or Jefferson County Clerk and Recorder, including a duly authorized agent or attorney, a purchaser, devisee, fiduciary or living person having a vested or contingent interest in the property in question.

(110) **“PAWN SHOP”** shall mean any business that loans money on deposit of personal property or deals in the purchase or possession of personal property on condition of selling the same back again to the pledger or depositor, or loans or advances money on personal property by taking chattel mortgage security thereon, and takes or receives such personal property and issues a lien upon such personal property.

(111) **“PARTICIPATION COSTS”** shall mean that portion of the construction cost of public improvements for which the City is responsible.

(112) **“PROFESSIONAL ENGINEER”** shall mean an engineer that is registered to practice engineering in the State of Colorado.

(113) **“PUBLIC ENTRANCE”** shall mean an entrance to a building or premises that is customarily used or intended for use by the general public. Fire exits, special employee entrances and loading dock entrances not generally used by the public and the like are not considered public entrances.

(114) **“PUBLIC IMPROVEMENT”** shall mean any street, curb, gutter, sidewalk, drainage ditch, drainageway, utility line, pedestrian way, or other facility for public use or owned by the City.

(115) **“RECOVERABLE COSTS”** shall mean that portion of the construction cost for which the City determines the owners or developers of other properties served by the improvements are responsible. Recoverable costs may include that portion of the costs of construction financed by developers through special assessment obligations or any other form of financial support that exceeds the amount of benefits the financing developers will realize from the improvements so financed.

(116) **“RECREATIONAL VEHICLE”** shall mean a vehicle that is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

(117) **“RETAIL ESTABLISHMENT”** shall mean a shop or store that, as its primary business, sells new merchandise to the public.

(118) **“ROOF”** shall mean the cover of any building, including the eaves and similar projections.

(119) **“ROOFLINE”** shall mean the highest point on any building where an exterior wall encloses usable floor space. The term "roofline" includes the top of any parapet wall, providing said parapet wall extends around the entire perimeter of the building at the same elevation. However, the top of a parapet wall extending along one or more building elevations or a portion of one or more building elevations may, as determined by the City Manager, be considered to be the roofline in those instances where the parapet wall improves the architectural appearance of a building or shields rooftop mechanical equipment.

(120) **“SATELLITE EARTH STATION OR SATELLITE DISH”** shall mean a dish-shaped antenna and associated electronics designed to receive television broadcasts relayed by microwave signals from earth orbiting communication satellites.

(121) **“SCHOOL, PRIMARY/SECONDARY”** shall mean a public, private, or parochial educational facility offering instruction at the elementary, junior, and/or senior high school levels in the branches of learning and study required to be taught in the public schools of Colorado.

(122) **“SEDIMENT”** shall mean rock, sand, gravel, silt, soil, or other material that is transported by, suspended in, or deposited by water or air or is accumulated in beds by other natural agencies.

(123) **“SEDIMENT BASIN”** shall mean a barrier or dam built at a suitable location to retain rock, sand, gravel, soil, or other material deposited by action of water, wind, ice, gravity, or other agents of erosion.

(124) **“SEDIMENTATION”** shall mean the process of subsidence and deposition of suspended matter carried by water or other liquids.

(125) **“SERIOUS HAZARD”** shall mean a man-made or natural phenomenon that is so adverse to past, current, or foreseeable development of land as to constitute a significant hazard to public health and safety or to property. The term may include, but is not limited to, natural hazards such as ground subsidence, radioactivity, landslides, floodplains and unstable slopes, and man-made hazards such as radioactivity and airport operations.

(126) **“SERVICE BUILDING”** shall mean any building or structure within a mobile home park that is used in common by the tenants of the mobile home park for such purposes as assembly, storage, recreation, laundry, car washing, office needs, or similar uses.

(127) **“SERVICE COMMITMENT”** shall mean that the measure of City service required is determined by the average service provided to one single-family detached dwelling unit.

(128) **“SHALLOW FLOODING AREAS”** shall mean areas within the 100-year floodplain where the base flood depths range from 1 foot to 3 feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident. On the flood insurance rate maps (FIRM) this area is designated as A0 or AH zones.

(129) **“SHOPPING CENTER; BUSINESS CENTER; AND OFFICE, INDUSTRIAL, OR TECHNICAL PARKS/CENTERS”** shall mean a group of two or more professional, office, commercial, industrial, or combination thereof establishments that are planned, developed, owned, or managed as a unit and related in location, size, and type, and provide on-site parking in definite relationship to the types and sizes of establishments. Free-standing or attached buildings that function as a part of a shopping center, though they may be under separate ownership, shall be deemed to be a part of the shopping center.

(130) **“SILT TRAP”** shall mean a constructed permanent facility for the collection of water-carried soils.

(131) **“SPECIAL FLOOD HAZARD AREAS”** shall mean the areas of land that will be inundated during the occurrence of the 100-year flood (base flood).

(132) **“SPECIAL USE”** shall mean a type of use that, because of special characteristics or circumstances, may be appropriately placed in a particular zone district on a case-by-case basis subject to conditions necessary to make the use compatible with other uses permitted in the district or an adjoining district.

(133) **“START OF CONSTRUCTION”** includes substantial improvements and shall mean the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(134) **“STREET”** shall mean roads, avenues, boulevards, expressways, highways, parkways, and bridges.

(135) **“STREET IMPROVEMENTS”** shall mean any one or more of the following: surfacing, extending, widening, lengthening, altering, reconstruction, or other improvements to roadways; construction of curbs, gutters, or sidewalks; construction of bridges, overpasses, or underpasses; the necessary grading therefor; street lighting; landscaping of adjoining parkways by the planting of trees and shrubs; and storm drainage facilities incidental thereto.

(136) **“STRUCTURE”** shall mean a walled and roofed building, storage tank, manufactured home or anything constructed or erected with a fixed location on the ground above grade but not

including poles, lines, cables, or other transmission or distribution facilities of public utilities that is principally above ground.

(137) **“SUBDIVISION”** shall mean the division, whether by deed, metes and bounds description, lease, map, plat, deed, or other instrument, of any tract of land, lot, or parcel into two or more lots, parcels, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, transfer of ownership, or to offer for sale or development, including subdivision. Lots, plots, block and other subdivisions may be designated in accordance with any recorded plat thereof, and unplatted lands by any definite description.

(138) **“SUBSTANCE ABUSE REHABILITATION HOME”** shall mean a residential facility for rehabilitation, special care, supervision, or treatment for alcohol, narcotic, or substance abuse. The home must be licensed by the State or the appropriate agency thereof.

(139) **“SUBSTANTIAL DAMAGE”** shall mean damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

(140) **“SUBSTANTIAL IMPROVEMENT”** shall mean any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (a) Before the improvement or repair is started; or
- (b) If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (a) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions; or
- (b) Any alteration of structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(141) **“TATTOO/BODY PIERCING PARLOR”** shall mean the same as the term “body piercing/tattoo parlor” previously defined.

(142) **“THRIFT STORE”** shall mean a shop or store that devotes more than 75 percent of their retail sales floor area to the activity of selling used clothing or merchandise. This does not include antique shops or consignment stores, or used motor vehicle parts sales.

(143) **“UNRESTRAINED SLOPE”** shall mean unstable earthen slope with high potential for movement or erosion.

(144) **“USED MERCHANDISE”** shall mean goods and products that were once new but have been used by one or more persons.

(145) **“VARIANCE”** shall mean a departure from the provisions of the zoning ordinance, but not including the actual use or structure.

(146) **“WATER SURFACE ELEVATION”** shall mean the height in relation to mean sea level, reached by floods of various magnitudes and frequencies in floodplains.

(147) **“WETLANDS”** shall mean those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands

generally include swamps, marshes, bogs, and similar areas. Wetlands shall also include any lands that are defined as wetlands under any federal or state law.

(B) When used in this Section, the phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for".

Section 6. The index for Chapter 4 of Title XI, W.M.C., is hereby AMENDED to read as follows:

CHAPTER 4

ZONING

11-4-1: ESTABLISHMENT OF DISTRICTS

11-4-2: ZONING MAP

11-4-3: ZONING AMENDMENTS

11-4-4: ~~ALLOWED~~PERMITTED USES

11-4-5: DENSITY SCHEDULE

11-4-6: SPECIAL REGULATIONS

11-4-7: PUD -- PLANNED UNIT DEVELOPMENT DISTRICT

11-4-8: USES BY SPECIAL PERMIT

11-4-9: ~~APPLICATIONS FOR SPECIAL USE PERMITS~~CONDITIONAL USES

11-4-10: HOME OCCUPATIONS

11-4-11: ANTENNAS, TOWERS AND TELECOMMUNICATION FACILITIES

11-4-12: SATELLITE EARTH STATIONS

11-4-13: ADULT BUSINESSES

11-4-14: LAND USE REGULATIONS OF OIL & GAS OPERATIONS

11-4-15: NON-CONFORMING USES AND STRUCTURES

11-4-16: ADOPTION, IMPLEMENTATION AND COMPLIANCE WITH CITY'S
COMPREHENSIVE LAND USE PLAN

Section 7. Sections 11-4-1 and 11-4-2, W.M.C., are hereby AMENDED to read as follows :

11-4-1: ESTABLISHMENT OF DISTRICTS. (2534) The City hereby establishes the following defined zoning districts:

RE ONE-FAMILY RESIDENTIAL DISTRICT. A residential district for large-lot single-family homes ~~detached dwelling units~~.

R1 ONE-FAMILY RESIDENTIAL DISTRICT. A residential district for medium-lot single-family homes ~~detached dwelling units~~.

RA ONE-FAMILY RESIDENTIAL DISTRICT. A residential district for single-family ~~homes~~ detached dwelling units.

R2 TWO-FAMILY RESIDENTIAL DISTRICT. A residential district allowing a mix of single-family detached dwelling units and duplex ~~homes~~.

R3 MULTIPLE-FAMILY RESIDENTIAL DISTRICT. A residential district allowing a mix of single-family, duplex, and low-density multi-family dwellings units.

R4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT. A residential district allowing a mix of single-family, duplex, and low- and medium-density multi-family dwellings units.

R5 MOBILE HOME DISTRICT. A residential district specifically tailored for mobile home parks.

T1 TRANSITIONAL DISTRICT. A mixed-use district allowing both office and residential uses.

B1 BUSINESS DISTRICT. A restricted retail and office district where no outside storage of goods and merchandise is allowed.

C1 COMMERCIAL DISTRICT. A retail and office district where outside storage of merchandise is permitted.

C2 HEAVY COMMERCIAL DISTRICT. A commercial district where more intensive activities and uses not compatible with residential and other business uses are allowed.

M1 INDUSTRIAL DISTRICT. A manufacturing and office district.

O1 OPEN DISTRICT. An agricultural and open district for providing an area of the City devoted to the production of agricultural crops and livestock, as well as preserving and protecting agricultural and non-urbanized areas until urbanization is warranted and the appropriate change in district classification is made.

PUD PLANNED UNIT DEVELOPMENT DISTRICT. A district where a maximum amount of flexibility is allowed in order to create a unified, innovative approach to mixed use design.

11-4-2: ZONING MAP: (2534) A record of the boundaries and zoning classification of all districts established pursuant to this Chapter shall be maintained by the Planning Manager, which record is by reference hereby made a part of this Title.

In the event uncertainty shall be deemed to exist concerning the boundary of any district shown on the zoning district map and the uncertainty cannot be resolved by reference to the applicable zoning ordinance, district boundaries shall be presumed to be located on section lines, or lot lines, on the centerlines of highways, streets, alleys, railroad rights-of-way, and channelized waterways such as streams, or on other logical boundaries as lines to be determined by the Planning Manager.

Section 8. Section 11-4-4, W.M.C., is hereby REPEALED AND REENACTED to read as follows:

11-4-4: ALLOWED USES: (2534 2896 2975 3295) This Section lists the uses allowed in specific zoning districts. The table of uses that follows lists the allowed uses within each corresponding district, excluding the Planned Unit Development District, PUD. Uses allowed pursuant to this Section do not apply to that area included in the South Westminster Urban Renewal Plan, Phase I (Sub-areas A-I), and the uses allowed in that area shall be governed by the Plan. The listing of a use as being allowed in any particular district shall be deemed to be an exclusion of such use from any other district unless the use is specifically allowed in such other district. Uses are allowed only insofar as they are not prohibited or in conflict with other provisions of this Title or the City's Comprehensive Plan. In the event of any conflict or inconsistency between this Section and the City's Comprehensive Plan, the Comprehensive Plan shall control.

The categories of allowed uses are as follows:

PERMITTED USES, indicated as 'P' in the following table, are allowed as of right.

CONDITIONAL USES, indicated as "C" in the following table, are allowed upon a determination that they meet the conditions specified in Section 11-4-9, W.M.C.

SPECIAL USES, indicated as 'S' in the following table, may be allowed if they receive a Special Use Permit under Section 11-4-8, W.M.C.

RESIDENTIAL USES:	RE	R1	RA	R2	R3	R4	R5	T1	B1	C1	C2	M1	O1
Single Family Detached Dwelling Units	P	P	P	P	P	P		P					P
Duplexes				P	P	P		P					
Single Family Attached Dwelling Units					P	P		P					
Multi-Family Dwelling Units					P	P		P					
Boarding & Rooming Houses						P		P	P				
Nursing Home/Facilities					P	P		P					
Mobile Home Parks							P						
Group Homes	C	C	C	C	C	C		C					
Group Care Facility					S	S		S	S	S			
Institutional Care Facility										S	S	S	
Domestic Violence Home					C	C		C					
GENERAL USES:	RE	R1	RA	R2	R3	R4	R5	T1	B1	C1	C2	M1	O1
Public Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P
Temporary Construction & Real Estate Buildings	P	P	P	P	P	P	P	P	P	P	P	P	P
All Uses Owned & Operated by the City	P	P	P	P	P	P	P	P	P	P	P	P	P
Radio and Television Towers and Microwave Transmission	P	P	P	P	P	P	P	P	P	P	P	P	P
Public Schools	P	P	P	P	P	P	P	P	P	P	P	P	P
OFFICE AND SIMILAR USES:	RE	R1	RA	R2	R3	R4	R5	T1	B1	C1	C2	M1	O1
Ambulance Service										S	S	S	
Accounting, Bookkeeping								P	P	P	P	P	
Addressing/Mailing Service								P	P	P	P	P	
Administrative Office								P	P	P	P	P	
Adoption Agency								P	P	P	P	P	
Advertising Office								P	P	P	P	P	
Aerobics, Ballet, Dance, Exercise Instruction, and Classes								P	P	P	P	P	
Appraisal Service								P	P	P	P	P	
Architecture, Landscape Architecture, Planning, Design Office								P	P	P	P	P	
Bank & Financial Institution								P	P	P	P	P	
Counseling/Consulting Service								P	P	P	P	P	
Credit/Collection Agency								P	P	P	P	P	
Data Processing Service								P	P	P	P	P	

Detective Agency									P	P	P	P	P	
Employment Agency									P	P	P	P	P	
Engineering & Technical Office									P	P	P	P	P	
Entertainment Services Office									P	P	P	P	P	
Fraternal & Service Club									P	P	P	P	P	
Insurance Office, Sales, & Adjustors									P	P	P	P	P	
Legal Service									P	P	P	P	P	
Medical/Dental/Veterinary Office and Clinic									P	P	P	P	P	
Military Recruiting									P	P	P	P	P	
News Office									P	P	P	P	P	
Real Estate Office									P	P	P	P	P	
Radio/TV/Recording Studio									P	P	P	P	P	
Research & Testing Laboratory									P	P	P	P	P	
Training Service									P	P	P	P	P	
BUSINESS AND COMMERCIAL USES:	RE	R1	RA	R2	R3	R4	R5	T1	B1	C1	C2	M1	O1	
Antique Shop										P	P			
Apparel & Accessory Store									P	P	P			
Artist's Studios/Art Galleries									P	P	P			
Arts & Crafts/Drafting Supply									P	P	P			
Assembly Halls, Event Centers, & Churches includes private functions such as weddings, receptions, conferences, and meetings									P	P	P			
Audio/Visual Sales, Service & Parts Store										P	P	P		
Automobile Accessory Store									P	P	P			
Automobile, Boat, Camper & Recreational Vehicle Showrooms for the purposes of lease only, without parts, service, outdoor storage, or operational demonstrations									P	P	P	P		
Automotive & Heavy Equipment Rental											P	P		
Automotive Wash Facility										P	P	P		
Automotive Rental Office 1)limited to 1.5 vehicles per										P	P	P		

100 square feet of lease space With a maximum of 20 vehicles 2) Vehicles must be in good condition (mechanically & exterior) 3) no car wash, maintenance or repair facilities 4) limited to 1 office per shopping center													
Bakeries								P	P	P			
Bar/Nightclub/Tavern								P	P	P			
Barber & Beauty Shop								P	P	P			
Beauty Supply Sales								P	P	P			
Bed & Bath Shop								P	P	P			
Bingo Establishment/Social Gaming Outlet										P			
Book/Magazine/News Dealer, Excluding Dealers Selling Goods Not Available To All Ages								P	P	P			
Bulk Fuel Sales										P	P		
Camera & Photographic Supply								P	P	P			
Carpet & Rug Store								P	P	P			
China & Glassware								P	P	P			
Cleaning/Laundry/Tailor/Fur Storage								P	P	P			
Computer Hardware, Software, and Accessories								P	P	P			
Consignment Shop									P	P			
Costume Sales & Rental								P	P	P			
Custom Crafts/Ceramics/Stained Glass								P	P	P			
Day Care Facility								P	P	P			
Department/Variety/Catalog Store								P	P	P			
Draperies & Window Coverings								P	P	P			
Drug Store								P	P	P			
Fabric Store								P	P	P			
Fast Food Restaurant/Snacks								P	P	P			
Florist & Plant Shop								P	P	P			
Food Store								P	P	P			
Funeral Home/Mortuary									P	P			
Furniture/Appliance Store								P	P	P			

Furniture/Equipment Rental for Home Use Only									P	P	P		
Gasoline Station/Convenience Store									P	P	P	P	
General Automobile Repair											P	P	
General Repair Shop											P	P	
Gifts/Novelties/Souvenirs, Excluding Dealers Selling Goods Not Available to All Ages									P	P	P		
Greenhouse											P	P	P
Hardware									P	P	P		
Home Furnishing/Home Improvement Centers									P	P	P		
Hotel/Motel/Resort										P	P		
Indoor Entertainment Establishments including Amusement Centers, Bowling, Billiards, Movie Theaters, & Similar Uses									P	P	P		
Jewelry/Watch & Clock/Watch & Clock Repair Store									P	P	P		
Kitchen, Cookware Store									P	P	P		
Lawn & Garden Store									P	P	P		
Leather Goods & Luggage Store									P	P	P		
Liquor Store									P	P	P		
Massage Therapist									P	P	P		
Medical Equipment									P	P	P		
Motor Vehicle, Recreational Vehicle, & Commercial Equipment Dealer, including Automobile, Aircraft, Boats, Campers, Mobile Homes, Trucks, Trailers, Heavy Equipment, Construction Equipment & Farm Implements -- New or Used												P	P
Music, Records, Tapes, Video Sales & Rental									P	P	P		
Office Furnishings & Supply/Typewriter Sales & Service									P	P	P		
Optical Store									P	P	P		

Outdoor Entertainment Establishment												P		
Packaging & Postal Substation									P	P	P			
Paint & Wallpaper Store									P	P	P			
Pawn Shop											P			
Pet Store/Pet Grooming									P	P	P			
Photography/Processing Studio									P	P	P			
Print Shop									P	P	P			
Private Schools									P	P	P			
Restaurants									P	P	P			
Saddle & Tack Store									P	P	P			
Shoe Sales/Repair									P	P	P			
Sporting Goods									P	P	P			
Stationery & Card Shop									P	P	P			
Tanning Salon									P	P	P			
Tattoo Parlor/Body Piercing Parlor										S	S	S		
Toy/Hobby Store									P	P	P			
Travel Agency									P	P	P			
TV & Electronic Appliance Repair									P	P	P			
Thrift Store (under 5,000 sf gross floor area)									P	P	P			
Thrift Store (5,000 sf or greater gross floor area)									S	S	S			
Used Motor Vehicle Parts Sales													P	
Variety Store									P	P	P			
Wholesale & Commercial Heating, Plumbing, Electrical, Lumber, & Building Equipment & Material												P	P	
INDUSTRIAL USES:	RE	R1	RA	R2	R3	R4	R5	T1	B1	C1	C2	M1	O1	
Auto Body Repair and Paint Shops, Auto Auction													P	
Builders Supply Yards, Sale of Lumber & Construction Products													P	
Commercial Printing Establishment													P	
Frozen Food Lockers, Ice, & Cold Storage Plants													P	
Furniture Refinishing													P	
General Contractor Storage													P	

Machine & Woodworking Shop													P	
Printing and Publishing													P	
Professional, Scientific, & Control Instrument Manufacturing													P	
Recycling Operations													P	
Retail Sales in Conjunction with Warehousing and Wholesale Business													P	
Sales of Agricultural, Equipment, Heavy Machinery													P	
Secondary Product Manufacturing, Processing, Fabrication, and Assembly													P	
Warehousing, Mini Warehousing, Storage, & Freight													P	
Wholesale Business With Stock													P	
OPEN AND AGRICULTURAL USES:	RE	R1	RA	R2	R3	R4	R5	T1	B1	C1	C2	M1	O1	
Crop Production, Dairy Farming, Pasture & Raising of Livestock but Excluding Feedlots														P
Gravel, Mineral, Sand Extraction Upon Permit Granted Pursuant to this Code														P
Nurseries								P					P	P
Private Country Clubs	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public or Private Golf Courses	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Riding Stables & Academies														P
Water Reservoirs														P

Section 9. Section 11-4-6, W.M.C., subsections (A) and (B) are hereby AMENDED, AND NEW SUBSECTION (Q) IS ADDED to read as follows:

11-4-6: SPECIAL REGULATIONS: (2534 2841 2975) The following additional regulations apply to zoning districts as indicated below:

(A) SINGLE-FAMILY DETACHED ONE-FAMILY DWELLINGS UNITS are also permitted in the R2, R3, R4, and T1 Districts in accordance with the RA "Density Schedule" provisions. Duplexes ~~TWO-FAMILY DWELLINGS~~ are also permitted in the R3, R4, and T1 Districts in accordance with the R2 "Density Schedule" provisions. MULTIPLE-FAMILY DWELLINGS UNITS are also permitted in the T1 District in accordance with the R3 "Density Schedule" provisions. In the B1

District, a caretaker's quarters is allowed on or above the main floor if said use is clearly ancillary to the primary business or commercial use.

(B) **OCCUPANCY OF DWELLING UNITS.** Subject to the provisions of Chapter 12 of Title XI, "Rental Property Maintenance Code," W.M.C., no persons except the following persons shall occupy a dwelling unit:

- (1) Members of a family, together with bona fide domestic employees of such family; or
- (2) Up to four unrelated persons; or
- (3) Two persons and any of either of their children by blood, marriage, adoption, or guardianship, including foster children placed by a state institution or licensed child placement agency; or
- (4) Up to eight residents of a group home for the aged; or
- (5) Up to eight residents, plus staff, of a group home for persons with mental illness; or
- (6) Up to eight residents, plus staff, of a group home for developmentally disabled persons,

provided, further, that, except as otherwise provided by law, no more than one individual who is required to register as a sex offender under the provisions of the Colorado Sex Offender Registration Act shall occupy a dwelling unit.

~~CITY EXEMPTION FROM COMPLIANCE.~~ All uses, structures, and facilities owned or operated by the City for the purpose of providing municipal services are exempt from complying with all zoning regulations and are exempt from all Preliminary Development Plan, Official Development Plan, and platting procedures contained in this Code.

(Q) CITY EXEMPTION FROM COMPLIANCE. All property, uses, structures, and facilities owned or operated by the City for the purpose of providing municipal services are exempt from complying with all zoning regulations and are exempt from all Preliminary Development Plan, Official Development Plan, and platting procedures contained in this Code.

Section 10. Section 11-4-7, W.M.C., is hereby AMENDED to read as follows:

11-4-7: PUD – PLANNED UNIT DEVELOPMENT DISTRICT:

(A) **AUTHORIZATION.** The provisions of this Title concerning Planned Unit Developments (PUD's) districts are enacted pursuant to the home rule provisions of Article XX of the Colorado Constitution and the authority and powers contained in Chapters 2 and 4 of the City Charter.

(B) **GENERAL PROVISIONS.** The PUD District is intended to provide the means and the guidelines through which tracts of land are developed through an overall development plan ~~which~~ that integrates the land uses and site considerations for the land as a unit, rather than the traditional standard treatment of land uses in other so-called Euclidian districts in this Code. It is intended to reflect maximum design freedom to make the best use of topography and land features and to permit the developer an opportunity to more fully utilize the physical characteristics of the site through the reduction of lot sizes and the absence of setback and bulk restrictions; to provide for diversification and flexibility in housing types, housing prices, and overall design; to encourage innovative development of smaller parcels of land that have been passed over; to encourage mixed-use developments, including uses such as residential, office, and commercial; and to encourage higher quality development than possible under traditional standard zoning regulations. Through the Planned Unit Development zoning process, it is the intent that property will be developed with a unified design providing continuity between the various elements. However, the PUD zoning process is not intended as a device to circumvent general development regulations, standards, and good planning practice.

(C) **PERMITTED USES.**

(1) The following uses are allowed in a PUD district:

- (a) ~~All~~ Those uses listed as permitted in the OI District.

~~2. Any use allowed in any other district within the City may be permitted if said use is listed as permitted in a Preliminary Development Plan and Official Development Plan approved in accordance with this Code.~~

~~(b)3. Public utilities.~~

~~(c)4. Temporary, on-site construction and real estate sales.~~

~~(d)5. All uses, structures, and facilities owned or operated by the City.~~

(2) Any other use may be allowed in a PUD district if said use is listed as an allowed or permitted use in a Preliminary Development Plan and/or an Official Development Plan that has been approved in accordance with this Title. Once a Preliminary Development Plan and/or an Official Development has been approved for a particular PUD district, only the listed uses are allowed and the uses allowed under paragraph (1) above are no longer allowed, unless listed.

~~6. All~~

~~proposed uses must conform with the City's Comprehensive Plan.~~

~~7. Land uses listed as allowed or permitted on a Preliminary Development Plan shall be subject to further review, adjustment or modification, including elimination of particular uses, as part of the City's review and approval of an Official Development Plan for the property, the site specific information provided as part of the Official Development Plan, including but not limited to architectural and aesthetic considerations, traffic, drainage, utility demands, heights, bulk, setbacks, common space and landscaping. Final land uses within a Planned Unit Development district shall be those listed as shown on the Official Development Plan for the property.~~

(3) All proposed uses in a PUD district must conform with the City's Comprehensive Plan.

(D) **PERMITTED DENSITY.** Permitted density and dimensional requirements shall be as included in a Preliminary Development Plan and/or Official Development Plan approved in accordance with this Code.

Section 11. Sections 11-4-8 and 11-4-9, W.M.C., are hereby REPEALED AND REENACTED to read as follows:

11-4-8: USES BY SPECIAL PERMIT:

(A) It shall be unlawful for any person to establish, maintain, operate or conduct a use listed in subsection (B) below without having first obtained approval of a Special Use Permit pursuant to this Section, unless such use is specifically listed as an allowed use in the Official Development Plan of a property located within a PUD district. A permit for a special use may be granted by the Planning Commission after a public hearing meeting the notice requirements of Section 11-5-13, W.M.C. The applicant shall have the burden of establishing that the proposed use shall be for the public good and in the public interest.

(B) The following special uses may be granted according to the provisions of this Section:

- (1) Ambulance Service
- (2) Group Care Facility
- (3) Institutional Care Facility
- (4) Tattoo or Body Piercing Parlor
- (5) Thrift Stores 5,000 sq. ft. or greater.

(C) **Application Requirements:** All applications for special use permits must include the following information:

- (1) A completed application form provided by the City.
- (2) The required fees for review and public hearing.
- (3) Written description of the proposed use in sufficient detail to allow review and analysis of the operation and its potential impact on the existing neighborhood.
- (4) Legal description and address of the site.

(5) Detailed site plan showing location of existing and proposed buildings and other structures, parking areas and number of available parking spaces for the special use, ingress and egress, outside trash and storage areas, and type of screening, fencing, and landscaping.

(6) Vicinity map showing immediately adjacent property, structures, existing land use, existing zoning and Comprehensive Land Use classification(s), streets, sidewalks, and curb cuts.

(7) Existing floor plan and elevation of buildings or proposed construction or modifications as may be applicable.

(8) Map and list of property owners within three hundred (300) feet of the subject property based upon records of the County Assessor as of a date within fifteen (15) days of filing the application. The list and map shall meet the requirements in Paragraph 11-5-13(A)(7), W.M.C..

(9) In the case of a Group Care Facility or Institutional Care Facility, a map to scale indicating the locations of any other Group Care Facility or Institutional Care Facility within seven hundred fifty (750) feet of the subject property, measured at the property line.

(10) In the case of a Tattoo or Body Piercing Parlor, a map to scale indicating the location of any other Tattoo or Body Piercing Parlor within one thousand (1,000) feet. Measurement shall occur as prescribed in Section 11-4-13, W.M.C..

(11) In the case of an Ambulance Service, a map to scale indicating a minimum distance of five hundred (500) feet from the boundary of any residential district or the property line of a lot devoted to a residential use regardless of the zoning designation, measured from the property line.

(12) In the case of a Thrift Store, a map to scale indicating the location of any other Thrift Store within one thousand (1,000) feet. Measurement shall occur as prescribed in Section 11-4-13, W.M.C..

(13) In the case of an Institutional Care Facility, the applicant shall also submit written plans for: security measures to prevent unplanned and unsafe activities on the part of residents; screening measures to prevent the placement of residents with a history of or high risk for violence or abuse of children; the ratio of supervisors to residents; programs for counseling or rehabilitation; the hours per day or week when counseling or rehabilitation programs will be administered; the education, training and other qualifications of all staff members; provisions for recreation including the areas of the building and site to be used for recreation.

(14) In the case of an Institutional Care Facility or Group Care Facility, a copy of the approved state license or the application form for such state license showing the use requested.

(15) In addition, reasonable additional information, including but not limited to a traffic study prepared by a professional traffic consultant, may be required by the City Manager or designee if required to evaluate the application.

(D) Application Process:

(1) The applications for Special Use Permits, together with the required fees, shall be submitted to the Planning Manager.

(2) The application shall be reviewed by the Planning Manager or designee, who, after review and such additional investigation as the manager may deem necessary, shall schedule a public hearing before the Planning Commission.

(3) Notice of public hearing shall meet the notice requirements in Section 11-5-13, W.M.C..

(E) Planning Commission Review: Within thirty (30) days of its public hearing on the application, or within such other time as the City and the applicant mutually agree, the Planning Commission will either grant the application, with or without modifications and conditions, or deny it. The Commission will review the application giving due consideration to the criteria listed in this Section in making their decision. The decision will set forth the Commission's written findings stating in what respects the application meets or fails to meet the criteria set forth herein. When granting or denying a Special Use Permit, the Planning Commission may also impose conditions on the granting of a permit, including but not limited to:

- (1) Requiring buffers or screening between the new activity and adjacent uses;
- (2) Placing limitations on the hours of operation of the use; and
- (3) Making changes in design or layout.

(F) Special Use Permit Criteria: When considering any application for a special use permit, the Planning Commission shall consider each of the criteria listed below, insofar as each is relevant to the proposed use:

- (1) Impact on the character of the neighborhood.
- (2) Compatibility of the proposed use with existing and planned uses on adjacent properties.
- (3) Activities or uses on the site that generate potential adverse impacts or nuisance effects such as visual impacts, noise, vibrations, light intensity, odors, loitering, or level of police activity.
- (4) Amount or degree of outdoor activity.
- (5) Hours of operation and deliveries.
- (6) Location and intensity of storage, loading, and delivery areas.
- (7) Adequacy of parking and vehicular access and circulation.
- (8) Traffic volume generated by the proposed use.
- (9) Pedestrian safety.

(G) Standards of Review: After consideration of the foregoing criteria, the Commission will grant the special use permit if it determines:

- (1) That the proposed use will be reasonably compatible with the surrounding neighborhood;
- (2) That the proposed use will not be in conflict with the policies of the Comprehensive Plan; and
- (3) That the proposed use will meet the following distance limitations:
 - (a) The location of any other Group Care Facility or Institutional Care Facility within seven hundred fifty (750) feet of a Group Care Facility shall preclude the approval of the special use permit.
 - (b) The location of any other Group Care Facility or Institutional Care Facility within seven hundred fifty (750) feet of an Institutional Care Facility shall preclude the approval of the special use permit.
 - (c) The location of any other Tattoo or Body Piercing Parlor within one thousand (1,000) feet of another such use shall preclude the approval of the special use permit.
 - (d) The location of any other Thrift Store within one thousand (1,000) feet of another such use shall preclude approval of the special use permit.
 - (e) The location of an ambulance service within five hundred (500) feet of the boundary of any residential district or the property line of a lot devoted to a residential use regardless of the zoning designation will preclude the approval of the special use permit.
- (4) In the case of an Ambulance Service, that the primary vehicular access from the subject property is direct to a four or more lane street and that no outside storage of ambulances occurs.

(H) Appeal to City Council: An applicant or the City Manager may appeal to the City Council any final decision of the Planning Commission regarding a special use permit. An appeal shall be taken by filing a written notice of appeal of the decision of the Planning Commission with the City Manager within ten (10) days after the date of such decision. Such notice of appeal shall include the following:

- (1) The action of the Planning Commission that is the subject of the appeal.
- (2) The date of such action.
- (3) The name, address, telephone number of the appellant.
- (4) A statement setting forth the basis of the appellant's appeal.

Upon the receipt of a timely notice of appeal, the City Manager shall schedule a date for a public hearing before the City Council as expeditiously as possible. The City Manager shall provide the appellant at least ten (10) days' written notice of the date, time and place of the hearing. The City Manager shall also issue the published and posted notices provided for by Section 11-5-13, W.M.C., in advance of the City Council hearing. At its public hearing, if City Council determines all the requirements have been met for perfecting an appeal of the Planning Commission decision pursuant to this Section, the City Council shall conduct a de novo hearing on the merits.

(I) Council Call-up: Upon the vote of at least four members of Council, any decision of the Planning Commission on a special use permit may be reviewed de novo by Council, if such vote occurs within

fourteen (14) days of the Planning Commission decision. Notice and scheduling of such hearing shall proceed in the same manner as for an appeal by an applicant or the City Manager, except that the notice shall also state that the hearing is being held upon the request of Council pursuant to this Section.

(J) Transfer: A special use permit shall not be transferred to another person, business, or location.

(K) Termination:

(1) A special use permit shall terminate automatically whenever the permitted use is inactive for a period of one (1) year or more.

(2) The Planning Commission may terminate any special use permit for cause if, after notice and hearing as provided above, it determines that the conditions of approval under which the permit was initially approved are no longer being met.

(L) State Licensing: In the event a proposed use requires a special use permit, no approval for a business license or a building permit shall be issued until the Special Use has been approved by the City and the appropriate State license has been issued, and evidence thereof has been provided to the Planning Manager.

11-4-9: CONDITIONAL USES:

(A) It shall be unlawful for any person to establish, maintain, operate or conduct a use listed in subsection (B) below without having first met the conditions for approval established by the City.

(B) The following Conditional Uses are permitted if they meet the conditions for the particular use:

(1) Group Home for the Developmentally Disabled

- (a) Receive and maintain state license as a Community Residential Home, and
- (b) Maintain adequate off-street parking for employees

(2) Group Home for the Mentally Ill

- (a) Receive and maintain state license as a Group Home for the Mentally Ill,
- (b) Maintain adequate off-street parking for employees, and
- (c) Be located no nearer than 750 feet from another such group home

(3) Group Home for the Aged

- (a) Be located no nearer than 750 feet from another such group home, and
- (b) Residents do not require life care or nursing facilities as defined by state statute.
- (c) Maintain adequate off-street parking for residents.

(4) Domestic Violence Shelter

- (a) Maintain adequate off-street parking for employees

(5) Thrift Store less than 5,000 square feet in gross floor area

- (a) No outdoor storage of materials
- (b) No outdoor donation bins
- (c) No outdoor display of merchandise

(C) Application Requirements: Applicants for Conditional Uses shall include the following information:

- (1) A completed application form provided by the City.
- (2) The required fee for review.
- (3) Written description of the proposed use.
- (4) Legal description and address of the site.
- (5) The zone district and Comprehensive Land Use designation of the subject property.

(D) Application Process:

- (1) An application for a Conditional Use shall be submitted to the Planning Manager.

(2) The application shall be reviewed by the Planning Manager or designee to determine that the conditions required by Subsection (B) above have been met. Review of a Conditional Use to insure compliance with the conditions established by this Section shall be obtained prior to establishing any of the uses listed above. If the review determines that one or more of the conditions required to establish a Conditional Use have not been met, the City will notify the applicant in writing describing the condition or conditions that have not been satisfied.

(3) In the event a proposed use is allowed as a Conditional Use, no approval for a business license or building permit shall be issued until the Conditional Use has been reviewed by the City to insure that the conditions established in this Section have been met.

(E) Transfer: A Conditional Use shall not be transferred to another person, business, or location.

(F) Termination:

(1) A Conditional Use shall terminate whenever the permitted use is inactive for a period of one (1) year or more.

(2) A Conditional Use shall automatically terminate if the conditions of approval are no longer being met.

Section 12. This ordinance shall take effect upon its passage after second reading.

Section 13. 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 11th day of January, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of January, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Summary of Proposed Changes to Definitions

<u>New/Added (28)</u>	<u>Revised (6)</u>	<u>Deleted (6)</u>
Ambulance Service	Antique Shop	Building Code Standards
Antique	Church	Child Care Center
Applicant	Dwelling Unit (SFA)	Household
Assisted Living Residence	Domestic Violence Shelter Home	Personal Care Home
Body Piercing/Tattoo Parlor	Family	Residential Care Facility
Cemetery	Thrift Store	Specialized Group Home
Conditional Use		
Consignment		
Consignment Store		
Correction Home		
Day Care Facility		
Discount Store		
Duplex		
Family Care Home		
Group Care Facility		
Group Home for the Developmentally Disabled		
Group Home for Persons with a Mental Illness		
Group Home for the Aged		
Hospital		
Indoor Entertainment		
Institutional Care Facility		
Nursing Home/Facility		
Pawn Shop		
Retail Establishment		
School		
Special Use		
Substance Abuse Rehabilitation Home		
Used Merchandise		

Jurisdiction	# Unrelated Persons within Family Definition
Arvada	5 - Also allows a foster home of up to 4 foster children
Aurora	4
Broomfield	3
Longmont	5 - Also allows a foster home
Lakewood	5- Also allows a foster home
Thornton	5
Westminster	4 (proposed) - 1 person per room (current Code) Foster Home up to 4 (current Code)

Non-Residential Uses	Use by Right	Conditional Use	Special Use Permit	Current Code
Ambulance Service	N/A	N/A	<ol style="list-style-type: none"> 1) C1, C2, M1; and 2) Minimum of 500 ft. distance from a boundary of any residential district or the property line of lot devoted to residential use, regardless of zoning designation (See Title 11-4-13(d) 2d, e and for measurement purposes Title 11-4-13); and 3) Primary access to a four or more lane street; and 4) No outside storage of ambulances; and 5) See (new) criteria for SUP 	1) Any zone district by Special Use Permit (SUP)
Day Care Facility (5 or more children or adults)	B1, C1, C2	N/A	N/A	1) Any zone district by SUP Adult daycare not addressed
Indoor Entertainment (amusement centers, bowling, billiards, movie theatres, paint ball, gymnastics and other similar uses)	B1, C1, C2	N/A	N/A	<ol style="list-style-type: none"> 1) M1 by SUP; and 2) B1, C1, C2 as use by right
Places of Assembly (event centers, meeting halls, churches, other places of private assembly)	B1, C1, C2	N/A	N/A	1) C1, C2 as use by right
Private Schools	B1, C1, C2	N/A	N/A	<ol style="list-style-type: none"> 1) Any zone district by SUP; and 2) All zone districts as use by right for public schools only
Tattoo/ Body Piercing Parlor	N/A	N/A	<ol style="list-style-type: none"> 1) C1, C2, M1; and 2) Minimum of 1,000 ft. from another tattoo parlor/piercing as defined and measured in Title 11-4-13; and 3) Minimum of 500 ft from the boundary of a residential district (measured as in Title 11-4-13); and 4) See (new) criteria for SUP 	N/A
Thrift Store (will not include antique or consignment)	N/A	<ol style="list-style-type: none"> 1) C1, C2, M1; and 2) < 5,000 SF GFA 3) No outdoor storage, outdoor donation bins, or outdoor display 	<ol style="list-style-type: none"> 1) C1, C2, M1; and 2) 5,000 SF GFA or greater; and 3) Minimum of 1,000 ft. from another thrift store (measured as in Title 11-4-13); and 4) See (new) criteria for SUP 	<ol style="list-style-type: none"> 1) C1, C2, M1, PUD by SUP; and 2) C2 as use by right 3) 500 foot separation
Hospital	Must be specified in PUD	N/A	N/A	1) Any zone district by SUP
Cemetery	Must be specified in PUD	N/A	N/A	1) Any zone district by SUP

Residential Uses	Use by Right	Conditional Use	Special Use Permit	Current Code
Group Home – Aged, Mentally Ill, Developmentally Disabled (8 or fewer residents; 24-hour accommodations)		1) All residential zones including residential portions of PUD's; and 2) 750-ft. separation from other similar group homes (excluding group homes for the developmentally disabled); and 3) Adequate off-street parking for employees and/or residents		1) All zones; and 2) Separation at 1,000 ft. between all residential care facilities
Group Care Facility (number of residents varies based on state licensing; 24-hour accommodations) * Includes group home (over 8 persons), residential child care facility, specialized group facilities, youth shelter facilities			1) R3, R4, T1, B1, C1; and 2) 750 ft. separation from other group care facilities and institutional care facilities; and 3) SUP Criteria	1) All zones with SUP; and 2) Separation at 1,000 ft.; and 3) > 3 persons (>4 persons if foster care)
Institutional Care Facility (any number of persons; 24-hour accommodations) * Includes correction home, substance abuse rehab, secure residential treatment centers, home detention facilities, halfway houses			1) C1, C2, M1; and 2) 750 ft. separation from group care facilities and other institutional care facilities; and 3) SUP Criteria	1) All zones with SUP (except if a correction home for 7 or more persons including staff – limited to R3, R4, T1, and multi family portions of PUD's with SUP); and 2) Separation at 1,000 ft.; and 3) > 3 persons
Domestic Violence Shelter (24-hour accommodations)		1) R3, R4, T1; and 2) Adequate off-street parking for employees and residents.		1) R3, R4, T1, and multi family PUD with administrative approval; and 2) Separation at 1,000 ft.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Councillor's Bill No. 2 re Appropriation to 80th Avenue/Federal Boulevard Project Account

Prepared By: Stephen Baumann, Assistant City Engineer

Recommended City Council Action

Pass Councillor's Bill No. 2 on first reading authorizing a supplemental appropriation of \$137,723 from 2008 Adams County Transportation Tax carryover funds into the capital project account for the 80th Avenue/Federal Boulevard project account.

Summary Statement

- In the years 2002-2007, the City developed a funding plan for the reconstruction of 80th Avenue and Federal Boulevard to solve intersection capacity and operational problems. Intergovernmental Agreements between the City and Adams County and the City and the Colorado Department of Transportation (CDOT) resulted in a pool of \$1,539,000 in local agency funds to secure \$2,497,000 in federal funding, along with \$453,000 in backup funding from the State for a total project budget of \$4,489,000. CDOT also administered the project and performed design engineering, right-of-way acquisition, and managed construction contracts.
- Construction was completed in 2007 at an overall project cost of \$4,605,587, 2.6% over budget. The State has now apportioned expenses in a final accounting that shows an additional \$137,723 is due from the City for cost overruns in several categories, particularly costs not eligible for federal participation. Under the terms of the agreement with CDOT, the local agency is responsible for all costs that exceed the project budget.
- Staff has reviewed the project accounting provided by CDOT and recommends that \$137,723 be appropriated from 2008 Adams County Transportation Tax Carryover Funds to the 80th Avenue/Federal Boulevard project account so the contract with CDOT can be closed out.

Expenditure Required: \$137,723

Source of Funds: 2008 Adams County Transportation Tax Carryover Funds

Policy Issue

Does City Council support use of Adams County Transportation Tax carryover funds to make up the shortfall in the capital project account for the 80th Avenue/Federal Boulevard Intersection project?

Alternative

The agreement with the Colorado Department of Transportation compels the City to cover costs that exceed the budget. City Council could choose not to appropriate the funding from the Adams County Transportation Tax carryover funds and direct staff to find a different source of funds. However, the Transportation Tax funds are well-suited to this particular application because they can only be spent on roadway improvements and must be spent in Adams County.

Background Information

In 2002, the City began planning for the reconstruction of the intersection of 80th Avenue and Federal Boulevard. The intersection was operating very poorly during peak traffic demand periods, particularly the northbound Federal Boulevard to westbound 80th Avenue left turns. A request for funding under the federal Transportation Equity Act for the 21st Century (TEA-21) was prepared and received approval in 2003. In budget years 2004-2007, the City joined with Adams County to come up with \$1,539,000 in local agency funding to secure \$2,497,000 in federal funds. The State of Colorado budgeted \$453,000 as funding of last resort for a total project budget of \$4,489,000.

Under an intergovernmental agreement between the City and the Colorado Department of Transportation that Council approved in November of 2004, CDOT took on the responsibility for administration of the project, including engineering design, right-of-way acquisition, and management of the construction contracts. CDOT would bill the City for the local agency share of project costs after they were incurred. Any costs that were not eligible for federal funding (non-participating costs) and any cost overruns on the project, whether eligible or not, would have to be covered by the local agency.

The intersection improvements were finished and put into service in late 2007, and CDOT has now completed all right-of-way acquisitions, closed out all construction contracts and has apportioned shares of the final project cost of \$4,605,587 – 2.6% over budget. This has taken some time due to a change in the hardware and software accounting systems used by the State. Various minor cost overruns were present in right-of-way acquisition and design engineering, but most of the difference between the original and final project budget is construction costs that were not eligible for federal participation. An example of these is the relocation of overhead electric and communication lines to an underground location, a significant expenditure in this project. In the final accounting completed by the State, the amount owed by the City includes the overall project budget overrun (i.e., \$116,572), plus those costs deemed ineligible for federal or state cost participation, the latter being “funding of last resort.” Thus the City owes a total of \$137,723.

Staff has reviewed the project accounting with CDOT representatives and is satisfied with their cost apportionment. An appropriation of \$137,723 to the capital project account for the 80th Avenue/Federal Boulevard Intersection improvements project is needed to close out the City's obligations. It is recommended that the amount be appropriated from 2008 Adams County Transportation Tax carryover funds where there is currently a fund balance of \$640,829. This is an appropriate use of these funds since they must be spent on roadway improvements and must be spent in the Adams County portion of the City.

This appropriation will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7500.40020.0000	\$1,207,396	<u>\$137,723</u>	\$1,345,119
Total Change to Revenues			<u>\$137,723</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
80 th & Federal Intersection	80475030603.80400.8888	\$0	<u>\$137,723</u>	\$137,723
Total Change to Expenses			<u>\$137,723</u>	

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Councillor's Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **2**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3432 are hereby increased by \$137,723. This appropriation is due to the appropriation of 2008 Adams Country Transportation Tax carryover.

Section 2. The \$137,723 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 C dated January 11, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$137,723</u>
Total	<u>\$137,723</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. 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 shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

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

Section 5. 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 11th day of January, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of January, 2010.

ATTEST:

Mayor

City Clerk



Agenda Item 10 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Councillor's Bill No. 3 re Cost Recovery for the 112th Avenue, Federal Boulevard to Huron Street Project

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action:

Pass Councillors Bill No. 3 on first reading establishing recovery payments owed to the City for costs incurred in constructing improvements for the 112th Avenue, Federal Boulevard to Huron Street Project.

Summary Statement

- The improvements to 112th Avenue between Federal Boulevard and Huron Street were completed in 2009 at an overall cost of approximately \$1,365,293. Westminster Municipal Code allows the City's recovery of portions of those costs from the future developers of adjoining benefited properties.
- Costs of the project were categorized and evaluated according to guidelines in the Municipal Code to determine the level of assessment of those costs to properties that benefit from them. Generally, improvements that would normally be installed by the future developers as a condition of development were included. The total cost was then apportioned among the City and the properties on either side of 112th Avenue. The recovery specifically impacts the property at the northwest corner of 112th Avenue and Huron Street, owned by Kaiser Permanente (the "Kaiser property"), and the property located immediately west of the Townhomes at the Ranch Subdivision, owned by the Rothe Family Trust (the "Rothe property"). Both of these properties are shown on the attached Exhibit B.
- The attached Councillor's Bill lists the qualifying costs and establishes the cost recovery mechanism for assessing those costs totaling \$212,044.71 to the Kaiser Property and \$29,736.81 to the Rothe property, plus interest as established by the City Council at the beginning of each year.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City Council establish a cost recovery for the 112th Avenue, Federal Boulevard to Huron Street project and assess the "Kaiser property" and the "Rothe property?"

Alternative

City Council could elect to waive the collection of a portion of the assessment. This alternative is not recommended since these assessments are equivalent to those a developer would normally bear in developing a property along an arterial street.

Background Information

The 112th Avenue project was fully completed in August of 2009. The aggregate cost of construction is \$1,365,293 and includes costs of engineering, right-of-way acquisition, street lights, replacement landscaping, construction engineering and construction. The Municipal Code provides authority for the City to recover portions of the project costs from developers of properties that adjoin the project. The City is responsible for the remaining costs. The apportionment and assessment of these costs to developers of adjacent properties has its basis in the code requirements for such developers to provide the infrastructure reasonably necessary to support their development. Project costs were compiled and apportioned among the City and the adjoining undeveloped properties based on the property frontages adjacent to 112th Avenue between Federal Boulevard and Huron Street.

The attached Councillor's Bill will formally establish the recoverable costs that will be owed to the City by future developers of properties that adjoin 112th Avenue. These recoveries will be collected at the time that these properties gain approval of a final plat as part of the development of their respective properties.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Councillor's Bill
- Exhibit A
- Exhibit B Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **3**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE ESTABLISHING COST RECOVERIES FOR CITY-CONSTRUCTED
PROJECT: 112TH AVENUE, FEDERAL BOULEVARD TO HURON STREET PROJECT**

WHEREAS, Westminster Municipal Code § 11-6-7(B)(1) provides that the City shall have the authority to allocate and recover the costs of construction of public improvements or facilities from property owners based on the benefit of such improvement, facility, or service to said owners; and

WHEREAS, Westminster Municipal Code § 11-6-7(B)(3) provides that the City Council shall provide by ordinance for the recovery of appropriate costs for public improvements, facilities, or services constructed by the City, and that said ordinance shall establish the nature and extent of the recoveries due to the City, and that such ordinance may include provisions for simple interest payable to the City; and

WHEREAS, Westminster Municipal Code § 11-6-7(E)(2)(a) provides that any ordinance establishing cost recovery obligations for City-constructed improvements shall include a list of properties to be charged with cost recovery for said improvements, that said ordinance shall be recorded in the real estate records of the counties in which the properties to be charged with cost recoveries are located and, if available, shall include a final statement of construction costs for the improvements subject to recovery or, otherwise, an estimate of construction costs for the improvements to be constructed until a final statement of construction costs for the improvements may be determined and recorded following the completion of the improvements; and

WHEREAS, the City completed the installation of roadway, utility and landscape improvements along the general alignment of 112th Avenue between Federal Boulevard and Huron Street; and

WHEREAS, the City, through this ordinance, now wishes to establish a cost assessment recoverable from benefiting properties.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The nature and extent of the recoverable costs owed to the City pursuant to this ordinance includes costs associated with the design, right-of-way acquisition, construction engineering, street lights and construction of improvements to 112th Avenue between Federal Boulevard and Huron Street listed and summarized in Exhibit A, attached hereto and incorporated herein by this reference, and those costs (the "Recoverable Costs") will be assessed at \$212,044.71 plus interest as established by City Council each year for the property located at the northwest corner of 112th Avenue and Huron Street and \$29,736.81 plus interest as established by City Council each year for the property west of and adjacent to the Townhomes at the Ranch Subdivision.

Section 2. The properties (the "Assessed Properties") described in Exhibit B, attached hereto and incorporated herein by this reference, is hereby assessed the Recoverable Cost noted in Exhibit A. The Recoverable Costs shall be due and payable in accordance with the provisions of W.M.C. § 11-6-7, as the same may be amended.

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.

Section 5. The City Clerk shall cause a copy of this ordinance to be recorded in the real estate records of Adams County immediately following its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 11th day of January, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of January, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT "A"

Recoverable Costs for THE 112th Avenue, Federal Boulevard to Huron Street Project Cost Apportionment Summary Jan-10		
Project Expense	Cost	Remarks
Final Design Engineering	\$ 166,044.00	Contract and amendments with JR Engineering
Right-of-way cost Rothe parcel	\$ 19,063.00	
Right-of-Way costs Kaiser parcel	\$ 175,000.00	
Road Construction Costs	\$ 879,847.07	see attached final project pay application
Street lighting	\$ 100,067.00	
Construction Engineering	\$ 25,272.00	Contract and amendment Herb Atchison
Total Cost not including ROW	\$1,171,230.07	
Total cost multiplied by by 24/65, not including ROW	\$ 432,454.18	Proportionate share per City Code. Developer's share is 24' plus accel/ decel lanes plus detached sidewalks and curb and gutter. Typical arterial street width is 65 feet back of curb to back of curb
Total project length	\$ 7,860.00	
Cost per foot (full width)	\$ 55.0196	Proportionate share divided by the project length
Total principal, Kaiser Property	\$ 212,044.71	Recovery equals cost per foot above plus Kaiser right-of-way costs plus interest established yearly by City Council. Frontage equals 673.30 feet.
Total principal, Rothe Property	\$ 29,736.81	Recovery equals cost per foot above plus Rothe right-of-way costs plus interest established yearly by City Council. Frontage equals 194 feet.

112th Ave, Federal Boulevard to Huron Street Improvements

11/3/2009

COST CODE	DESCRIPTION	UNIT	BID PRICE	PLANNED QUANTITIES	EXTENSION	FINAL QUANTITIES	AMOUNT EARNED
	ORIGINAL ITEMS						
1	CLEARING AND GRUBBING	LS	\$2,473.00	1	\$2,473.00	1	\$2,473.00
2	REMOVAL OF TIMBER STAIRS	LS	\$105.25	1	\$105.25	1	\$105.25
3	REMOVAL OF CONCRETE	SY	\$5.80	308	\$1,786.40	291	\$1,687.80
4	REMOVAL OF SIDEWALK	SY	\$5.80	702	\$4,071.60	720	\$4,176.00
5	REMOVAL OF CURB & GUTTER	LF	\$2.30	1684	\$3,873.20	1784	\$4,103.20
6	REMOVAL OF CONCRETE CURB RAMP	SY	\$5.80	23	\$133.40	60	\$348.00
7	REMOVAL OF PAVEMENT MARKING	SF	\$1.05	93	\$97.65	234	\$245.70
8	REMOVAL OF STRIPING (PAVEMENT MARKING)	LF	\$0.40	4631	\$1,852.40	250	\$100.00
9	REMOVAL OF ASPHALT (PLANING, 2" DEPTH)	SY	\$0.30	13200	\$3,960.00	13200	\$3,960.00
10	REMOVAL OF ASPHALT (FULL DEPTH)	SY	\$6.00	2007	\$12,042.00	2007	\$12,042.00
11	REMOVAL OF ASPHALT (PLANING, VARIABLE DEPTH, 3.25" AVERAGE)	SY	\$1.05	2335	\$2,451.75	5711	\$5,996.55
12	REMOVAL OF GROUND SIGN	EACH	\$52.65	1	\$52.65	5	\$263.25
13	UNCLASSIFIED EXCAVATION (COMPLETE IN PLACE)	CY	\$9.80	1630	\$15,974.00	1630	\$15,974.00
14	BORROW/FILL	CY	\$15.60	448	\$6,988.80	448	\$6,988.80
15	STRUCTURE BACKFILL (FLOW-FILL)	CY	\$81.05	26	\$2,107.30	3	\$243.15
16	TOPSOIL (STOCKPILE & REDISTRIBUTE)	CY	\$9.70	606	\$5,878.20	606	\$5,878.20
17	EROSION BALES	EACH	\$18.95	10	\$189.50	9	\$170.55
18	SILT FENCE	LF	\$0.95	3528	\$3,351.60	3528	\$3,351.60
19	CONCRETE WASHOUT STRUCTURE	EACH	\$894.65	1	\$894.65	1	\$894.65
20	STORM DRAIN INLET PROTECTION	EACH	\$157.90	3	\$473.70	8	\$1,263.20
21	EROSION CONTROL SUPERVISOR	LS	\$3,684.00	1	\$3,684.00	1	\$3,684.00
22	RESET SURVEY MONUMENT	EACH	\$1,191.00	1	\$1,191.00	1	\$1,191.00
23	RESET EXISTING SIGN W/NEW POST	EACH	\$173.65	5	\$868.25	3	\$520.95
24	RESET EXISTING HOA SIGN	EACH	\$52.65	2	\$105.30	0	\$-
25	RELOCATE EXISTING FIRE HYDRANT	EACH	\$4,589.00	3	\$13,767.00	4	\$18,356.00
26	RESET FENCE	LF	\$4.45	93	\$413.85	0	\$-
27	ADJUST VALVE BOX TO GRADE (POTABLE WATER)	EACH	\$204.30	3	\$612.90	3	\$612.90
28	ADJUST MANHOLE TO GRADE (POTABLE WATER)	EACH	\$579.70	1	\$579.70	1	\$579.70
29	ADJUST MANHOLE TO GRADE (EXISTING)(SANITARY)	EACH	\$579.70	1	\$579.70	1	\$579.70

COST CODE	DESCRIPTION	UNIT	BID PRICE	PLANNED QUANTITIES	EXTENSION	FINAL QUANTITIES	AMOUNT EARNED
30	ADJUST MANHOLE TO GRADE (EXISTING)(STORM)	EACH	\$579.70	2	\$1,159.40	1	\$579.70
31	RELOCATE IRRIGATION VALVE	EACH	\$157.90	1	\$157.90	0	\$-
32	SEEDING (NATIVE)	SF	\$0.05	40541	\$2,027.05	63830	\$3,191.50
33	SOD	SF	\$1.05	1498	\$1,572.90	3498	\$3,672.90
34	MULCH TACKIFIER	LB	\$3.00	93	\$279.00	200	\$600.00
35	REMOVE AND RELOCATE (TRANSPLANT) TREE	EACH	\$289.45	10	\$2,894.50	2	\$578.90
36	HOT BITUMINOUS PAVEMENT (GRADING SX)(75)(PG76-28)	TON	\$50.90	2433	\$123,839.70	2489.3	\$126,705.37
37	HOT BITUMINOUS PAVEMENT (GRADING SG)(75)(PG64-22)	TON	\$53.05	2430	\$128,911.50	2778.64	\$147,406.85
38	EMULSIFIED ASPHALT (SLOW SETTING)	GAL	\$1.60	8282	\$13,251.20	4604	\$7,366.40
39	CONCRETE PAVEMENT (8") [CROSSPANS]	SY	\$41.50	354	\$14,691.00	197	\$8,175.50
40	CONCRETE PAVEMENT (9-1/2")	SY	\$48.90	105	\$5,134.50	108	\$5,281.20
41	RIPRAP TYPE L (9")(SOIL-RIPRAP) [BURIED]	CY	\$210.50	2	\$421.00	6	\$1,263.00
42	18" RCP	LF	\$210.50	16	\$3,368.00	16	\$3,368.00
43	24" RCP	LF	\$97.90	11	\$1,076.90	11	\$1,076.90
44	18" RCP FES	EACH	\$515.75	1	\$515.75	1	\$515.75
45	24" RCP FES	EACH	\$571.55	1	\$571.55	1	\$571.55
46	TYPE 16 INLET SINGLE (5' DEPTH)	EACH	\$2,831.00	1	\$2,831.00	1	\$2,831.00
47	TYPE R (10') INLET	EACH	\$5,576.00	1	\$5,576.00	1	\$5,576.00
48	CONCRETE SIDEWALK	SY	\$27.55	2829	\$77,938.95	2903	\$79,977.65
49	8' CONCRETE SIDEWALK W/ATTACHED WALL	SY	\$48.55	250	\$12,137.50	250	\$12,137.50
50	CONCRETE CURB RAMP	SY	\$47.05	170	\$7,998.50	261.66	\$12,311.10
51	CONCRETE STEPS	LF	\$52.65	2	\$105.30	2	\$105.30
52	CURB & GUTTER TYPE 2 (SECTION II-B)	LF	\$9.90	3298	\$32,650.20	3727	\$36,897.30
53	SIGN PANEL 12"X18"	EACH	\$57.90	8	\$463.20	0	\$-
54	SIGN PANEL 24"X30"	EACH	\$110.50	4	\$442.00	0	\$-
55	SIGN PANEL 30"X30"	EACH	\$124.20	13	\$1,614.60	0	\$-
56	SIGN PANEL 36"X36"	EACH	\$126.30	3	\$378.90	0	\$-
57	POST SIGN	EACH	\$68.40	33	\$2,257.20	0	\$-
58	IRRIGATION SYSTEM	LS	\$1,419.00	1	\$1,419.00	1	\$1,419.00
59	CONSTRUCTION SURVEYING	LS	\$4,526.00	1	\$4,526.00	2	\$9,052.00
60	MOBILIZATION	LS	\$11,059.00	1	\$11,059.00	1	\$11,059.00

COST CODE	DESCRIPTION	UNIT	BID PRICE	PLANNED QUANTITIES	EXTENSION	FINAL QUANTITIES	AMOUNT EARNED
61	EPOXY PAINT PAVEMENT MARKING (4" SOLID WHITE)	GAL	\$78.95	2	\$157.90	2	\$157.90
62	EPOXY PAINT PAVEMENT MARKING (8" SOLID WHITE)	GAL	\$78.95	30	\$2,368.50	38.5	\$3,039.58
63	EPOXY PAINT PAVEMENT MARKING (4" DASHED WHITE)	GAL	\$78.95	7	\$552.65	9	\$710.55
64	EPOXY PAINT PAVEMENT MARKING (4" DOUBLE YELLOW)	GAL	\$78.95	72	\$5,684.40	0.5	\$39.48
65	EPOXY PAINT PAVEMENT MARKING (8" DOTTED WHITE)	GAL	\$78.95	0.5	\$39.48	89	\$7,026.55
66	PREFORMED PAVEMENT MARKING (TURN ARROW)	SF	\$12.65	574	\$7,261.10	775	\$9,803.75
67	THERMOPLASTIC PAVEMENT MARKING (2'X8' CROSSWALK BLOCK)	SF	\$6.85	496	\$3,397.60	836	\$5,726.60
68	TRAFFIC CONTROL	LS	\$48,943.00	1	\$48,943.00	1	\$48,943.00
69	REMOVAL OF PAVEMENT MARKG	SF	\$2.10	-93	(\$195.30)	0	\$-
70	REMOVAL OF STRIPING (PAVEMENT MARKING)	LF	\$0.70	-4,631.00	(\$3,241.70)	0	\$-
71	REMOVAL OF ASPHALT (PLANING, 2" DEPTH)	SY	\$0.60	18,360.00	\$11,016.00	14707	\$8,824.20
72	HOT BITUMINOUS PAVEMENT (GRADING SX)(75)(PG 64-22)	TON	\$50.90	2,020.00	\$102,818.00	1786.96	\$90,956.26
73	EMULSIFIED ASPHALT (SLOW SETTING)	GAL	\$1.60	9,180.00	\$14,688.00	0	\$-
4 (ADD	TRAFFIC CONTROL	DAY	\$1,150.00	4	\$4,600.00	4	\$4,600.00
75 (ADD	REMOVAL OF ASPHALT MATERIAL (PLANNING VAR. DEPTH)	SY	\$1.05	9,500.00	\$9,975.00	0	\$-
76(ADD	HOT BITUMINOUS PAVING (GR SX)(75)(PG 76-28)	TON	\$50.90	1,285.36	\$65,425.00	1129.31	\$57,481.88
FINAL CONTRACT					825,317.58		
ADDITIONAL ITEMS							
CCO #1							
77	15" CMP	LF	\$50.00	63.8	\$3,190.00	63.8	\$3,190.00
78	45 DEGREE CMP BEND	EACH	\$1.00	341	\$341.00	341	\$341.00
79	MODIFY EXISTING (CUT PIPE, POUR SWALE)	LS	\$1.00	1,072.50	\$1,072.50	1072.5	\$1,072.50
80	GRADE SWALE TO DRAIN WATER FROM THE EAST	LS	\$1.00	220	\$220.00	220	\$220.00
81	DEDUCT 18" RCP	LF	\$210.50	-16	(\$3,368.00)	-16	(\$3,368.00)
82	DEDUCT 18" FES	EACH	\$515.75	-1	(\$515.75)	-1	(\$515.75)

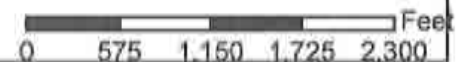
COST CODE	DESCRIPTION	UNIT	BID PRICE	PLANNED QUANTITIES	EXTENSION	FINAL QUANTITIES	AMOUNT EARNED
CCO #2						0	\$-
83	ADD DRIVEWAY CUT	SY	\$41.50	12	\$498.00	32	\$1,328.00
84	AGG BASE COURSE ROAD	SY	\$19.80	50	\$990.00	50	\$990.00
CCO #3						0	\$-
85	ADD DAYS - NO MONETARY VALUE	LS	\$-	1	\$-	0	\$-
CCO #4						0	\$-
86	HBP (GRADING SG)(75)(PG64-22) (REVISE UNIT PRICE)	TON	(\$1.00)	2,430.00	(\$2,430.00)	2778.64	(\$2,778.64)
87	LEVELING COURSE	TON	\$82.00	45	\$3,690.00	45	\$3,690.00
88	TRAFFIC CONTROL PEDESTAL @ HURON	LS	\$1,100.00	1	\$1,100.00	1	\$1,100.00
89	FENCE FOR DRAINAGE CANAL	LS	\$1,125.00	1	\$1,125.00	1	\$1,125.00
90	EXTRA SURVEY DUE TO POOR PLANS	LS	\$1,450.00	1	\$1,450.00	1	\$1,450.00
91	MEDIAN COVER @ HURON	SF	\$5.50	670	\$3,685.00	670	\$3,685.00
CCO #5							
92	MILL PATCHING	TON	\$81.00	660.49	\$53,499.69	660.49	\$53,499.69
	OVERRUNS/ UNDERRUNS	LS			(\$10,017.95)	0	\$-
ACT CHANGE ORDERS					54,529.49		
						TOTAL	\$879,847.07



112th Avenue, Federal Boulevard to Huron Street Recovery Exhibit



EXHIBIT B





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Resolution No. 2 re Spring 2010 Adams County Open Space Grant Application for the Little Dry Creek Dog Park

Prepared By: Richard Dahl, Park Services Manager
Kathy Piper, Landscape Architect II

Recommended City Council Action

Adopt Resolution No. 2 authorizing the Department of Parks, Recreation and Libraries to pursue a grant with Adams County Open Space during the spring 2010 grant cycle for the development of the Little Dry Creek Dog Park located at 69th Place and Lowell Boulevard.

Summary Statement

- The Department of Parks, Recreation and Libraries wishes to pursue a grant from Adams County Open Space for funding assistance with construction of the dog park at 69th Place and Lowell Boulevard (see attached location map).
- Staff recommends requesting a \$100,000 Adams County Open Space grant for the dog park.
- The City has budgeted funds of \$100,000 for development of the dog park.

Expenditure Required: \$100,000

Source of Funds: General Capital Improvement Fund – Little Dry Creek Dog Park

Policy Issue

Should the City attempt to seek assistance for the development of the Little Dry Creek Dog Park by pursuing grant monies from the Adams County Open Space Grant Program?

Alternative

Council could choose not to pursue additional funding for the Little Dry Creek Dog Park and proceed with the project budget of \$100,000 in the Park Renovation CIP Fund. However, Staff recommends attempting to secure additional funding for this project through this grant opportunity in order to achieve a more developed dog park , which is one of the goals of the Parks and Recreation Master Plan.

Background Information

The Departments of Parks, Recreation and Libraries and Community Development have been successful in applying for and receiving grants for the development of parks, trails, and open space from a variety of sources in the past. In recent years, the City has received grant money from Adams County Open Space for park and trail development projects as well as open space acquisitions. The City has developed a strong partnership with Adams County in its successful use of these grant funds. Recent Adams County grants received by the City include: a \$500,000 fall grant for Westminster Center Park; two grants in the spring of 2007 for Cheyenne Ridge Park and Big Dry Creek Park for \$80,000 and \$500,000, respectively; and a 2005 grant in the amount of \$600,060 for Westfield Village Park.

Originally, Staff considered Faversham Park, at 6109 W. 73rd Avenue, to build an additional dog park. Due to public comments received and maintenance concerns, Staff recommended forgoing a dog park at this location and recommended moving it to the Little Dry Creek Park area where conflicts with parking and park activities could be minimized. This dog park project site would develop a 1.5-acre site located at the corner of 69th Place and Lowell Boulevard. The master plan would include two separate areas, one for large dogs and one for small dogs; an entrance area; a dog watering area; a tree planting with drip irrigation; paved parking; benches and signage.

This grant request and project supports the City’s Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Beautiful and Environmentally Sensitive City.”

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **2**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**A RESOLUTION AUTHORIZING THE SUBMITTAL OF A
GRANT REQUEST FOR THE
SPRING 2010 ADAMS COUNTY OPEN SPACE GRANT PROGRAM**

WHEREAS, Adams County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements and open space acquisition; and

WHEREAS, the City of Westminster has budgeted for improvements for the Little Dry Creek Dog Park to be located at 69th Place and Lowell Boulevard and;

WHEREAS, grant money received from Adams County would significantly enhance the improvements for the above-mentioned project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that Staff shall submit a grant application to the Adams County Open Space Grant Program for the spring funding cycle of 2010, requesting funding in the amount of \$100,000 to enhance the development of the Little Dry Creek Dog Park at 69th Place and Lowell Boulevard.

PASSED AND ADOPTED this 11th day of January 2010.

Mayor

ATTEST

APPROVED AS TO LEGAL FORM

City Clerk

City Attorney



Little Dry Creek Dog Park Total Area 1.5 Acres

Legend

-  Fence
-  Trees
-  Parking
-  Car Entrance/Exit





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
January 11, 2010



SUBJECT: Resolution No. 3 re 2010 Jefferson County Joint Venture Grant Application for the Armed Forces Tribute Garden Shade Structures

Prepared By: Becky Eades, Landscape Architect II

Recommended City Council Action

Adopt Resolution No. 3 authorizing the Department of Parks, Recreation and Libraries to pursue a Jefferson County Joint Venture Grant in the amount of \$110,000 for the Armed Forces Tribute Garden shade structures.

Summary Statement

- The Department of Parks, Recreation and Libraries wishes to pursue a second grant from the Jefferson County Joint Venture Program for funding assistance with construction of shade structures at the Armed Forces Tribute Garden. City Council previously authorized a Jeffco Joint Venture Grant application to construct a new play area at City Park. Cities and special districts in Jefferson County are allowed to submit two Joint Venture Grant applications per cycle.
- Matching funds for this project are available in the Armed Forces Tribute Garden CIP Fund in the amount of \$35,000.
- Additional matching funds for this project are committed from the Legacy Foundation (\$5,000) and the 7:10 Rotary (\$75,000) for a total of \$80,000.
- Shade structures were included in the original Armed Forces Tribute Garden Master Plan, and are also listed in the recently adopted 2010-2014 Parks and Recreation Master Plan.
- Design and costs of the shade structures has not yet been finalized, but Staff believes that at least two structures can be completed if Jeffco Grant funding is received.

Expenditure Required: \$110,000

Source of Funds: Armed Forces Tribute Garden CIP - \$35,000
Legacy Foundation - \$5,000
Westminster 7:10 Rotary - \$75,000

Policy Issue

Should the City attempt to seek assistance for the Armed Forces Tribute Garden Shade Structures by pursuing grant monies from the Jefferson County Joint Venture Grant Program?

Alternative

Council could choose not to pursue additional funding for the Armed Forces Tribute Garden shade structures; however Staff believes it is important to provide a place where visitors can be protected from the sun during the summer months.

Background Information

The Departments of Parks, Recreation and Libraries and Community Development has been successful in applying for and receiving grants for the development of parks, trails, and open space from a variety of sources in the past. The City has developed a strong partnership with Jefferson County in its successful use of these grant funds. Recent Jefferson County Joint Venture grants received by the City include: a 2009 grant in the amount of \$300,000 for renovation of the aquatics area of the City Park Recreation Center, a 2008 grant for \$250,000 for the renovation of the Westminster Sports Center, and \$41,407 for construction of the Heritage Golf Course restrooms.

Shade structures over each of the individual service branch areas were included in the original Armed Forces Tribute Garden master plan. Budgetary constraints at the time of the initial project construction made it necessary to remove the shade structures from the project. The 2010-2014 Parks and Recreation Master Plan includes the addition of these shade structures under future development recommendations. The final design and cost of the individual structures has not yet been determined. However, Staff believes that at least two structures can be designed and constructed if a Jefferson County Open Space Grant is awarded. The possibility exists that all six service branch structures could be accomplished depending upon the possibility of modifying a pre-manufactured shelter to fit the appropriate design criteria. If the budget accommodates only two structures, Staff would suggest placing them in the middle two memorial areas (Marines and Air Force) to achieve an even design balance (see attached plan).

This grant request and project supports the City's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **3**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**A RESOLUTION
TO PURSUE A GRANT REQUEST FROM THE
2010 JEFFERSON COUNTY JOINT VENTURE GRANT PROGRAM
FOR THE ARMED FORCES TRIBUTE GARDEN SHADE STRUCTURES**

WHEREAS, Jefferson County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements; and

WHEREAS, the City of Westminster has budgeted for improvements for the Armed Forces Tribute Garden Shade Structures; and

WHEREAS, grant money received from Jefferson County would significantly enhance the improvements for the above-mentioned project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that Staff shall submit a grant application to the Jefferson County Joint Venture Grant program for the funding cycle of 2010, requesting funding in the amount of \$110,000 to enhance the development of Armed Forces Tribute Garden Shade Structures.

PASSED AND ADOPTED this 11th day of January, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

AFTG Shade Structures



Conceptual Rendering