



**REVISED
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. Many items have been previously discussed at a Council Study Session.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) is 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.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings (January 12, 14 and 15, 2015)
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
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. Financial Report for December 2014
 - B. Appointment of Donald M. Tripp as City Manager
 - C. Fleet Maintenance Cumulative Fuel Purchases of Over \$75,000
 - D. Quarterly Insurance Claims Report – October through December 2014
 - E. 2015 IGA with Thornton re 144th and 136th Avenue I-25 Interchanges
 - F. IGA with Adams County re Funding for Little Dry Creek Road and Drainage Improvements
 - G. Little Dry Creek Regional Detention Pond – 7th Amended IGA with the UDFCD and Adams County
 - H. Amendment of Pacific Companies and Urban Pacific Multi-Housing LLC Contract to Buy and Sell Real Estate
 - I. Second Reading of Councillor's Bill No. 48 re Contract Amendment for 72nd/Raleigh St. Bridge Replacement
 - J. Second Reading of Councillor's Bill No. 1 re Northwest Business Park Comprehensive Plan Amendment
 - K. Second Reading of Councillor's Bill No. 2 re Early Supplemental Appropriation of 2014 POST Fund

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Public Hearing re Annexation, CP Amendment, Zoning, PDP and ODP re Moorings at Hidden Lake Property
- B. Resolution No. 2 re Annexation Finding re Moorings at Hidden Lake Property
- C. Councillor's Bill No. 3 re Annexation of the Moorings at Hidden Lake Property
- D. Councillor's Bill No. 4 re Comprehensive Plan Amendment for the Moorings at Hidden Lake Property
- E. Councillor's Bill No. 5 re Zoning of the Moorings at Hidden Lake Property
- F. Preliminary and Official Development Plan of the Moorings at Hidden Lake Property
- G. Cooperation Agreement with WHA and the South Westminster Arts Group re Promotion and Programming
- H. Councillor's Bill No. 6 re SWAG Lease Agreement for Property Located at 7287 Lowell Boulevard
- I. Councillor's Bill No. 7 re Proposed EDA with Tenere, Inc.
- J. Councillor's Bill No. 8 re Proposed EDA with Trimble Navigation
- K. Councillor's Bill No. 9 re Financing for Little Dry Creek Flood Control Improvements (Emergency Ordinance)
- L. Councillor's Bill No. 10 re Supplemental Appropriation of Funds to the 2015 Budget Storm Drainage Fund
- M. Resolution No. 3 re Spring 2015 Adams County Grant Applications

11. Old Business and Passage of Ordinances on Second Reading

- A. Special Legal Counsel Services for Drafting of Collective Bargaining Ordinance (Tabled 10-27-14)
- B. Remove from Table the Acting City Manager Appointment (Tabled 1-12-15)
- C. Appointment of Acting City Manager

12. Miscellaneous Business and Executive Session

- A. City Council
 - 1. City Council Selection of New Councillor
 - 2. Election of Mayor Pro Tem
- B. Executive Session

Discuss strategy and progress on negotiations related to economic development matters for the Westminster Urban Center Redevelopment, disclosure of which would seriously jeopardize the City’s ability to secure the development; discuss strategy and progress on the possible sale, acquisition, trade or exchange of property rights, including future leases; and provide instruction to the City’s negotiators on the same as authorized by WMC Sections 1-11-3(C)(2), (4), and (7) as well as Colorado Revised Statutes, Sections 24-6-402 (4)(a) and 24-6-402(4)(e). (*verbal*)

13. Adjournment

WESTMINSTER HOUSING AUTHORITY (Separate Agenda)

NOTE: *Persons needing an accommodation must notify the City Clerk no later than noon on the Thursday prior to the scheduled Council meeting to allow adequate time to make arrangements. You can call 303-658-2161/TTY 711 or State Relay or write to lyeager@cityofwestminster.us to make a reasonable accommodation request.*

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, JANUARY 12, 2015, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Herb Atchison and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz were present at roll call. Also present were City Manager J. Brent McFall, City Attorney David Frankel, and City Clerk Linda Yeager.

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of December 22, 2014, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that City offices would be closed on Monday, January 19, in observance of the Martin Luther King holiday. The public was encouraged to contact facilities directly about hours of operation or to check the City's website for information.

With a public hearing scheduled during this meeting, Mr. McFall reminded those in attendance that comments about the subject of the public hearing needed to be stated during the public hearing; comments relative to any other topic should be addressed to Council during Citizen Communication.

FAREWELL TO CITY MANAGER MCFALL

Having served on Council when Mr. McFall was first named City Manager, Mayor Atchison said it was a privilege to not only have attended his first City Council meeting, but also, 14 years later, to attend his last Council meeting prior to retirement. On behalf of the City Council and the citizens of Westminster, it had been a pleasure and an honor to have Mr. McFall serve as City Manager. He would be missed.

On behalf of City Staff and the Department Head Team, Stephen P. Smithers, Deputy City Manager, thanked Mr. McFall for 14 years of amazing leadership and valued service. During the best of times and the worst of times, Mr. McFall had been consistent and dedicated to the community. His leadership, guidance, and friendship were sincerely appreciated. In the City Management profession, one of the highest compliments that could be paid was acknowledgement that the City Manager was leaving the City better than he had found. That was certainly true of Mr. McFall, and Mr. Smithers was privileged to express the gratitude of employees throughout the organization.

Mr. McFall said it was always better and easier when you worked with great people.

COUNCIL REPORTS

Councillor Baker reported that on a recent dark, bitter cold evening while driving home with his wife, he observed a City snowplow driver out clearing the roadway. It reminded him that fire crews and police officers also were out in the elements working to protect safety of the public. City services were provided 24 hours a day, 7 days a week, regardless of circumstances. The work of City employees was greatly appreciated by City Council and the community.

Councillor Briggs thanked Mr. McFall for 14 years of excellent service to the City and appreciated the guidance he had provided to City Council. He wished him well in his retirement. Secondly, he noted that, Jackie Hovorka, the

wife of former Mayor George Hovorka, had died on Saturday, January 10. Jackie had always supported her husband's efforts and was equally devoted and committed to Westminster. She was the foundation of his success. He urged prayers for the family as they mourned her loss.

Councillor Garcia realized it had been a busy holiday season for the Police Department with a number of serious incidents and challenges occurring. He commended the Police Department on their incredible work in the face of adverse circumstances and thanked Chief Birk and his staff. Addressing Mr. McFall, he reported having knocked on many, many doors during the November 2013 municipal election campaign and without exception, people said the City organization was well run and meeting the needs of citizens. Citizen surveys produced the same results; residents were pleased with local government and the services provided. That feedback was a direct reflection on Mr. McFall's leadership and Councillor Garcia thanked him for his service to the community.

Councillor Seitz pointed out that the community had seen and continued to see a lot of change: four new Council members in November 2013; Mayor Pro Tem Winter elected as a State Representative and leaving the City Council before her term expired; the retirement of a long-standing City Attorney and hiring of David Frankel, who stated his position today; Council was scheduled later in the week to interview citizens interested in being appointed to fill the vacancy on City Council; and the announcement of Council's selection of a new City Manager later in this meeting. Mr. McFall had brought so many people together with vision and passion for Westminster's quality of life. She thanked him for his service the past 14 years and for the legacy he left to the community.

Councillor Pinter said that the City was not only well run, but also carefully run in testament to Mr. McFall's leadership and the work he had accomplished. He had served the community well and she thanked him.

Mayor Atchison welcomed David Frankel, City Attorney, to his first City Council meeting. The Council and Staff looked forward to working with him into the future.

EMPLOYEE LENGTH OF SERVICE AWARDS

The City Council was pleased to recognize City employees in celebration of 20 or more years of service to the organization. Councillor Garcia presented a certificate and 20-year service pin to Cathy Harder. Karla Brunick was unable to attend and also had completed 20 years of service. Two employees, Jean Matthews and Mike R. Jones, were celebrating 25 years of service. Mayor Atchison announced that Ms. Matthews was unable to attend. He presented a certificate, 25-year service pin, and a check for \$2,500 (\$100 for each year of service) to Mr. Jones. Councillor Pinter was excited to recognize Brian Nash for 30 years of service to the City and presented him with a certificate and service pin. Doug Sgambelluri had not been able to attend, but also had completed 30 years of service. Richard Infranca and Ralph Moffat were celebrating 35 years of service. Although Mr. Moffat was unable to attend, Councillor Baker was pleased to present Mr. Infranca with a certificate and 35-year service pin.

PROCLAMATION

Councillor Seitz presented the National Mentoring Month proclamation to Becky Hoffman of the Adams County Youth Initiative Caring Adult Network. Realizing that adult mentors offer youth valuable encouragement, motivation and hope by providing consistent friendship and role modeling, non-profit public and private agencies and organizations had formed the Caring Adult Network and was seeking volunteers to make a difference in children's lives by matching adults with youth for life-long healthy relationships. January was National Mentoring Month.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: 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 the City's Boards and Commissions pursuant to Section 24-6-402 (2)(c), C.R.S. of the Colorado Open Meetings Act; authorize the City Manager to amend the KG Clean

custodial services contract to \$387,746 and amend the Varsity Group custodial services contract to \$84,153, increasing the total custodial services contracts by \$5,636; based on the results of the State of Colorado bid, award the purchase of nine Police Department patrol vehicles to Sill-Ter Har Motors in the amount of \$261,126; appoint Deputy City Manager Stephen Smithers to serve as Acting City Manager to have and exercise the duties and responsibilities of City Manager under the City Charter until such time as a new City Manager was appointed by Council; final passage on second reading of Councillor's Bill No. 29 amending Sections 10-1-12(A) and (B) of the Westminster Municipal Code to create more flexibility in parking restrictions related to loading and unloading RVs, trailers and boats; and final passage on second reading of Councillor's Bill No. 47 amending the Water and Wastewater Utility Enterprise to include the Stormwater Utility.

Mayor Atchison announced that Council wished to remove Agenda Item 8D for individual consideration. It was moved by Councillor Baker and seconded by Councillor Seitz to approve the consent agenda excluding Agenda Item 8D. The motion carried by unanimous vote.

ACTING CITY MANAGER APPOINTMENT

It was moved by Councillor Baker and seconded by Councillor Pinter to table consideration of this item to the January 26 City Council meeting. The motion passed unanimously.

2015 APPOINTMENTS TO THE ROCKY FLATS STEWARDSHIP COUNCIL

Councillor Seitz moved, seconded by Councillor Garcia, to reappoint City Councillor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council, Mary Fabisiak as alternate representative, and Cathy Shugarts as second alternate representative. The motion passed unanimously.

PUBLIC HEARING ON 6TH AMENDED PDP AND CLUP AMENDMENT RE NORTHWEST BUSINESS PARK

At 7:31 p.m., the Mayor opened a public hearing to consider the Sixth Amended Preliminary Development Plan and Comprehensive Land Use Plan Amendment for Lots 4, 7 and 10 in the Northwest Business Park. Mac Cummins, Planning Manager, entered in the record the agenda memorandum and attachments, as well as evidence that the legal notification requirements of the Westminster Municipal Code had been met. The property was located at the southwest corner of 112th Avenue and Westminster Boulevard. The current land use for the subject lots was Office/RD High; the proposed land use designation, Mixed Use. This was a City-initiated application that was supported by the property owners. The Planning Commission had reviewed the proposal on December 23, 2014, and recommended approval.

Responding to questions from Council, Mr. Cummins indicated that the mixed use designation allowed residential uses to commercial uses already permitted. No development plan for the site had been submitted at this time. Maximum density on the 6 to 7 acre parcel was 36 per acre and the mixed use category required vertical mix of the building. The owners and the metropolitan district serving the parcel had been part of discussions and plans leading to this request, which would resolve an issue for the district to ensure it remained in good legal standing.

There were no further questions from Council, and the Mayor opened the hearing to public comment. No one wished to speak, and the Mayor closed the hearing at 7:39 p.m.

COUNCILLOR'S BILL NO. 1 AMENDING CLUP DESIGNATION IN NORTHWEST BUSINESS PARK

Upon a motion by Councillor Seitz, seconded by Councillor Briggs, the Council voted unanimously at roll call to pass on first reading Councillor's Bill No. 1, approving a Comprehensive Plan Amendment changing the designation of Lots 4, 7, and 10 of the Northwest Business Park from Office/RD High Intensity to Mixed-Use based on finding that the proposed amendment would be in the public good; and that the proposed amendment was in compliance with the overall purpose and intent of the Comprehensive Plan.

SIXTH AMENDED PDP OF NORTHWEST BUSINESS PARK

It was moved by Councillor Seitz and seconded by Councillor Briggs to approve the Sixth Amended Preliminary Development Plan allowing multi-family residential use on Lots 4, 7, and 10 of the Northwest Business Park based on finding that the criteria set forth in Sections 11-5-9(A)(2)(b) and 11-5-14 of the Westminster Municipal Code had been met. The motion carried unanimously.

COUNCILLOR'S BILL NO. 2 – SUPPLEMENTAL APPROPRIATION OF 2014 POST FUND CARRYOVER

Councillor Briggs moved, seconded by Councillor Garcia, to pass on first reading Councillor's Bill No. 2, appropriating \$26,576 of the 2014 Parks, Open Space and Trails Fund Carryover to the General Capital Improvement Fund. The motion passed unanimously on roll call vote.

CONTRACT AMENDMENT – 2014 OPEN SPACE DEMOLITION PROJECT

By motion of Councillor Briggs, seconded by Councillor Garcia, the Council voted unanimously to authorize the City Manager to execute a contract amendment with Property Assurance, the contractor, in the amount of \$40,350 for the 2014 Open Space Demolition Project, Bid Schedule E, and authorize a construction contingency of \$4,035 for an increase of \$44,385, bringing the total authorized expenditure to \$285,109, contingent upon passage on second reading of Councillor's Bill No. 2.

RESOLUTION NO. 1 – TRIENNIAL RENEWAL OF ROCKY FLATS STEWARDSHIP COUNCIL

Councillor Pinter moved to adopt Resolution No. 1 supporting the continuation of the Rocky Flats Stewardship Council for an additional three years. Councillor Baker seconded the motion, and it passed unanimously on roll call vote.

AUTHORIZATION TO OFFER EMPLOYMENT & NEGOTIATE A CONTRACT FOR CITY MANAGER

Councillor Garcia moved, seconded by Councillor Pinter, to authorize Mayor Herb Atchison to make an offer of employment to Donald M. Tripp as the finalist for City Manager and direct staff to negotiate an employment agreement with him.

Prior to voting, Council members described the process used to recruit a new City Manager and thanked Deborah Mitchell, General Services Director, and her staff for guiding the impressive process, as well as the 220 City employees and the members of the public who participated in the process and had provided valuable feedback. Of three qualified finalists, Mr. Tripp demonstrated passion for Westminster, enthusiasm, vision, strategic leadership, and was the only candidate to submit a plan of accomplishments he would achieve within six months of employment. Further, it pleased Council members to promote from within the organization. As the current Director of Parks, Recreation and Libraries, Mr. Tripp had in-depth knowledge of the organization, was respected, and had a record of innovation and partnership internally and externally.

Following comments, the Council passed the motion unanimously.

ADJOURNMENT

There was no further business to come before the City Council, and, hearing no objections, Mayor Atchison adjourned the meeting at 7:57 p.m.

ATTEST:

City Clerk

Mayor

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
HELD ON WEDNESDAY, JANUARY 14, 2015, AT 5:00 P.M.

ROLL CALL

Mayor Herb Atchison and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter were present when the meeting convened. Councillor Seitz joined the meeting in progress at 5:04 p.m. Also present was City Clerk Linda Yeager.

INTERVIEWS OF APPLICANTS SEEKING TO FILL VACANCY ON CITY COUNCIL

Council members conducted 20-minute interviews of each applicant. Interviewed were: Steven Caulk, Steward Mosko, Chris Dittman, Jonathan Herrmann, Melanie Flores, Shannon Bird, Maria DeCambra, and Anil Mathai.

Each applicant was asked five questions in the same order and had an opportunity to ask questions of Council members before the 20-minute interview concluded.

ADJOURNMENT

There was no further business, and Mayor Atchison adjourned the meeting at 7:57 p.m.

ATTEST:

City Clerk

Mayor

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
HELD ON WEDNESDAY, JANUARY 15, 2015, AT 5:07 P.M.

ROLL CALL

Mayor Herb Atchison and Councillors Bruce Baker, Alberto Garcia, Emma Pinter, and Anita Seitz were present when the Mayor convened the meeting. Councillor Bob Briggs arrived at 5:16 p.m. and joined the meeting in progress. Also present was City Clerk Linda Yeager.

INTERVIEWS OF APPLICANTS SEEKING TO FILL VACANCY ON CITY COUNCIL

Council members conducted 20-minute interviews of each applicant. Interviewed were: David DeMott, Katherine Laurienti, and David Aragoni.

Each applicant was asked five questions in the same order and had an opportunity to ask questions of Council members before the 20-minute interview concluded.

RECESS

At approximately 5:50 p.m., the Council recessed for dinner. They reconvened at approximately 6:30 p.m.

DISCUSSION OF APPLICANTS AND INTERVIEW RESPONSES

The Council ranked their top three choices from the applicants interviewed. Based on the results, they ranked their top two choices from the four remaining applicants and each discussed the rationale for his/her top two choices. A verbal straw poll was taken, and the Mayor reminded all that regardless of the outcome, written ballots would be cast at the conclusion of the January 26 Council meeting; the results of discussions and rankings could change with written ballots.

The Clerk described the balloting process and reminded the members of Council that after the new City Councillor was sworn into office, the full Council would select a Mayor Pro Tem by secret ballot.

ADJOURNMENT

There was no further business, and Mayor Atchison adjourned the meeting at 7:05 p.m.

ATTEST:

City Clerk

Mayor



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Financial Report for December, 2014

Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

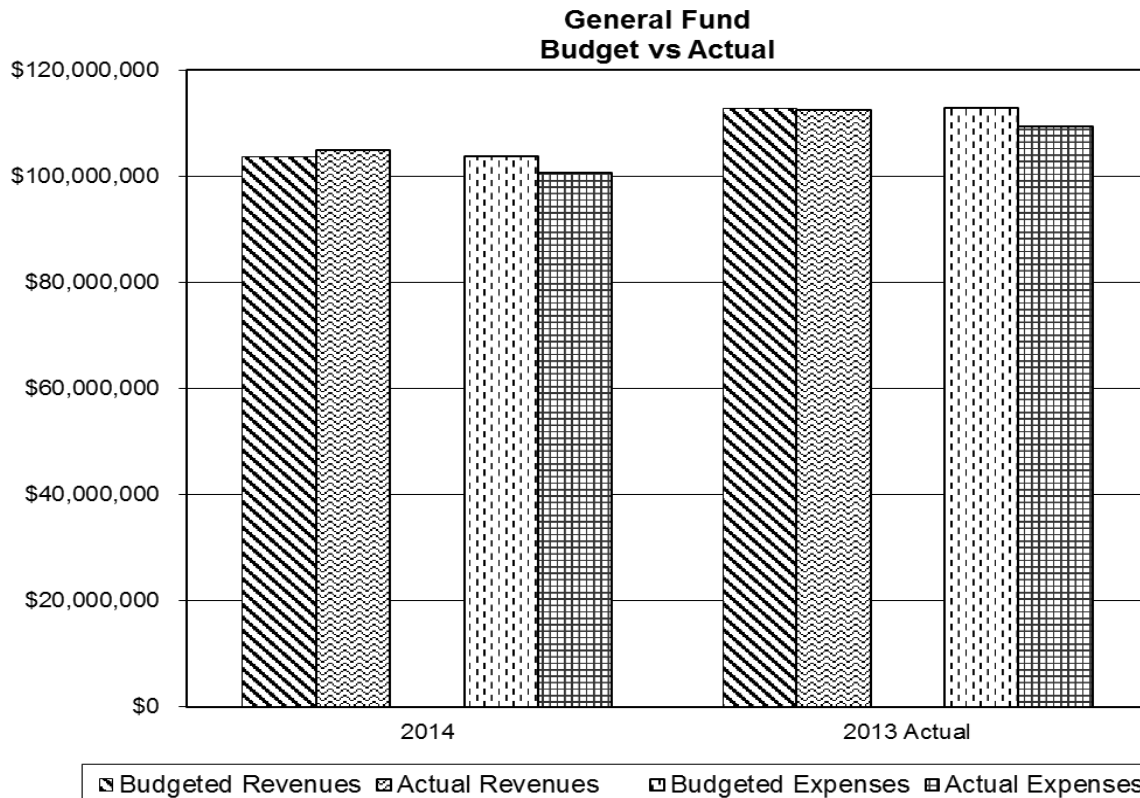
Accept the Financial Report for December as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. The financial statement reflects December month end figures. Revenue includes carryover where applicable. The budget numbers that are presented reflect the City's amended 2014 budget.

Several revenue and expense modifications will be made over the next few months based on year-end accruals that will be included in December year-end figures presented to Council in June, after the audit is complete. Some of the more significant accruals include revenue earned in 2014 but not received until 2015, in particular intergovernmental revenue, and all expenses incurred in 2014 but paid in 2015.

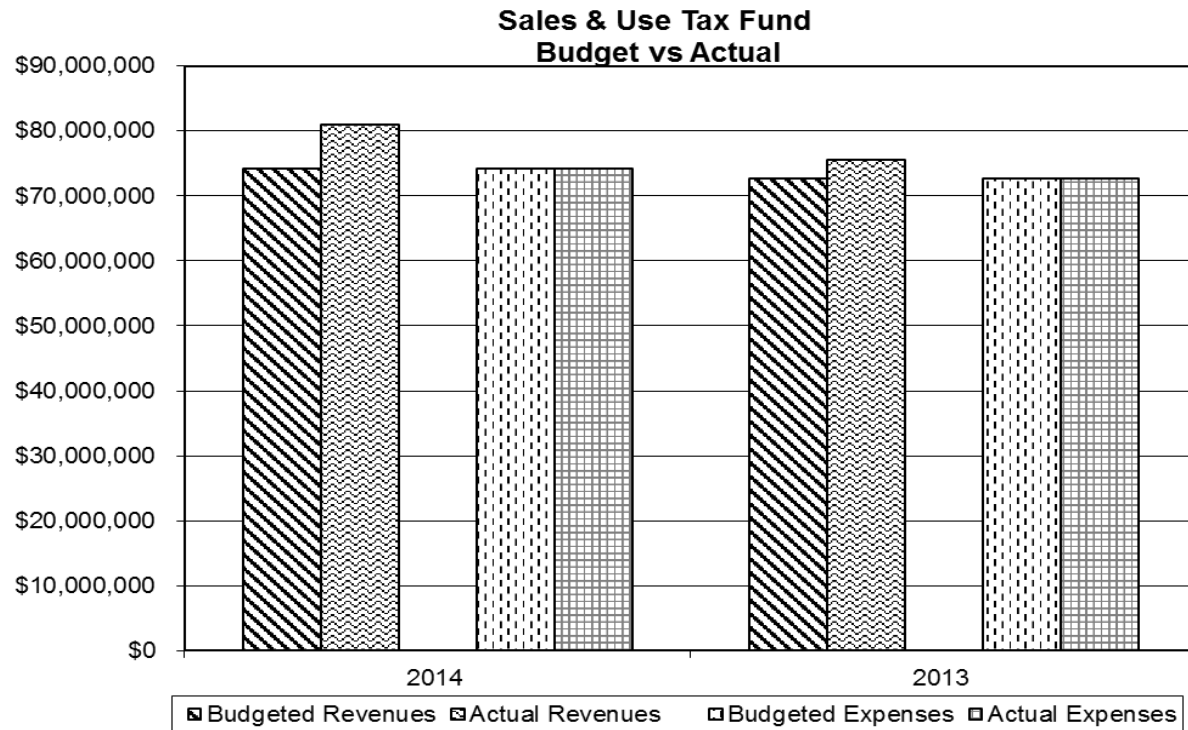
General Fund revenues and carryover exceed expenditures by \$4,321,358. The following graph represents Budget vs. Actual for 2013-2014.



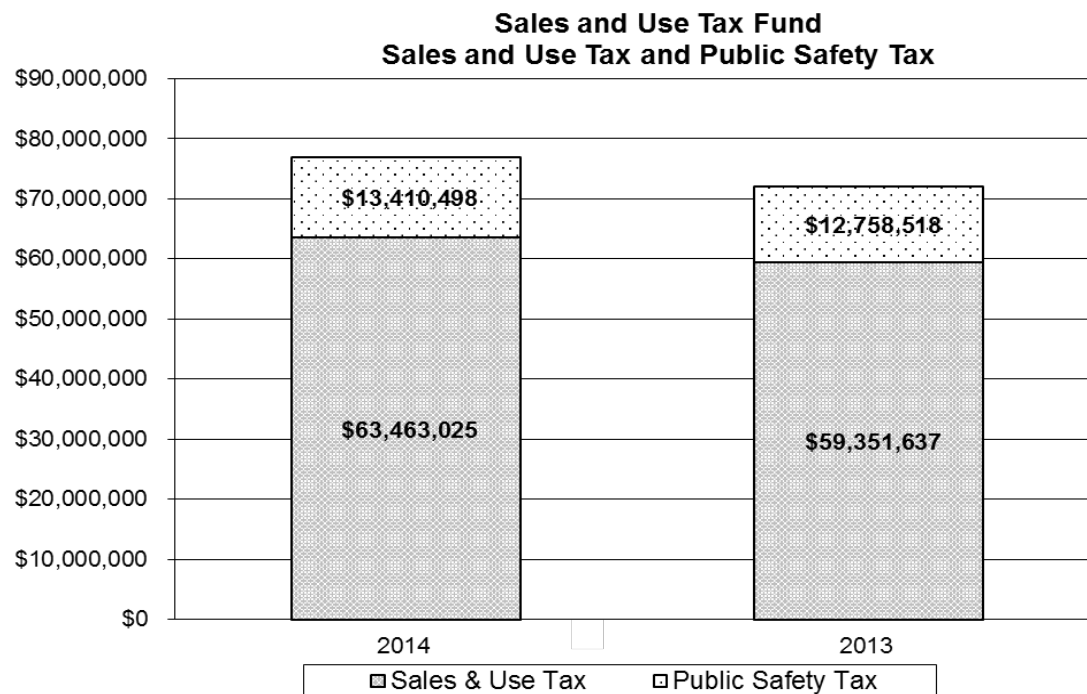
2013 revenue and expense includes an \$11.1 million refinancing of long term debt.

The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$6,687,173. On a year-to-date cash basis, total sales and use tax is up 5.6% from 2013. Key components are listed below:

- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 6.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 62.0% of all collections, are up 5.6% for the month when compared to 2013.
- Urban renewal areas make up 39.6% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 86.3% of this money is being retained for General Fund use in operating the City.

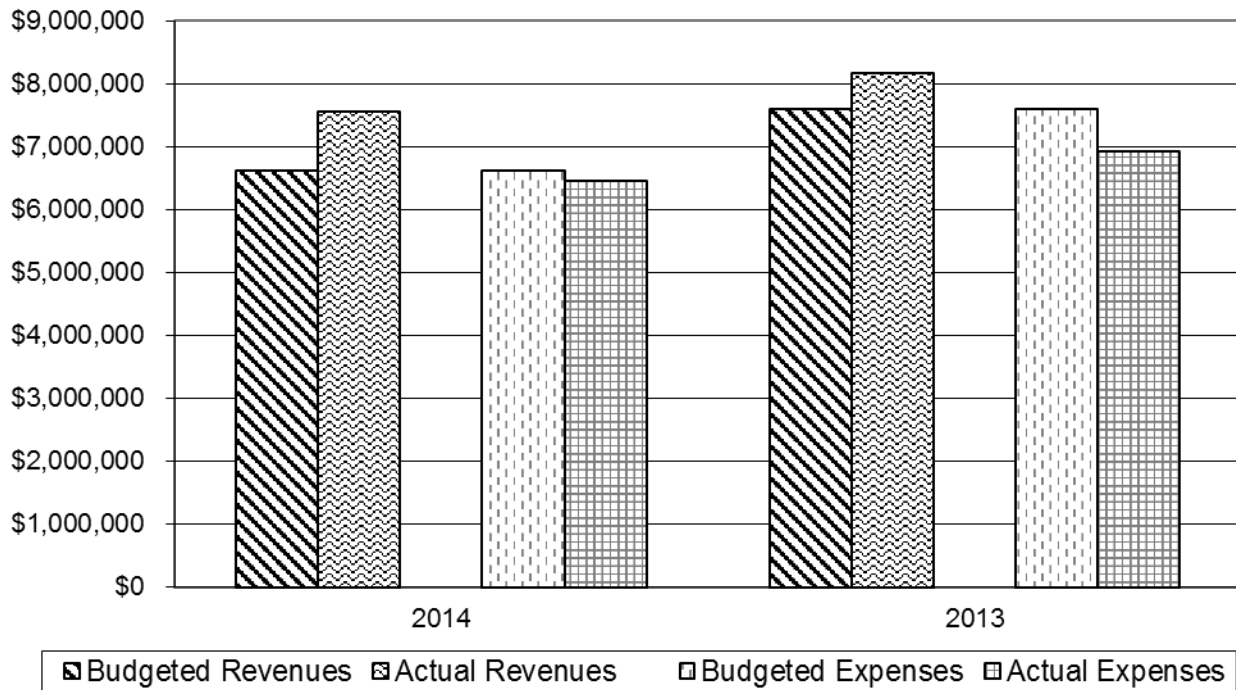


The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



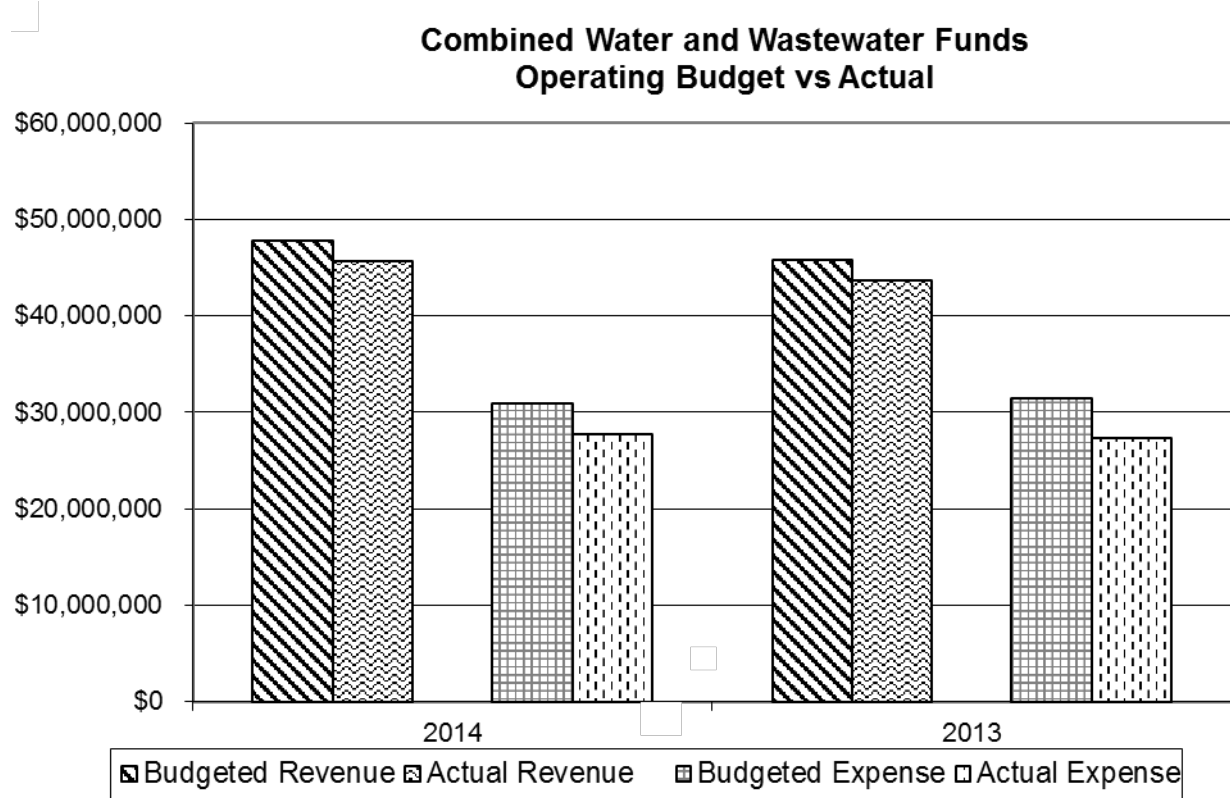
Parks, Open Space and Trails (POST) Fund revenues and carryover exceed expenditures by \$1,090,826.

POST Fund Budget vs Actual



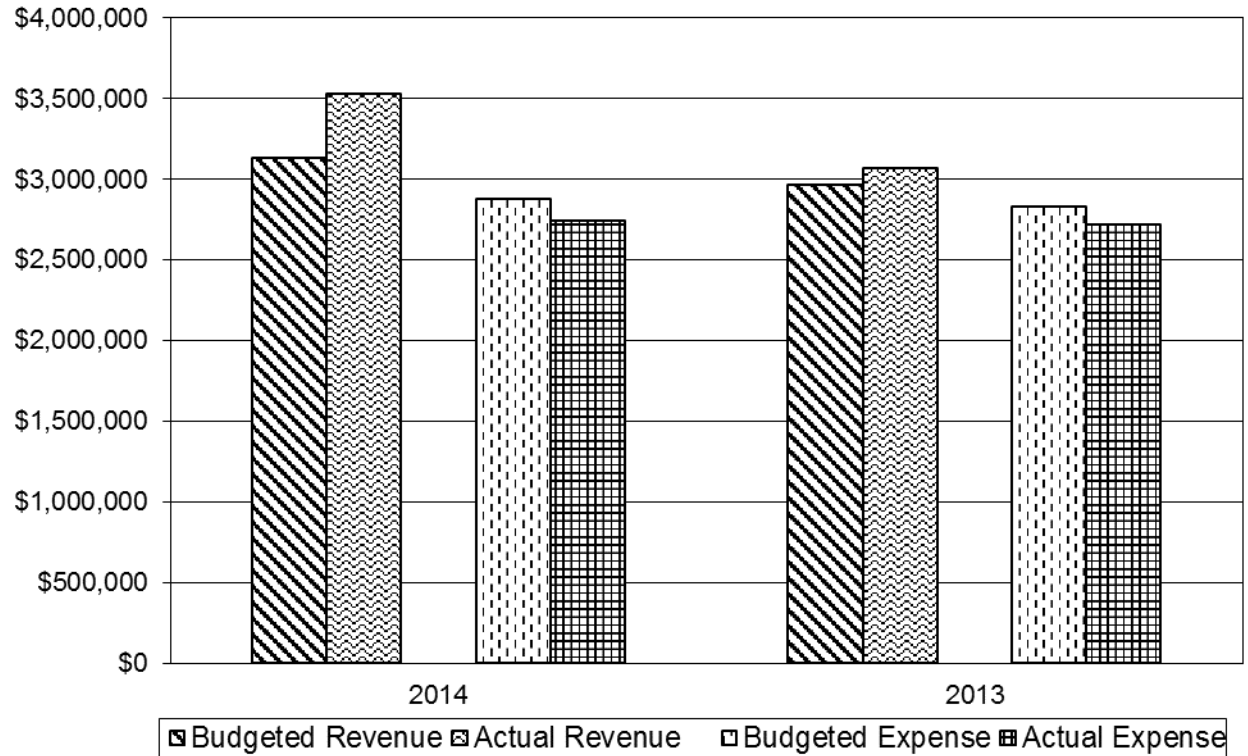
Budget to actual revenue variances reflect grant reimbursements that were budgeted in prior years. The disparity in budget and actual revenue between years results mostly from carryover and to a lesser extent intergovernmental revenues that fluctuate from year to year based on grant activity. 2013 carryover was roughly \$1.2 million more than what was appropriated in 2014.

Overall, the combined Water & Wastewater Fund revenues and carryover exceed expenditures by \$27,576,776. The combined Water & Wastewater Fund operating revenues exceed expenditures by \$17,957,722. \$28,339,398 is budgeted for capital project and reserves.



The combined Golf Course Fund revenues and carryover exceed expenditures by \$1,039,301. The combined Golf Course Fund operating revenues exceed expenditures by \$784,413. \$482,886 is budgeted for capital projects.

Golf Course Enterprise Operating Budget vs Actual



2014 Golf Course revenue exceeds budget in part because of various promotions during the year and proceeds from the Golf Expo. As a result, green fees, cart rentals, driving range fees, and merchandise sales were up at both courses.

Policy Issue

A monthly review of the City’s financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

Alternative

Conduct a quarterly review. This is not recommended, as the City’s budget and financial position are large and complex, warranting a monthly review by the City Council.

Background Information

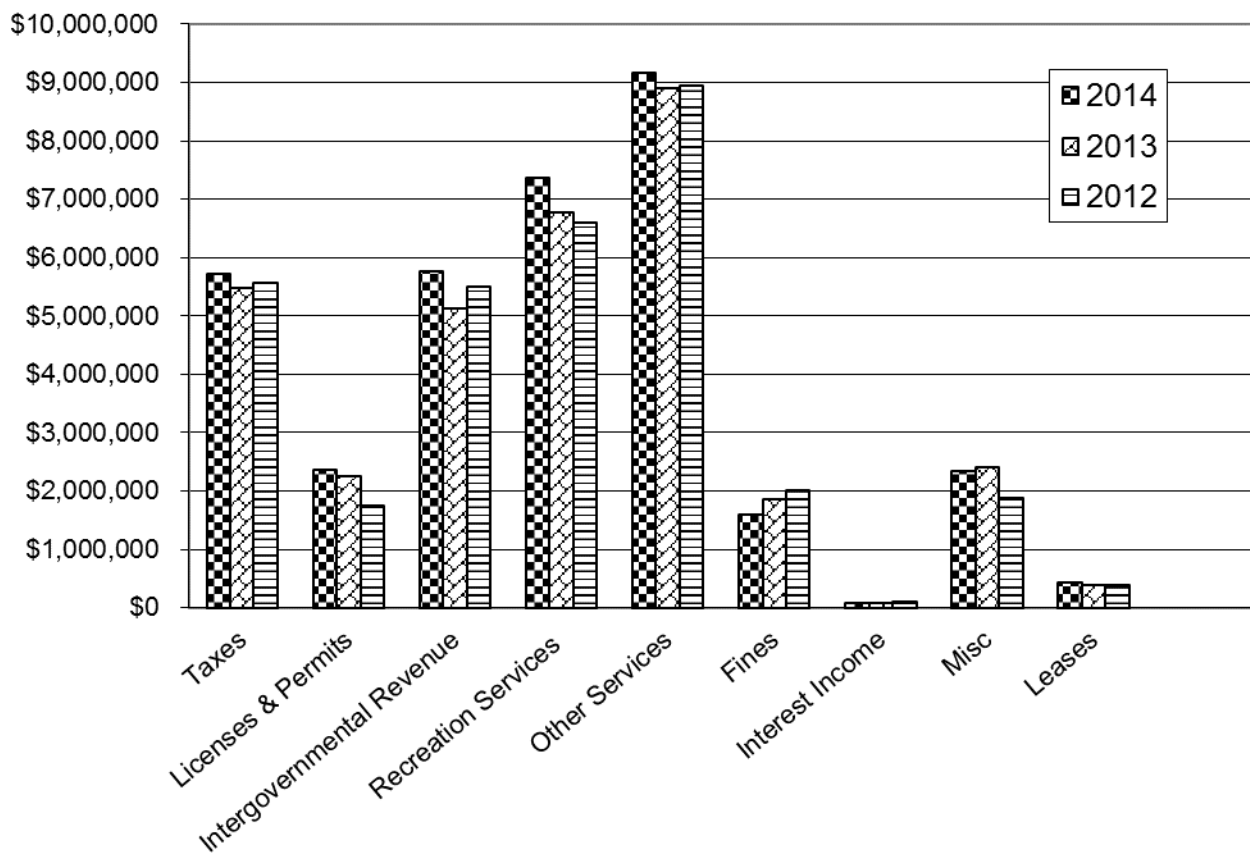
This section includes a discussion of highlights of each fund presented.

General Fund

This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Street Operations), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

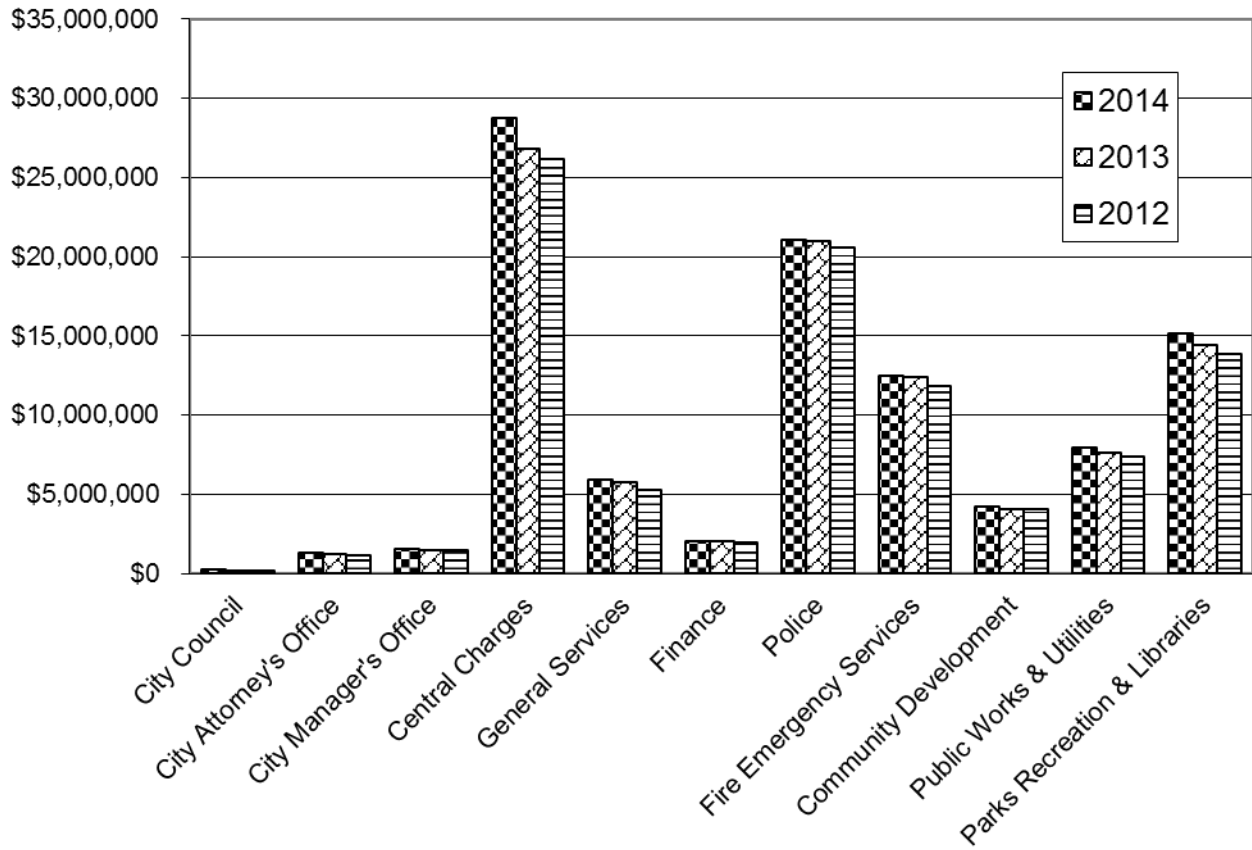
The following chart represents the trend in actual revenues from 2012-2014 year-to-date.

**General Fund Revenues, less Transfers and Carryover
2012-2014**



2014 Intergovernmental Revenue variance reflects urban renewal income generated by a revenue sharing agreement between Westminster and Thornton in the North Huron URA, as well as mineral and severance tax revenues from the State. The increase in Recreation Services reflects additional pass revenue and youth activity fees as an outcome of various Parks, Recreation and Libraries promotions during the year. Other Services is slightly higher than in prior years mostly because of an increase in infrastructure fees. Fines are lower in 2014 mostly because of a decrease in traffic fines.

General Fund Expenditures by Function 2012-2014

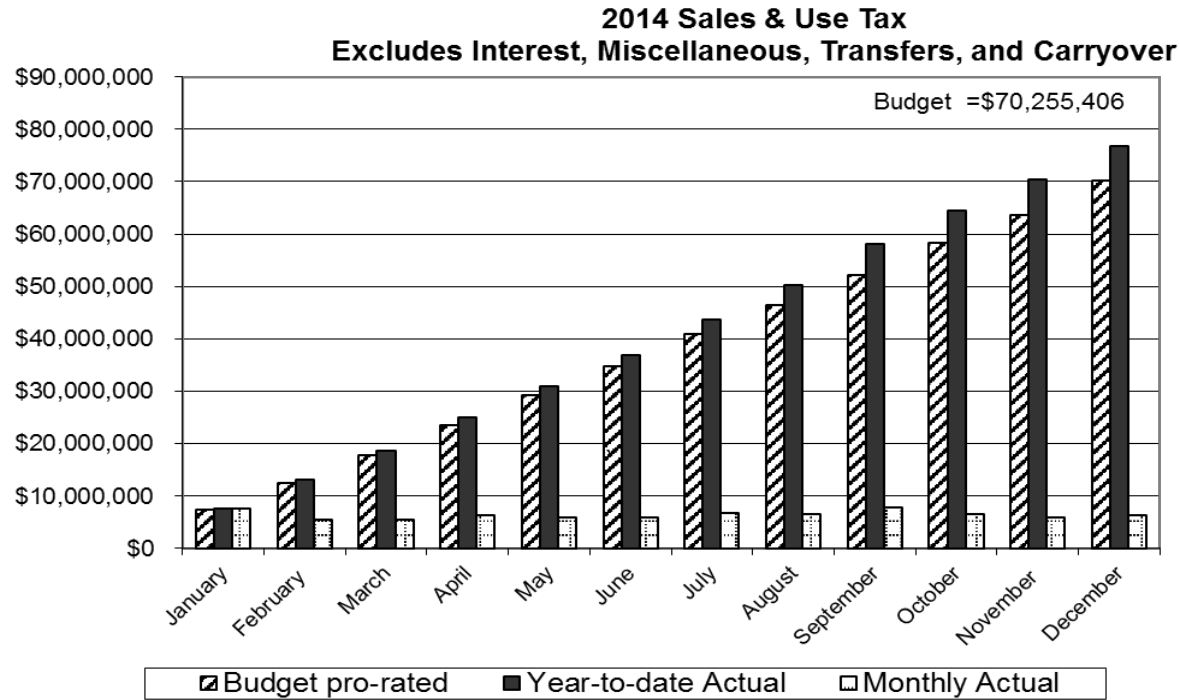


2014 Central Charges expenditures is higher when compared to prior years mostly because of an increase in budgeted transfers.

Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)

These funds are the repositories for the 3.85% City Sales & Use Tax. The Sales & Use Tax Fund provides monies for the General Fund, the General Capital Improvement Fund, and the Debt Service Fund. The Parks, Open Space and Trails (POST) Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, pay bonds related to the Heritage Golf Course, buy open space land, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used for funding public safety-related expenditures.

This chart indicates how the City’s Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space and Trails Sales & Use Tax.

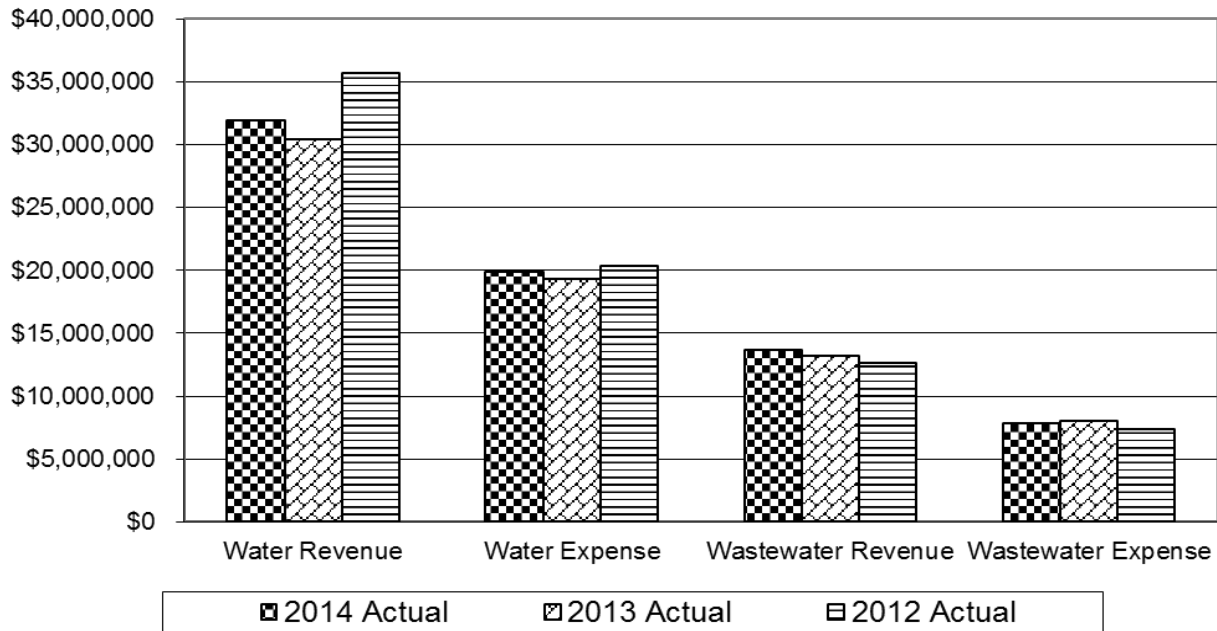


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net revenues are used to fund capital projects and reserves.

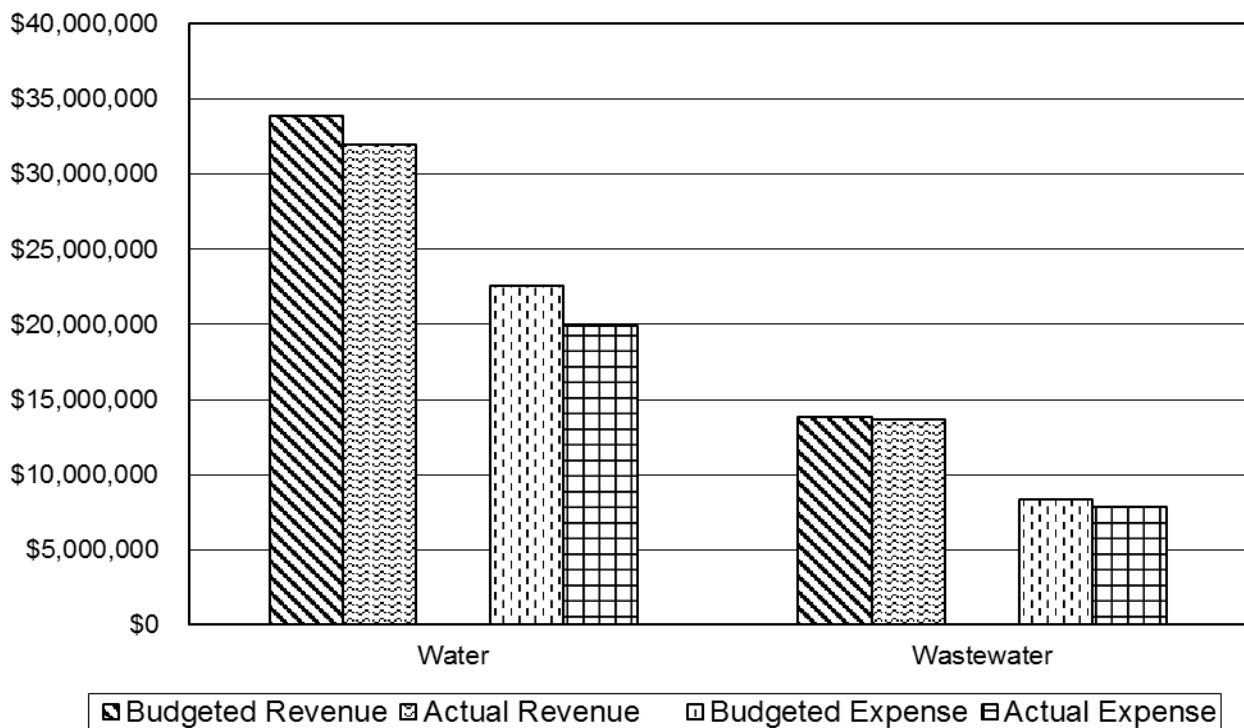
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenues and Expenditure
2012-2014**



The Water revenue variance is due to the effect of climatic variations on water consumption.

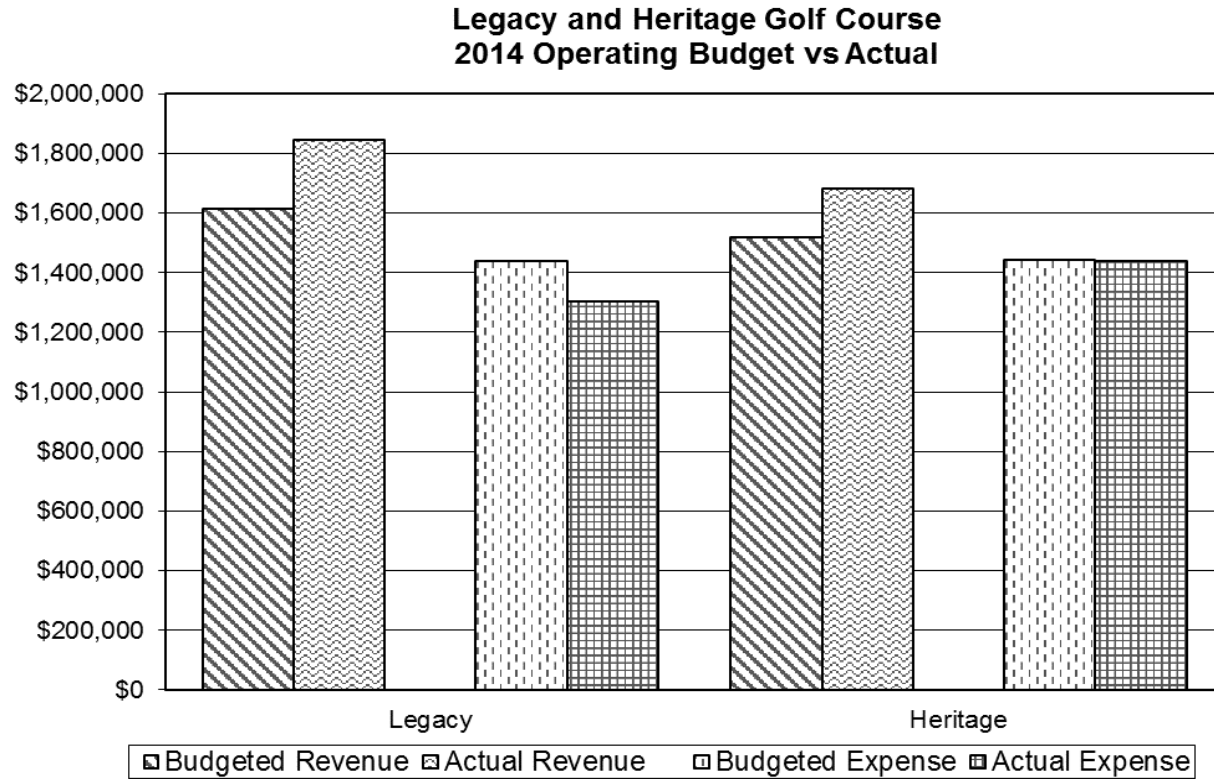
**Water and Wastewater Funds
2014 Operating Budget vs Actual**



The Storm Water Fund information is provided in the attached financial reports.

Golf Course Enterprise (Legacy and Heritage Golf Courses)

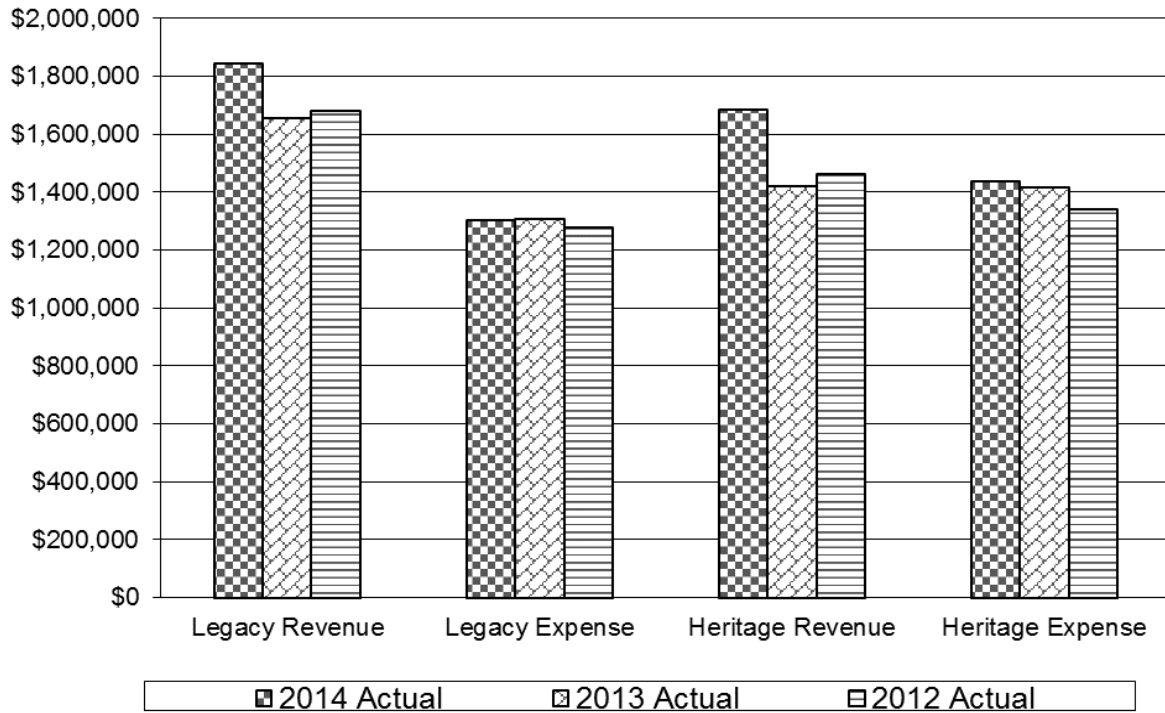
This enterprise reflects the operations of the City's two municipal golf courses.



Golf Course revenues exceed budget in part because of various special promotions during the year as well as proceeds from the Golf Expo.

The following graph represents the information for each of the golf courses.

Legacy and Heritage Golf Courses Operating Revenue and Expenditures 2012-2014



Several promotions during the year and the Golf Expo generated additional revenue for the courses. Heritage revenue also reflects a reimbursement from Trimble Navigation for modifications to the Heritage.

This financial report supports City Council’s Strategic Plan Goal of Excellence in City Services by communicating timely information on the results of City operations to assist with critical decision making.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Financial Statements
Shopping Center Report

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description General Fund | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|-------------------------------|--------------------|-------|--------------------|------------------------|---------------|
| Revenues | | | | | |
| Taxes | 5,617,500 | | 5,709,649 | 92,149 | 101.6% |
| Licenses & Permits | 1,622,000 | (4) | 2,364,789 | 742,789 | 145.8% |
| Intergovernmental Revenue | 5,445,502 | | 5,773,497 | 327,995 | 106.0% |
| Charges for Services | | | | | |
| Recreation Services | 6,912,229 | | 7,375,593 | 463,364 | 106.7% |
| Other Services | 9,412,865 | (1) | 9,163,284 | (249,581) | 97.3% |
| Fines | 2,150,000 | (2) | 1,584,434 | (565,566) | 73.7% |
| Interest Income | 55,000 | | 86,950 | 31,950 | 158.1% |
| Miscellaneous | 1,956,978 | (3) | 2,338,014 | 381,036 | 119.5% |
| Leases | 401,779 | | 418,676 | 16,897 | 104.2% |
| Interfund Transfers | 66,881,386 | | 66,881,386 | 0 | 100.0% |
| Sub-total Revenues | <u>100,455,239</u> | | <u>101,696,272</u> | <u>1,241,033</u> | <u>101.2%</u> |
| Carryover | 3,235,585 | | 3,235,585 | 0 | 100.0% |
| Total Revenues | <u>103,690,824</u> | | <u>104,931,857</u> | <u>1,241,033</u> | <u>101.2%</u> |
| Expenditures | | | | | |
| City Council | 254,094 | | 229,327 | (24,767) | 90.3% |
| City Attorney's Office | 1,316,507 | | 1,284,647 | (31,860) | 97.6% |
| City Manager's Office | 1,602,272 | | 1,547,535 | (54,737) | 96.6% |
| Central Charges | 29,953,346 | | 28,762,381 | (1,190,965) | 96.0% |
| General Services | 6,126,997 | | 5,891,662 | (235,335) | 96.2% |
| Finance | 2,133,622 | | 2,071,259 | (62,363) | 97.1% |
| Police | 21,867,704 | | 21,023,043 | (844,661) | 96.1% |
| Fire Emergency Services | 12,669,840 | | 12,521,812 | (148,028) | 98.8% |
| Community Development | 4,382,669 | | 4,207,326 | (175,343) | 96.0% |
| Public Works & Utilities | 8,183,153 | | 7,941,815 | (241,338) | 97.1% |
| Parks, Recreation & Libraries | 15,200,620 | | 15,129,692 | (70,928) | 99.5% |
| Total Expenditures | <u>103,690,824</u> | | <u>100,610,499</u> | <u>(3,080,325)</u> | <u>97.0%</u> |
| Revenues Over(Under) | | | | | |
| Expenditures | <u>0</u> | | <u>4,321,358</u> | <u>4,321,358</u> | |

(1) Budget to actual variance is primarily due to EMS, franchise and street infrastructure fees.

(2) Budget to actual variance is due mostly to traffic fines.

(3) Budget to actual variance primarily reflects reimbursement from WEDA for City funded improvements in the South Sheridan URA.

(4) Budget to actual variance is primarily due to an increase in ADCO residential permits and both ADCO and JEFFCO commercial permits.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|-------------------------------|-------------------|-------|-------------------|------------------------|-------------|
| Sales and Use Tax Fund | | | | | |
| Revenues | | | | | |
| Sales Tax | | | | | |
| Sales Tax Returns | 48,071,133 | | 51,133,984 | 3,062,851 | 106.4% |
| Sales Tx Audit Revenues | 729,000 | | 1,598,508 | 869,508 | 219.3% |
| S-T Rev. STX | <u>48,800,133</u> | | <u>52,732,492</u> | <u>3,932,359</u> | 108.1% |
| Use Tax | | | | | |
| Use Tax Returns | 8,390,000 | | 9,424,809 | 1,034,809 | 112.3% |
| Use Tax Audit Revenues | 785,000 | | 1,305,724 | 520,724 | 166.3% |
| S-T Rev. UTX | <u>9,175,000</u> | | <u>10,730,533</u> | <u>1,555,533</u> | 117.0% |
| Total STX and UTX | <u>57,975,133</u> | | <u>63,463,025</u> | <u>5,487,892</u> | 109.5% |
| Public Safety Tax | | | | | |
| PST Tax Returns | 11,971,773 | | 12,829,875 | 858,102 | 107.2% |
| PST Audit Revenues | 308,500 | | 580,623 | 272,123 | 188.2% |
| Total Rev. PST | <u>12,280,273</u> | | <u>13,410,498</u> | <u>1,130,225</u> | 109.2% |
| Interest Income | 61,000 | | 61,063 | 63 | 100.1% |
| Miscellaneous | 287,291 | (1) | 356,284 | 68,993 | 124.0% |
| Interfund Transfers | 329,463 | | 329,463 | 0 | 100.0% |
| Carryover | 3,272,649 | | 3,272,649 | 0 | 100.0% |
| Total Revenues | <u>74,205,809</u> | | <u>80,892,982</u> | <u>6,687,173</u> | 109.0% |
| Expenditures | | | | | |
| Central Charges | <u>74,205,809</u> | | <u>74,205,809</u> | 0 | 100.0% |
| Revenues Over(Under) | | | | | |
| Expenditures | <u>0</u> | | <u>6,687,173</u> | <u>6,687,173</u> | |

(1) Budget to actual variance primarily reflects reimbursement from WEDA for City funded improvements in the South Sheridan URA.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description POST Fund | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|-----------------------------|------------------|-------|------------------|------------------------|-------------|
| Revenues | | | | | |
| Sales & Use Tax | 5,152,477 | | 5,586,207 | 433,730 | 108.4% |
| Intergovernmental Revenue | 754,600 | (1) | 1,037,072 | 282,472 | 137.4% |
| Interest Income | 10,000 | | 5,935 | (4,065) | 59.4% |
| Miscellaneous | 98,901 | (2) | 115,184 | 16,283 | 116.5% |
| Interfund Transfers | 24,537 | (3) | 224,537 | 200,000 | 915.1% |
| Sub-total Revenues | <u>6,040,515</u> | | <u>6,968,935</u> | <u>928,420</u> | 115.4% |
| Carryover | 578,400 | | 578,400 | 0 | 100.0% |
| Total Revenues | <u>6,618,915</u> | | <u>7,547,335</u> | <u>928,420</u> | 114.0% |
| Expenditures | | | | | |
| Central Charges | 6,279,199 | | 6,152,954 | (126,245) | 98.0% |
| Park Services | 339,716 | | 303,555 | (36,161) | 89.4% |
| Total Expenditures | <u>6,618,915</u> | | <u>6,456,509</u> | <u>(162,406)</u> | 97.5% |
| Revenues Over(Under) | | | | | |
| Expenditures | <u>0</u> | | <u>1,090,826</u> | <u>1,090,826</u> | |

(1) Budget to actual variance reflects grants that were budgeted in a prior year.

(2) Budget to actual variance includes reimbursements from WEDA for costs previously incurred by the City for the South Sheridan URA as well as certain building permit fee rebates.

(3) Budget to actual variance is funds received from CDBG for water tap credits.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|--|-------------------|-------|-------------------|------------------------|-------------|
| Water and Wastewater Funds - Combined | | | | | |
| Operating Revenues | | | | | |
| License & Permits | 75,000 | | 103,740 | 28,740 | 138.3% |
| Intergovernmental Revenue | 0 | (1) | 479,758 | 479,758 | |
| Rates and Charges | 47,265,414 | | 44,832,785 | (2,432,629) | 94.9% |
| Miscellaneous | 410,000 | (2) | 241,730 | (168,270) | 59.0% |
| Total Operating Revenues | <u>47,750,414</u> | | <u>45,658,013</u> | <u>(2,092,401)</u> | 95.6% |
| Operating Expenditures | | | | | |
| Central Charges | 6,170,349 | | 6,226,761 | 56,412 | 100.9% |
| Finance | 646,754 | | 562,497 | (84,257) | 87.0% |
| Public Works & Utilities | 20,892,643 | | 18,013,352 | (2,879,291) | 86.2% |
| Parks, Recreation & Libraries | 152,417 | | 137,426 | (14,991) | 90.2% |
| Information Technology | 3,038,821 | | 2,760,255 | (278,566) | 90.8% |
| Total Operating Expenditures | <u>30,900,984</u> | | <u>27,700,291</u> | <u>(3,200,693)</u> | 89.6% |
| Operating Income (Loss) | <u>16,849,430</u> | | <u>17,957,722</u> | <u>1,108,292</u> | |
| Other Revenue and Expenditures | | | | | |
| Tap Fees | 8,662,000 | | 6,716,827 | (1,945,173) | 77.5% |
| Interest Income | 323,847 | | 374,086 | 50,239 | 115.5% |
| Sale of Assets | 0 | | 24,020 | 24,020 | |
| Carryover | 6,118,308 | | 6,118,308 | 0 | 100.0% |
| Debt Service | (7,204,825) | | (7,204,825) | 0 | 100.0% |
| Reserve Transfer In | 9,156,830 | | 9,156,830 | 0 | 100.0% |
| Reserve Transfer Out | (5,566,192) | | (5,566,192) | 0 | 100.0% |
| Total Other Revenue (Expenditures) | <u>11,489,968</u> | | <u>9,619,054</u> | <u>(1,870,914)</u> | |
| Revenues Over(Under) Expenditures | <u>28,339,398</u> | (3) | <u>27,576,776</u> | <u>(762,622)</u> | |

(1) Intergovernmental revenue reflects the Build America Bond rate subsidy.

(2) Budget to actual variance reflects one-time sales of untreated water and bio-solids farm activity.

(3) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|--|-------------------|-------|-------------------|------------------------|-------------|
| Water Fund | | | | | |
| Operating Revenues | | | | | |
| License & Permits | 75,000 | | 103,740 | 28,740 | 138.3% |
| Intergovernmental Revenue | 0 | (1) | 479,758 | 479,758 | |
| Rates and Charges | 33,445,414 | | 31,135,905 | (2,309,509) | 93.1% |
| Miscellaneous | 400,000 | (2) | 234,545 | (165,455) | 58.6% |
| Total Operating Revenues | <u>33,920,414</u> | | <u>31,953,948</u> | <u>(1,966,466)</u> | |
| Operating Expenditures | | | | | |
| Central Charges | 4,316,054 | | 4,323,660 | 7,606 | 100.2% |
| Finance | 646,754 | | 562,497 | (84,257) | 87.0% |
| Public Works & Utilities | 14,405,355 | | 12,105,701 | (2,299,654) | 84.0% |
| PR&L Standley Lake | 152,417 | | 137,426 | (14,991) | 90.2% |
| Information Technology | 3,038,821 | | 2,760,255 | (278,566) | 90.8% |
| Total Operating Expenditures | <u>22,559,401</u> | | <u>19,889,539</u> | <u>(2,669,862)</u> | 88.2% |
| Operating Income (Loss) | <u>11,361,013</u> | | <u>12,064,409</u> | <u>703,396</u> | |
| Other Revenue and (Expenditures) | | | | | |
| Tap Fees | 7,567,000 | | 5,206,437 | (2,360,563) | 68.8% |
| Interest Income | 233,665 | | 290,453 | 56,788 | 124.3% |
| Carryover | 4,446,506 | | 4,446,506 | 0 | 100.0% |
| Debt Service | (5,697,476) | | (5,697,476) | 0 | 100.0% |
| Reserve Transfer In | 8,619,230 | | 8,619,230 | 0 | 100.0% |
| Reserve Transfer Out | (4,375,938) | | (4,375,938) | 0 | 100.0% |
| Total Other Revenues (Expenditures) | <u>10,792,987</u> | | <u>8,489,212</u> | <u>(2,303,775)</u> | |
| Revenues Over(Under) Expenditures | <u>22,154,000</u> | (3) | <u>20,553,621</u> | <u>(1,600,379)</u> | |

(1) Intergovernmental revenue reflects the Build America Bond rate subsidy.

(2) Budget to actual variance reflects one-time sales of untreated water and bio-solids farm activity.

(3) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|--|-------------------|-------|-------------------|------------------------|-------------|
| Wastewater Fund | | | | | |
| Operating Revenues | | | | | |
| Rates and Charges | 13,820,000 | | 13,696,880 | (123,120) | 99.1% |
| Miscellaneous | 10,000 | | 7,185 | (2,815) | 71.9% |
| Total Operating Revenues | <u>13,830,000</u> | | <u>13,704,065</u> | <u>(125,935)</u> | 99.1% |
| Operating Expenditures | | | | | |
| Central Charges | 1,854,295 | (1) | 1,903,101 | 48,806 | 102.6% |
| Public Works & Utilities | 6,487,288 | | 5,907,651 | (579,637) | 91.1% |
| Total Operating Expenditures | <u>8,341,583</u> | | <u>7,810,752</u> | <u>(530,831)</u> | 93.6% |
| Operating Income (Loss) | <u>5,488,417</u> | | <u>5,893,313</u> | <u>404,896</u> | |
| Other Revenue and Expenditures | | | | | |
| Tap Fees | 1,095,000 | | 1,510,390 | 415,390 | 137.9% |
| Interest Income | 90,182 | | 83,633 | (6,549) | 92.7% |
| Sale of Assets | 0 | | 24,020 | 24,020 | |
| Carryover | 1,671,802 | | 1,671,802 | 0 | 100.0% |
| Debt Service | (1,507,349) | | (1,507,349) | 0 | 100.0% |
| Reserve Transfer In | 537,600 | | 537,600 | 0 | 100.0% |
| Reserve Transfer Out | (1,190,254) | | (1,190,254) | 0 | 100.0% |
| Total Other Revenues (Expenditures) | <u>696,981</u> | | <u>1,129,842</u> | <u>432,861</u> | |
| Revenues Over(Under) Expenditures | <u>6,185,398</u> | (2) | <u>7,023,155</u> | <u>837,757</u> | |

(1) Budget to actual variance is due mostly to self insurance charges.

(2) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|--|------------------|-------|------------------|------------------------|-------------|
| Storm Drainage Fund | | | | | |
| Revenues | | | | | |
| Charges for Services | 2,698,000 | | 2,664,786 | (33,214) | 98.8% |
| Interest Income | 38,000 | | 24,575 | (13,425) | 64.7% |
| Miscellaneous | 88,262 | | 88,392 | 130 | 100.1% |
| Sub-total Storm Drainage Revenues | <u>2,824,262</u> | | <u>2,777,753</u> | <u>(46,509)</u> | 98.4% |
| Carryover | 130,728 | | 130,728 | 0 | 100.0% |
| Total Revenues | <u>2,954,990</u> | | <u>2,908,481</u> | <u>(46,509)</u> | 98.4% |
| Expenditures | | | | | |
| General Services | 86,200 | | 41,122 | (45,078) | 47.7% |
| Community Development | 178,990 | | 179,635 | 645 | 100.4% |
| PR&L Park Services | 200,000 | | 151,261 | (48,739) | 75.6% |
| Public Works & Utilities | 329,810 | | 253,951 | (75,859) | 77.0% |
| Total Expenditures | <u>795,000</u> | | <u>625,969</u> | <u>(169,031)</u> | 78.7% |
| Revenues Over(Under) Expenditures | <u>2,159,990</u> | (1) | <u>2,282,512</u> | <u>122,522</u> | |

(1) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|--|------------------|-------|------------------|------------------------|-------------|
| Golf Courses Combined | | | | | |
| Operating Revenues | | | | | |
| Charges for Services | 3,025,336 | | 3,417,061 | 391,725 | 112.9% |
| Miscellaneous | 107,886 | | 110,234 | 2,348 | 102.2% |
| Total Revenues | <u>3,133,222</u> | | <u>3,527,295</u> | <u>394,073</u> | 112.6% |
| Operating Expenditures | | | | | |
| Central Charges | 211,700 | | 194,988 | (16,712) | 92.1% |
| Recreation Facilities | 2,670,458 | | 2,547,894 | (122,564) | 95.4% |
| Total Expenditures | <u>2,882,158</u> | | <u>2,742,882</u> | <u>(139,276)</u> | 95.2% |
| Operating Income (Loss) | <u>251,064</u> | | <u>784,413</u> | <u>533,349</u> | |
| Other Revenues and Expenditures | | | | | |
| Interest Income | 0 | | 8,637 | 8,637 | |
| Other Financing Sources | 1,101,069 | | 1,101,069 | 0 | 100.0% |
| Other Financing Use | (1,107,149) | | (1,105,634) | 1,515 | 99.9% |
| Debt Service | (716,241) | | (703,327) | 12,914 | 98.2% |
| Interfund Transfers | 579,143 | | 579,143 | 0 | 100.0% |
| Carryover | 375,000 | | 375,000 | 0 | 100.0% |
| Total Other Revenue (Expenditures) | <u>231,822</u> | | <u>254,888</u> | <u>23,066</u> | |
| Revenues Over(Under) Expenditures | <u>482,886</u> | (1) | <u>1,039,301</u> | <u>556,415</u> | |

(1) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|--|------------------|-------|------------------|------------------------|-------------|
| Legacy Ridge Fund | | | | | |
| Operating Revenues | | | | | |
| Charges for Services | 1,615,968 | | 1,844,228 | 228,260 | 114.1% |
| Total Revenues | <u>1,615,968</u> | | <u>1,844,228</u> | <u>228,260</u> | 114.1% |
| Operating Expenditures | | | | | |
| Central Charges | 98,900 | | 85,717 | (13,183) | 86.7% |
| Recreation Facilities | 1,341,665 | | 1,218,637 | (123,028) | 90.8% |
| Total Expenditures | <u>1,440,565</u> | | <u>1,304,354</u> | <u>(136,211)</u> | 90.5% |
| Operating Income (Loss) | <u>175,403</u> | | <u>539,874</u> | <u>364,471</u> | |
| Other Revenues and Expenditures | | | | | |
| Interest Income | 0 | | 4,998 | 4,998 | |
| Other Financing Sources | 540,431 | | 540,431 | 0 | 100.0% |
| Other Financing Use | (543,431) | | (543,846) | (415) | 100.1% |
| Debt Service | (204,133) | | (204,121) | 12 | 100.0% |
| Interfund Transfers | 31,730 | | 31,730 | 0 | 100.0% |
| Carryover | 100,000 | | 100,000 | 0 | 100.0% |
| Total Other Revenue (Expenditures) | <u>(75,403)</u> | | <u>(70,808)</u> | <u>4,595</u> | |
| Revenues Over(Under) Expenditures | <u>100,000</u> | (1) | <u>469,066</u> | <u>369,066</u> | |

(1) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2014**

| Description | Budget | Notes | Actual | (Under) Over Budget | % Budget |
|--|------------------|-------|------------------|------------------------|-------------|
| Heritage at Westmoor Fund | | | | | |
| Operating Revenues | | | | | |
| Charges for Services | 1,409,368 | | 1,572,833 | 163,465 | 111.6% |
| Miscellaneous | 107,886 | | 110,234 | 2,348 | 102.2% |
| Total Revenues | <u>1,517,254</u> | | <u>1,683,067</u> | <u>165,813</u> | 110.9% |
| Operating Expenditures | | | | | |
| Central Charges | 112,800 | | 109,271 | (3,529) | 96.9% |
| Recreation Facilities | 1,328,793 | | 1,329,257 | 464 | 100.0% |
| Total Expenditures | <u>1,441,593</u> | | <u>1,438,528</u> | <u>(3,065)</u> | 99.8% |
| Operating Income (Loss) | <u>75,661</u> | | <u>244,539</u> | <u>168,878</u> | |
| Other Revenues and Expenditures | | | | | |
| Interest Income | 0 | | 3,639 | 3,639 | |
| Other Financing Sources | 560,638 | | 560,638 | 0 | 100.0% |
| Other Financing Use | (563,718) | | (561,788) | 1,930 | 99.7% |
| Debt Service | (512,108) | | (499,206) | 12,902 | 97.5% |
| Interfund Transfers | 547,413 | | 547,413 | 0 | 100.0% |
| Carryover | 275,000 | | 275,000 | 0 | 100.0% |
| Total Other Revenue (Expenditures) | <u>307,225</u> | | <u>325,696</u> | <u>18,471</u> | |
| Revenues Over(Under) Expenditures | <u>382,886</u> | (1) | <u>570,235</u> | <u>187,349</u> | |

(1) Net revenues are used to fund capital projects and reserves.

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF DECEMBER 2014

| Center Location Major Tenant | Current Month | | | Last Year | | | Percentage Change | | |
|--|------------------|----------------|---------|------------------|----------------|---------|-------------------|------|-------|
| | General Sales | General Use | Total | General Sales | General Use | Total | Sales | Use | Total |
| THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S | 502,639 | 15,728 | 518,367 | 469,546 | 13,072 | 482,618 | 7 | 20 | 7 |
| WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND | 389,985 | 5,476 | 395,461 | 373,764 | 753 | 374,517 | 4 | 627 | 6 |
| NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO | 267,256 | 2,196 | 269,452 | 237,452 | 212 | 237,664 | 13 | 936 | 13 |
| SHOPS AT WALNUT CREEK 104TH & REED TARGET | 267,474 | 1,528 | 269,002 | 257,060 | 1,307 | 258,367 | 4 | 17 | 4 |
| BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT | 237,065 | 5,840 | 242,905 | 228,834 | 2,166 | 231,000 | 4 | 170 | 5 |
| SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND | 206,733 | 308 | 207,041 | 190,863 | 415 | 191,278 | 8 | (26) | 8 |
| INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH | 198,875 | 1,059 | 199,934 | 194,625 | 672 | 195,297 | 2 | 58 | 2 |
| SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S | 187,150 | 1,724 | 188,874 | 184,135 | 917 | 185,052 | 2 | 88 | 2 |
| PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC | 141,522 | 21,885 | 163,407 | 137,670 | 21,147 | 158,817 | 3 | 3 | 3 |
| NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS | 132,017 | 205 | 132,222 | 120,981 | 473 | 121,454 | 9 | (57) | 9 |
| CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE | 115,190 | 295 | 115,485 | 91,054 | 2,008 | 93,062 | 27 | (85) | 24 |
| STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS | 94,435 | 197 | 94,632 | 81,909 | 199 | 82,108 | 15 | (1) | 15 |

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF DECEMBER 2014

| Center Location Major Tenant | Current Month | | | Last Year | | | Percentage Change | | |
|--|------------------|----------------|------------------|------------------|----------------|------------------|-------------------|-------------|----------|
| | General Sales | General Use | Total | General Sales | General Use | Total | Sales | Use | Total |
| VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US | 83,681 | 328 | 84,009 | 87,283 | 271 | 87,554 | (4) | 21 | (4) |
| WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY | 68,066 | 478 | 68,544 | 63,087 | 1,270 | 64,357 | 8 | (62) | 7 |
| WESTMINSTER CROSSING 136TH & I-25 LOWE'S | 66,340 | 99 | 66,439 | 62,725 | 116 | 62,841 | 6 | (15) | 6 |
| ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE | 63,156 | 436 | 63,592 | 67,373 | 100 | 67,473 | (6) | 336 | (6) |
| WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY | 56,991 | 305 | 57,296 | 54,850 | 384 | 55,234 | 4 | (21) | 4 |
| VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS | 46,273 | 820 | 47,093 | 44,612 | 882 | 45,494 | 4 | (7) | 4 |
| NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART | 39,742 | 333 | 40,075 | 36,021 | 11,387 | 47,408 | 10 | (97) | (15) |
| WILLOW RUN 128TH & ZUNI SAFEWAY | 33,504 | 212 | 33,716 | 32,354 | 169 | 32,523 | 4 | 25 | 4 |
| MEADOW POINTE NE CRN 92ND & OLD WADS CARRABAS | 33,287 | 190 | 33,477 | 29,326 | 17 | 29,343 | 14 | 1,018 | 14 |
| BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S | 32,905 | 553 | 33,458 | 32,544 | 222 | 32,766 | 1 | 149 | 2 |
| LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY | 7,443 | 24,759 | 32,202 | 8,071 | 67,865 | 75,936 | (8) | (64) | (58) |
| STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY | 28,804 | 555 | 29,359 | 45,915 | 140 | 46,055 | (37) | 296 | (36) |
| BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE | 26,885 | 217 | 27,102 | 24,496 | 511 | 25,007 | 10 | (58) | 8 |
| | <u>3,327,418</u> | <u>85,726</u> | <u>3,413,144</u> | <u>3,156,550</u> | <u>126,675</u> | <u>3,283,225</u> | <u>5</u> | <u>(32)</u> | <u>4</u> |

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
DECEMBER 2014 YEAR-TO-DATE

| Center Location Major Tenant | Current Month | | | Last Year | | | Percentage Change | | |
|--|------------------|----------------|-----------|------------------|----------------|-----------|-------------------|------|-------|
| | General Sales | General Use | Total | General Sales | General Use | Total | Sales | Use | Total |
| THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S | 5,400,078 | 228,495 | 5,628,573 | 5,241,134 | 167,382 | 5,408,516 | 3 | 37 | 4 |
| WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND | 4,067,783 | 40,552 | 4,108,335 | 4,044,845 | 27,616 | 4,072,461 | 1 | 47 | 1 |
| NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO | 3,155,919 | 47,135 | 3,203,054 | 2,867,845 | 11,259 | 2,879,104 | 10 | 319 | 11 |
| SHOPS AT WALNUT CREEK 104TH & REED TARGET | 3,075,258 | 20,992 | 3,096,250 | 3,038,969 | 35,165 | 3,074,134 | 1 | (40) | 1 |
| BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT | 2,468,934 | 25,755 | 2,494,689 | 2,598,948 | 57,232 | 2,656,180 | (5) | (55) | (6) |
| SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND | 2,150,804 | 14044 | 2,164,848 | 2,100,170 | 7,060 | 2,107,230 | 2 | 99 | 3 |
| SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S | 2,118,341 | 28,111 | 2,146,452 | 2,068,331 | 11,806 | 2,080,137 | 2 | 138 | 3 |
| INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH | 2,106,981 | 11,444 | 2,118,425 | 2,043,699 | 15,402 | 2,059,101 | 3 | (26) | 3 |
| PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC | 1,822,685 | 296,491 | 2,119,176 | 1,632,540 | 227,795 | 1,860,335 | 12 | 30 | 14 |
| NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS | 1,626,423 | 8894 | 1,635,317 | 1,529,518 | 14,412 | 1,543,930 | 6 | (38) | 6 |
| CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE | 1,405,112 | 18614 | 1,423,726 | 1,267,727 | 16,549 | 1,284,276 | 11 | 12 | 11 |
| STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS | 1,122,363 | 6044 | 1,128,407 | 1,031,382 | 4,596 | 1,035,978 | 9 | 32 | 9 |

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
DECEMBER 2014 YEAR-TO-DATE

| Center Location Major Tenant | Current Month | | | Last Year | | | Percentage Change | | |
|--|-------------------|----------------|-------------------|-------------------|----------------|-------------------|-------------------|-----------|----------|
| | General Sales | General Use | Total | General Sales | General Use | Total | Sales | Use | Total |
| VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US | 982,433 | 9211 | 991,644 | 919,604 | 5,999 | 925,603 | 7 | 54 | 7 |
| WESTMINSTER CROSSING 136TH & I-25 LOWE'S | 839,657 | 8380 | 848,037 | 799,637 | 27,050 | 826,687 | 5 | (69) | 3 |
| ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHERIDAN GUITAR STORE | 777,551 | 6141 | 783,692 | 759,584 | 6,073 | 765,657 | 2 | 1 | 2 |
| WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY | 702,865 | 5007 | 707,872 | 681,478 | 7,427 | 688,905 | 3 | (33) | 3 |
| VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS | 593,069 | 9395 | 602,464 | 542,856 | 20,894 | 563,750 | 9 | (55) | 7 |
| WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY | 589,730 | 10377 | 600,107 | 585,307 | 9,909 | 595,216 | 1 | 5 | 1 |
| SHERIDAN PROF OFFICE PARK 86TH -87TH YATES - WOLFF DOUBLETREE | 577,548 | 41898 | 619,446 | 45,317 | 15,952 | 61,269 | 1,174 | 163 | 911 |
| NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART | 499,126 | 6591 | 505,717 | 330,181 | 32,759 | 362,940 | 51 | (80) | 39 |
| STANDLEY LAKE MARKETPLACE NE CRN 99ND & WADSWORTH SAFEWAY | 484,125 | 33968 | 518,093 | 537,873 | 2,330 | 540,203 | (10) | 1,358 | (4) |
| WILLOW RUN 128TH & ZUNI SAFEWAY | 402,839 | 2465 | 405,304 | 402,865 | 2,866 | 405,731 | 0 | (14) | 0 |
| BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S | 401,203 | 9,119 | 410,322 | 370,018 | 6,275 | 376,293 | 8 | 45 | 9 |
| BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE | 396,244 | 3522 | 399,766 | 353,706 | 5,499 | 359,205 | 12 | (36) | 11 |
| STANDLEY PLAZA SW CORNER 88TH & WADSWORTH WALGREENS | 322,027 | 4717 | 326,744 | 310,022 | 7,074 | 317,096 | 4 | (33) | 3 |
| | <u>38,089,098</u> | <u>897,362</u> | <u>38,986,460</u> | <u>36,103,556</u> | <u>746,381</u> | <u>36,849,937</u> | <u>5</u> | <u>20</u> | <u>6</u> |



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Appointment of Donald M. Tripp, City Manager

Prepared By: Debbie Mitchell, General Services Director

Recommended City Council Action

Authorize the Mayor to execute the attached employment agreement with Donald M. Tripp for his services as City Manager for 2015 with an effective date of February 9th, 2015, and an automatic renewal for 2016 unless terminated pursuant to the terms of the agreement.

Summary Statement

In the last six months since City Manager, Brent McFall, confirmed the timing of his retirement, City Council and City Staff have been closely involved in the recruitment and selection of a new City Manager.

- The process has included selection of a national executive search firm, Waters and Company; national advertising and comprehensive recruitment materials used in direct mailing and at the International City Management Association (ICMA) conference in September, 2014.
- The City received 63 applications for the position.
- Six (6) semifinalists were interviewed in person by the selection committee and three (3) finalists were recommended to the full City Council for consideration.
- A three (3) day assessment process with the finalists involved interview panels and tours with many employees, community leaders and City Council.
- Final deliberation by City Council included the input of four panels, employee observations from tours as well as references and background information.
- On January 12, 2015 City Council made the final decision to offer the position to Donald M. Tripp, authorizing Mayor Atchison to make an offer of employment and to negotiate the employment contract.
- Mr. Tripp has formally accepted the offer pending final action by City Council to execute the employment contract.
- City Council is being asked to take formal action on the appointment of Donald M. Tripp as the new City Manager, authorizing the Mayor to execute the attached employment contract. This appointment is being made in accordance with Section 4.7 of the Westminster City Charter.
- Mr. Tripp's first day as City Manager will be February 9th, 2015.

Expenditure Required: \$ 215,000 plus benefits

Source of Funds: General Fund – City Manager's Office

Policy Issue

Does City Council wish to appoint Donald M. Tripp to be the City of Westminster's City Manager?

Alternative

Do not appoint Donald M. Tripp as City Manager and conduct another selection process to select a new candidate for appointment. Staff does not recommend this alternative as Donald M. Tripp was the Council consensus candidate to bring forward for appointment. Under Section 4.7 of the Westminster City Charter, City Council has the authority to appoint the City Manager. Based on the Council-directed selection process, Donald M. Tripp is being recommended for appointment as the new City Manager for 2015 with an effective date of February 9th, 2015, and an automatic renewal in 2016 unless terminated pursuant to the terms of the agreement.

Background Information

In the spring of 2014, City Manager Brent McFall announced his retirement effective January, 2015 after more than 13 years of service to the City of Westminster. Shortly thereafter, City Council authorized Staff to conduct an executive recruitment with the support of an executive search firm. Waters and Company was selected through a competitive process as the firm to assist City Council and Staff with the recruitment process. In September of 2014, the position was opened and job announcements were placed in several state, regional, and national publications as well as on-line job services. The recruitment marketing, screening and selection process was comprehensive and inclusive including many important steps outlined below:

- Waters and Company showcased the Westminster City Manager position at the ICMA conference in September, 2014;
- National advertising and comprehensive recruitment materials used in direct mailings and at the ICMA conference in September, 2014;
- The City received 63 applications for the position and in collaboration with Waters and Company screened the pool through a variety of written questionnaires, a video presentation and initial interviews with an executive selection committee including Mayor Herb Atchison and Mayor Pro Tem Faith Winter and City Staff;
- Six (6) semifinalists were interviewed in person by the selection committee and three (3) finalists were recommended to the full City Council for consideration;
- A three (3) day assessment process with the finalists involved interview panels, reception and tours with many employees, community leaders and City Council;
- Final deliberation by City Council included a Council interview with each candidate, the input of four panels, employee observations from tours as well as references and background information;
- On January 12, 2015 City Council made the final decision to offer the position to Donald M. Tripp, authorizing Mayor Atchison to make an offer of employment and to negotiate the employment contract;
- Mr. Tripp has formally accepted the offer pending final action by City Council to execute the employment contract;
- City Council is being asked to take formal action on the appointment of Donald M. Tripp as the new City Manager, authorizing the Mayor to execute the attached employment contract. This appointment is being made in accordance with Section 4.7 of the Westminster City Charter; and,
- Mr. Tripp's first day as City Manager will be February 9, 2015.
- Mr. Tripp has extensive experience as an executive leader. He has served the City of Westminster since 2012 as the Director of Parks, Recreation and Libraries. Other positions Mr. Tripp has held include Parks and Recreation Director for the City of Des Moines, Iowa (1991-2012); and Recreation Director and Parks and Recreation Director for the City of Battle Creek, Michigan (1987-1991).

The offer of employment negotiated between City Council and Mr. Tripp has the following terms:

1. Initial base salary for services as City Manager of \$215,000 with an annual salary negotiated in 2016 based on a contract renewal;
2. Continued participation in the City's Defined Contribution Pension Plan with employee contributions of 10% and employer contributions of 10.25% consistent with other City employees.
3. A twelve-month severance pay agreement should City Council terminate Mr. Tripp's employment agreement prior to expiration;
4. A \$750 per month car allowance;
5. The same benefit package provided to department head level positions;
6. All expenses related to participation in various national, state, and other professional associations; and,
7. General Leave accrual at the "over 20" year rate of 9.13 hours per pay period totaling 238 hours per year and 90 hours of holiday per year along with an initial credit of 160 hours of Administrative Leave upon appointment in 2015, allowable for roll over to 2016.

All of the above terms of employment, along with various other provisions related to Mr. Tripp's appointment are included in the attached employment contract.

This Staff recommendation achieves Council's Strategic Plan goal of "Excellence in City Services" by providing superior executive leadership through an exceptional new City Manager committed to the mission, values and strategic objectives of the City of Westminster.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

- Employment Agreement

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 9th day of February, 2015, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "the CITY", and DONALD M. TRIPP, hereinafter called "EMPLOYEE", is as follows:

WHEREAS, the CITY desires to employ the services of DONALD M. TRIPP as City Manager of the City of Westminster as provided by Section 4.7 of the City Charter; and

WHEREAS, it is the desire of the City Council of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to accept such employment, (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE, and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties or when the CITY may desire to otherwise terminate his employ; and

WHEREAS, EMPLOYEE has accepted employment as City Manager of the CITY.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. DUTIES:

A. The CITY hereby agrees to begin the employment of EMPLOYEE as City Manager of the CITY to perform the duties and functions specified in Section 4.8 of the City Charter and in Title 1, Chapter 12, of the Westminster Municipal Code, and such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated January 12, 2015, and as may be amended during the term of this Agreement. ("Personnel Policies and Rules").

SECTION 2. TERM:

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as City Manager for calendar years 2015 and 2016. EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, the term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3 of this Agreement.

D. This Agreement shall be in effect through December 31, 2015, and shall be automatically renewed through December 31, 2016, unless terminated by the City on or before October 31, 2015.

SECTION 3. TERMINATION AND SEVERANCE PAYMENT:

A. In the event the City Council decides to terminate EMPLOYEE's employment with the CITY before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Manager, then and in that event, the CITY agrees to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing twelve (12) months, plus the pro rata share of deferred compensation to which EMPLOYEE is entitled based on his termination date (the "Severance Payment"); provided however, that in the event the EMPLOYEE is terminated because of his conviction of an illegal act, then, and in that event, the CITY has no obligation to pay the Severance Payment.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or in the event the EMPLOYEE resigns following a written suggestion by at least four (4) members of the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction and be entitled to the Severance Payment as described in subsection A of this Section 3.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY no less than ninety (90) days' notice in advance in writing, and this Agreement and all payments due hereunder shall terminate on the effective date of the resignation.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this Section 3.

E. In the event this Agreement is not renewed by the City Council as referenced in Section 2.D., such non-renewal shall be considered a termination as provided for in Section 3.A. hereof and shall entitle EMPLOYEE to the Severance Payment described therein.

SECTION 4. SALARY AND EVALUATIONS:

A. Effective February 9, 2015, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary ("Gross Salary") of two hundred fifteen thousand dollars (\$215,000.00), which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take as deferred compensation. The Base Salary portion of this amount shall be payable in installments at the same time as other employees of the CITY are paid. EMPLOYEE may designate a portion of this amount not to exceed the amount allowed by Federal Law to be paid as a lump sum payment to EMPLOYEE'S deferred compensation plan.

B. The CITY agrees to review EMPLOYEE'S performance annually, no later than October 31st of each year. Salary evaluation each year shall be at the discretion of the CITY.

SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE is allowed to take compensatory time off as he shall deem appropriate during normal office hours.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the City Council. Such consulting or other non-City connected business shall not constitute a conflict of any nature with EMPLOYEE'S work as City Manager. However, the City Council shall be the sole judge of such conflicts, and its determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of seven hundred fifty dollars (\$750.00) to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 8. PROFESSIONAL DEVELOPMENT:

The CITY hereby agrees to budget and to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for the CITY, including but not limited to the International City/County Management Association, the Colorado City/County Management Association, the Colorado Municipal League, and such other national, regional, state and local governmental groups and committees thereof on which EMPLOYEE serves as a member.

SECTION 9. GENERAL EXPENSES:

The CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt and approval of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

A. The CITY shall provide EMPLOYEE with all benefits that are provided to all other Department Head level employees by the Personnel Policies and Rules, except that when such benefits are in conflict with this Agreement, this Agreement shall control.

B. EMPLOYEE shall accrue General Leave at the rate prescribed for "over 20" years of continuous municipal service in the City Code and Personnel Policies and Rules and shall be able to use such accrued leave in accordance with the rate of use accorded to employees in the "over 20" years of service category. The CITY also agrees to provide additional Administrative Leave in 2015 of one hundred sixty (160) hours, which hours shall be allowable for roll over to 2016.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter or any other law.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement becomes effective on February 9, 2015, and if automatically renewed shall be in effect through December 31, 2016.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. Nothing in this Agreement shall be construed as creating a multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

F. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement.

APPROVED by Westminster City Council on this 26th day of January, 2015.

Herb Atchison, Mayor

ATTEST:

City Clerk

Donald M. Tripp

APPROVED AS TO LEGAL FORM:



City Attorney



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Fleet Maintenance Cumulative Fuel Purchases of Over \$75,000

Prepared By: Jeffery Bowman, Fleet Manager

Recommended City Council Action

Based upon the recommendation of the City Manager, determine that the public interest will be best served by approving Fleet Maintenance cumulative purchases in 2015 with Chief Petroleum, Gray Oil, and Hill Petroleum for total fuel purchases not to exceed \$432,036 total among the three vendors.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$75,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$75,000.
- The Fleet Maintenance Division is purchasing 180,000 gallons of gasoline and 90,000 gallons of diesel fuel via a futures contract method, competitively bid and awarded to Hill Petroleum totaling \$650,000 in 2015. This item appeared separately on City Council Agenda 8D on December 8, 2014, and is not included in this request.
- Historic gasoline and diesel fuel use averages 340,000 gallons annually, so the remaining non-contracted fuel may equal 70,000 gallons. Staff is asking for approval of purchases not to exceed \$432,036 among all three vendors through 2015.
- Adequate funds are appropriated in the 2015 Fleet Maintenance Commodities Fund and are available for the needed purchases.

Expenditure Required: Not to exceed \$432,036

Source of Funds: 2015 Fleet Maintenance Fund

Policy Issue

Should Council approve the cumulative purchase of vehicle fuel from various vendors that total over \$75,000 per vendor, but not to exceed \$432,036 in total in 2015?

Alternative

Do not approve the expenditures as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more prudent approach is to treat the smaller transactions as cumulative larger purchases with the vendors that are subject to Council approval.

Background Information

Fleet Maintenance uses a variety of fuel vendors to provide no-lead, E-10 gasoline and #2 diesel fuel in City vehicles. The 2015 Fleet Maintenance Commodities budget contains \$1,082,036 in the line item for vehicle fuel. Beyond the 270,000 gallon quantity outlined in the 2015 futures contract with Hill Petroleum, additional on-going purchases will be necessary and will include routine, competitively bid fuel deliveries.

Fleet Maintenance has three vendors that are used on a regular basis. Any one of the three vendors (Chief Petroleum, Gray Oil and Hill Petroleum) could be awarded individual spot bids totaling 70,000 gallons. While the futures contract is the primary gasoline and diesel acquisition method in 2015, spot pricing will provide timely deliveries of fuel to the City for quantities that are needed, beyond the futures contract amounts. Spot pricing is expected to supply approximately 15% of the anticipated gasoline use and 25% of the anticipated diesel use in 2015. When spot fuel deliveries are necessary, prices are requested from three vendors and the low price for the day is awarded the purchase.

Staff anticipates that it will be purchasing fuel from all three vendors throughout the year that will surpass \$75,000 each, but not exceed a total of \$432,036 for these spot purchases.

This recommended approach to purchasing fuel helps achieve City Council's Strategic Plan goal of "Excellence in City Services" by keeping the City's fleet on the street and maintaining service levels at a reasonable cost.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Quarterly Insurance Claims Report – October through December 2014
Prepared By: Martee Erichson, Risk Manager

Recommended City Council Action

Accept the Fourth Quarter 2014 Insurance Claims Report.

Summary Statement

- The attached report provides detailed information on each liability insurance claim made to the City including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office on litigated claims to make sure the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.
- In accordance with Code provisions, the Risk Manager, acting as the City Manager's designee, has the authority to settle claims of less than \$30,000. However, under the City's contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjuster and settlement of claims proceed with the concurrence of both CIRSA and the Risk Manager. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 4th quarter of 2014 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow-up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the fourth quarter of 2014, Staff has noted the following summary information:

- Twelve of the 15 claims reported in the fourth quarter of 2014 are closed at this time.
- Total claims for the quarter and year-to-date are broken down by department as follows:

| Department | 4th Qtr 2014 | | | YTD Total |
|---|--------------|----------|-----------|-----------|
| | Total Claims | Open | Closed | |
| Community Development | 0 | 0 | 0 | 1 |
| Fire | 0 | 0 | 0 | 3 |
| General Services | 0 | 0 | 0 | 1 |
| Parks, Recreation and Libraries (PRL) | 4 | 2 | 2 | 15 |
| Police (PD) | 2 | 0 | 2 | 19 |
| Public Works and Utilities (PWU) - Street Maintenance | 2 | 0 | 2 | 17 |
| Public Works and Utilities (PWU) - Utility Field Operations | 7 | 1 | 6 | 20 |
| TOTAL | 15 | 3 | 12 | 76 |

Risk Management supports Council’s Strategic Plan goal of “Excellence in City Services” by working to mitigate the cost of claims to the City and maintaining a loss control program that strives to keep City streets and facilities safe for the general public.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Quarterly Insurance Report

Quarterly Insurance Claims Report – October through December 2014

| Claim Number | Loss Date | Dept. | Claimant | Address | Claim Description | Payment | Status | Notes |
|--------------|------------|------------|----------------|---|--|-------------|--------|--|
| 2014-334 | 10/13/2014 | PRL | Mona Banwait | 6203 W 92nd Pl., Westminster CO 80031 | Claimant alleges a branch from a City tree damaged her van when she drove by the tree. | \$ - | Closed | Claim denied based on a finding of no negligence on the part of the City. |
| 2014-322-1 | 10/14/2014 | PWU - Util | David Buehmann | 14757 Osage Ct., Westminster CO 80023 | Unforeseen failure in the connection pipe to a water main Pressure Relief Valve, caused increased water pressure into claimant's home causing property damage. | \$ 1,000.00 | Closed | Claim denied based on a finding of no negligence on the part of the City; however, claimant was offered payment under the City's "good neighbor" settlement program. |
| 2014-322-2 | 10/14/2014 | PWU - Util | Suebeth Wagner | 1545 W 148th Ave., Westminster Co 80023 | Unforeseen failure in the connection pipe to a water main Pressure Relief Valve, caused increased water pressure into claimant's home causing property damage. | \$ 245.29 | Closed | Claim denied based on a finding of no negligence on the part of the City; however, claimant was offered payment under the City's "good neighbor" settlement program. |

Quarterly Insurance Claims Report – October through December 2014

| Claim Number | Loss Date | Dept. | Claimant | Address | Claim Description | Payment | Status | Notes |
|--------------|------------|------------|--------------------|---|--|-----------|--------|--|
| 2014-322-3 | 10/14/2014 | PWU - Util | Susan Lattarulo | 1238 W 132nd Place., Westminster CO 80234 | Unforeseen failure in the connection pipe to a water main Pressure Relief Valve, caused increased water pressure into claimant's home causing property damage. | \$ 259.00 | Closed | Claim denied based on a finding of no negligence on the part of the City; however, claimant was offered payment under the City's "good neighbor" settlement program. |
| 2014-322-4 | 10/14/2014 | PWU - Util | Dolores Kovinchick | 1456 W 135th Dr., Westminster CO 80234 | Unforeseen failure in the connection pipe to a water main Pressure Relief Valve, caused increased water pressure into claimant's home causing property damage. | \$ 20.00 | Closed | Claim denied based on a finding of no negligence on the part of the City; however, claimant was offered payment under the City's "good neighbor" settlement program. |

Quarterly Insurance Claims Report – October through December 2014

| Claim Number | Loss Date | Dept. | Claimant | Address | Claim Description | Payment | Status | Notes |
|--|------------|------------|---|--|--|---------|--------|--|
| 2014-322-5 | 10/14/2014 | PWU - Util | Sheryl Hollingsworth | 1422 W 135th Pl., Westminster, CO 80234 | Unforeseen failure in the connection pipe to a water main Pressure Relief Valve, caused increased water pressure into claimant's home causing property damage. | \$ - | Open | Claim denied based on a finding of no negligence on the part of the City; however, claimant was offered payment under the City's "good neighbor" settlement program. |
| 2014-370 | 11/8/2014 | PRL | Donna Valdez | 8140 Stuart St., Westminster CO 80031 | Claimant alleges she was injured when she slipped and fell on a wet floor in the locker room at the Swim & Fitness Center. | \$ - | Open | CIRSA investigating |
| CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 4TH QUARTER 2014: | | | | | | | | |
| 2014-310 | 5/28/2014 | PRL | Campden Witte (minor) c/o Morgan Witte (mother) | 13288 Lost Lake Way, Broomfield CO 80020 | Claimants' attorney alleges the minor claimant received a chemical burn on the bottom of his feet from stepping on grass at a City park. | \$ - | Closed | Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. |

Quarterly Insurance Claims Report – October through December 2014

| Claim Number | Loss Date | Dept. | Claimant | Address | Claim Description | Payment | Status | Notes |
|--------------|-----------|---------------|---------------------------------------|--|---|-----------|--------|--|
| 2014-396 | 5/31/2014 | PWU - Streets | David Nazeri | 8761 Quigley St., Westminster CO 80031 | Claimant's attorney alleges the claimant was injured in a vehicle accident due to improper lighting and signage on a US 36 off ramp. | \$ - | Closed | Claim denied based on the fact the location of the accident is not within the City's jurisdiction. |
| 2014-155 | 6/2/2014 | PRL | Angela Ross | 12670 Dahlia Way, Thornton CO 80241 | Claimant's attorney alleges the claimant was injured by a Pilates machine during a City fitness class. | \$ - | Open | CIRSA investigating |
| 2014-380 | 7/1/2014 | PD | Julian Valenzuela c/o Jamie Rivera | c/o 2676 Espinoza St., Trinidad CO 81082 | Claimant's bicycle was being held in custody after the claimant was transported for medical care. The bicycle was sent off to auction without claimant's knowledge. | \$ 530.00 | Closed | Claim denied based on Colorado Governmental Immunity Act; however, claimant was offered payment under the City's "good neighbor" settlement program. |
| 2014-309 | 7/24/2014 | PWU - Streets | Benjamin Alarcon | 9775 Ogden Ct., Thornton CO 80229 | Claimant's attorney alleges the claimant was injured resulting from a motorcycle accident that occurred on Interstate 25. | \$ - | Closed | Claim denied based on the fact the location of the accident is not within the City's jurisdiction. |

Quarterly Insurance Claims Report – October through December 2014

| Claim Number | Loss Date | Dept. | Claimant | Address | Claim Description | Payment | Status | Notes |
|--------------|-----------|------------|---|--|--|--------------------|--------|---|
| 2014-360 | 8/22/2014 | PWU - Util | Echelon Property Group, c/o Toscana Apts, attn: Erika Freeman-Daniels | 5655 S. Yosemite St. Ste 460, Greenwood Vlg CO 80111 | Claimants allege City heavy equipment being stored near a water main replacement project, damaged an asphalt parking lot it was sitting on. | \$ - | Closed | Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. |
| 2014-323 | 9/20/2014 | PWU - Util | Brad Johann and Kerri Tuttle | 9945 Wolff St Westminster, CO 80031 | Claimants allege their sprinkler line was damaged and a guest visiting their home was injured when the guest stepped on a water meter pit lid and fell into the water meter pit. | \$ - | Closed | Claim denied based on a finding of no negligence on the part of the City. |
| 2014-307 | 9/26/2014 | PD | Jerome Pfannestiel | 560 Poppy Dr., Brighton CO 80601 | Claimant was bitten by a Westminster Police K9 after being told several times to back away from the dog. The K9 and Officer were searching the claimant's backyard for a felony suspect. | \$ - | Closed | Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. |
| | | | | | TOTAL | \$ 2,054.29 | | |



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: 2015 Intergovernmental Agreement with Thornton regarding 144th and 136th Avenue I-25 Interchanges

Prepared By: Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the City Manager to execute a 2015 Intergovernmental Agreement with the City of Thornton Amending and Restating the 2006 Intergovernmental Agreement Between the Cities of Thornton and Westminster Regarding Maintenance Responsibilities at I-25 and the 144th and 136th Avenue Interchanges.

Summary Statement

- The City of Westminster and the City of Thornton share city limit boundaries on the two interchanges over I-25 at 136th Avenue and 144th Avenue.
- Along the 136th and 144th Avenue interchanges, the Cities are required to keep all structures, roadways and street lights in good repair, provide snow and ice control, and maintain landscapes with costs to be borne equally by each City.
- The original Intergovernmental Agreement (IGA) was approved on December 17, 2001.
- Since 2001, the IGA has been modified three times with each version amending and updating various responsibilities.
- The Cities desire to amend and restate the IGA in its entirety to include all right of way maintenance associated with the two interchanges including snow and ice control, street maintenance, traffic signal maintenance, and landscape maintenance.
- The City of Thornton City Council approved this IGA at a regular City Council meeting January 13, 2015.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City enter into an IGA with the City of Thornton Amending and Restating the 2006 Intergovernmental Agreement Between the Cities of Thornton and Westminster Regarding Maintenance Responsibilities at I-25 and the 144th and 136th Avenue Interchanges?

Alternative

City Council could choose to decline entering into an amended and restated IGA with the City of Thornton. The Cities would then be responsible for their respective portions of right of way, except as noted in previous amendments. Staff does not recommend this alternative because the proposed cooperative IGA provides clarity of maintenance responsibilities, reduces duplicative efforts, improves cost effectiveness and makes the most operational sense for both entities.

Background Information

The City of Westminster and the City of Thornton share city limit boundaries on the two interchanges over I-25 at 136th Avenue and 144th Avenue. To delineate each city's maintenance responsibilities, the Cities entered into an IGA in December 2001, which addressed snow and ice plowing operations, landscaping, traffic signal, roadway, structure and street light maintenance responsibilities.

In December 2006, the IGA was amended and updated for snow and ice operations and street cleaning on the 144th Avenue interchange. The Cities entered into a first amendment in June 2007 for landscape and signal maintenance on both interchanges, and a second amendment in December 2010 for further clarification of maintenance responsibilities for these two interchanges.

For clarity and ease of reference, the Cities desire to amend and restate the 2006 IGA in its entirety. The City of Thornton City Council approved this IGA on January 13, 2015, and it is now being brought before Westminster City Council for its consideration.

This IGA excludes items maintained by Colorado Department of Transportation (CDOT) within the CDOT right of way of these interchanges.

This IGA supports the City's Strategic Plan goals of Vibrant and Inclusive Neighborhoods, Proactive Regional Collaboration, Excellence in City Services, and Ease of Mobility by providing well maintained City infrastructure through timely maintenance and repairs of roadways.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Intergovernmental Agreement
Exhibit A
Exhibit A1

**INTERGOVERNMENTAL AGREEMENT AMENDING AND RESTATING THE 2006
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF THORNTON AND
WESTMINSTER REGARDING MAINTENANCE RESPONSIBILITIES AT I-25 AND
THE 144TH AND 136TH AVENUE INTERCHANGES**

This Amendment and Restatement of the 2006 Intergovernmental Agreement between Thornton and Westminster regarding maintenance responsibilities at Interstate 25 and the 144th and 136th Avenue Interchanges ("Agreement") is made and entered into this ____ day of _____, 2015, by and between the **CITY OF THORNTON**, a home-rule municipal corporation ("Thornton") and the **CITY OF WESTMINSTER**, a home-rule municipal corporation ("Westminster") (or collectively referred to as the "City or Cities, Party or Parties").

WITNESSETH

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, et seq., and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit, and

WHEREAS, Thornton and Westminster share many corporate boundaries with one another; and

WHEREAS, the maintenance of shared roadways and appurtenances requires duplicative efforts on the part of the Parties; and

WHEREAS, the Parties entered into an Intergovernmental Agreement for the construction of the 136th Avenue and Interstate 25 Interchange dated December 17, 2001, which contained, Paragraph H addressing snow and ice removal, landscaping, traffic signal, roadway, structure and street light maintenance responsibilities (the "136 Avenue IGA"), which paragraph was superseded by the Intergovernmental Agreement between the Parties dated December 13, 2006, for the snow and ice removal and street cleaning on 144th and 136th Avenues at the I-25 interchanges (the "2006 IGA"); and

WHEREAS, the 2006 IGA was amended by the First Amendment to the 2006 IGA, dated June 14, 2007, and was later amended by the Second Amendment to the 2006 IGA, dated December, 2010; and

WHEREAS, for clarity and for ease of reference, the Parties desire to amend and restate the 2006 IGA in its entirety.

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the Parties hereto agree to amend and restate the 2006 IGA as amended, in its entirety as follows:

1. RESPONSIBILITIES

A. Snow and Ice Control and Roadway Cleaning

Thornton and Westminster agree that each Party shall be responsible for snow and ice control, and roadway cleaning and costs associated therewith on those portions of 144th and 136th Avenue located within the corporate boundaries of each Party's respective jurisdiction in accordance with each Party's respective operating procedures. For the sidewalks that cross Interstate I-25 at 136th Avenue and 144th Avenue, Thornton will remove snow on the westbound sidewalk and

Westminster will remove snow on the eastbound sidewalk, as shown on the map attached hereto and incorporated herein as **Exhibit A and A-1**.

B. Street Maintenance

The Parties agree that any maintenance costs required to keep all structures, roadways and streetlights along the 136th and 144th Avenue Interchanges within Colorado Department of Transportation ("CDOT") right of way ("ROW"), including striping and traffic control signage, ("Infrastructure"), in good repair shall be borne equally by each City. The term "Infrastructure" does not include any items located within CDOT ROW maintained by CDOT. The Parties will jointly inspect the Infrastructure once every two years, at a minimum, and shall mutually agree to any necessary repairs prior to performance of such maintenance. Such maintenance and repairs shall be performed within industry standards for the care of the Infrastructure. Thornton shall be responsible for coordinating any repairs and maintenance of Infrastructure for the 136th Interchange and Westminster shall be responsible for coordinating any repairs and maintenance of Infrastructure for the 144th Interchange.

C. Signal Maintenance

Westminster shall pay for and be responsible for the maintenance of the traffic signals and attached devices located within the CDOT ROW on 144th Avenue at I-25 including power, parts, labor and equipment. Thornton shall pay for and be responsible for the maintenance of the traffic signals and attached devices located within the CDOT ROW on 136th Avenue at I-25 including power, parts, labor and equipment.

D. Landscape Maintenance

Thornton and Westminster agree that each Party shall be responsible for landscaping maintenance and costs associated therewith on those portions of 144th and 136th Avenue located within the corporate boundaries of each Party's respective jurisdiction in accordance with each Party's respective operating procedures. However, to encourage consistent landscape levels within such interchanges, the Parties may agree to jointly select contractors to perform the landscape work for each of the entire length of interchanges.

2. NON-APPROPRIATION OF FUNDS

Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation with respect to either Party. All financial obligations of the Parties under this Agreement are subject to annual appropriation. Notwithstanding the foregoing, however, the Parties covenant and agree that they will use their utmost good faith and best efforts to annually appropriate the funds necessary to meet their financial obligations under this Agreement. In the event either party fails to appropriate the funds necessary to meet its obligations under this Agreement, the Parties agree that they shall negotiate in good faith a supplemental agreement, the purpose of which shall be to make whole the unpaid party as a result of such non-appropriation.

3. DELAYS

Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulation or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.

4. PARAGRAPH CAPTIONS

The captions of the Paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

5. ADDITIONAL DOCUMENTS OR ACTION

The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

6. INTEGRATION AND AMENDMENT

This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.

7. WAIVER OF BREACH

A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

8. BINDING EFFECT

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

9. VENUE

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

10. SEVERABILITY

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

11. GOVERNMENTAL IMMUNITY

The Parties hereto understand and agree that Thornton nor Westminster, and their respective officers and employees are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities, privileges or protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., ("CGIA") as it is from time to time amended.

12. INDEMNIFICATION

To the extent permitted by law and without waiving any rights or immunities under this Agreement, Thornton agrees to indemnify and hold harmless Westminster, its officers, and its employees, from and against all liability, claims, and demands which arise out of or are in any manner connected

with the performance or non-performance of Thornton's responsibilities under this Agreement. Thornton agrees to bear its costs and expenses related thereto, including court costs and attorney fees.

To the extent permitted by law and without waiving any rights or immunities under this Agreement, Westminster agrees to indemnify and hold harmless Thornton, its officers, and its employees, from and against all liability, claims, and demands which arise out of or are in any manner connected with the performance or non-performance of Westminster's responsibilities under this Agreement. Westminster agrees to bear its costs and expenses related thereto, including court costs and attorney fees.

13. THIRD PARTY INSURANCE COVERAGE

In the event any work to be performed hereunder is subcontracted or performed by anyone other than an employee of the Parties, the Party contracting with that subcontracted person, firm, organization or corporation shall be responsible to ensure that the contractor has the insurance coverage levels required by each Party and provides an indemnification to each Party for acts and omissions in performing its work.

14. TERM

The first term of this Agreement shall terminate on December 31, 2015. This Agreement shall automatically renew for successive one year terms subject to Paragraph 15 herein.

15. TERMINATION

This Agreement shall automatically renew on an annual basis and may be terminated without cause, by either Party providing sixty-day advance written notification of its intent to terminate to the other Party.

16. NOTICE

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent to the following addresses by certified mail or registered mail, postage and fees prepaid, or at such other address as may be subsequently furnished in writing to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail.

Bud Elliot, Deputy City Manager - Infrastructure
City of Thornton
12450 Washington Street
Thornton, Colorado 80241

Jody Andrews, Public Works Director
City of Westminster
4800 W 92nd Avenue
Westminster, CO 80031

Dave Cantu, Street Operations Manager
City of Westminster
6575 W 88th Avenue
Westminster. CO 80031

17. DESIGNATION OF RESPONSIBLE STAFF PERSON

Thornton and Westminster each agree to designate a responsible staff person who will be responsible for the coordination of the performance of the terms and conditions of this Agreement and who will act as a contact for citizen complaints and comments regarding the maintenance responsibilities each Party has undertaken hereunder.

18. NO THIRD PARTY BENEFICIARY

It is specifically agreed between the Parties that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary hereunder or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other damages under this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement, with respect to third parties, shall remain as imposed by law.

19. CONFLICT

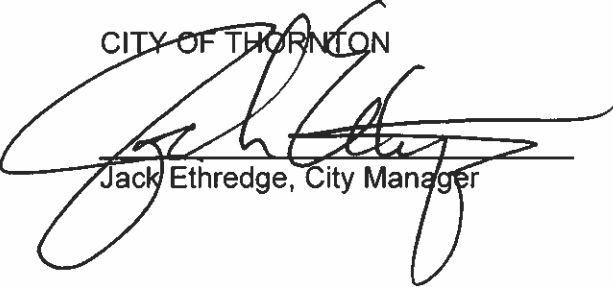
In the event there is any conflict with this Agreement and the 2006 IGA, as amended, the terms of this Agreement shall govern.

20. This Agreement shall be known as the 2015 IGA Regarding Maintenance Responsibilities at I-25 and the 144th and 136th Avenue Interchanges.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the date first above written.

CITY OF THORNTON



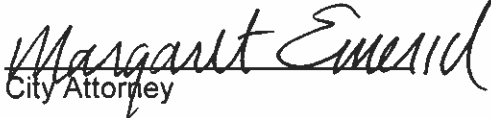
Jack Ethredge, City Manager

ATTEST:



Nancy Vincent, City Clerk

APPROVED AS TO FORM:
Margaret Emerich, City Attorney



Margaret Emerich
City Attorney

CITY OF WESTMINSTER

J. Brent McFall, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

2015 IGA Regarding Maintenance Responsibilities at I-25 and the 144th and 136th Avenue Interchanges

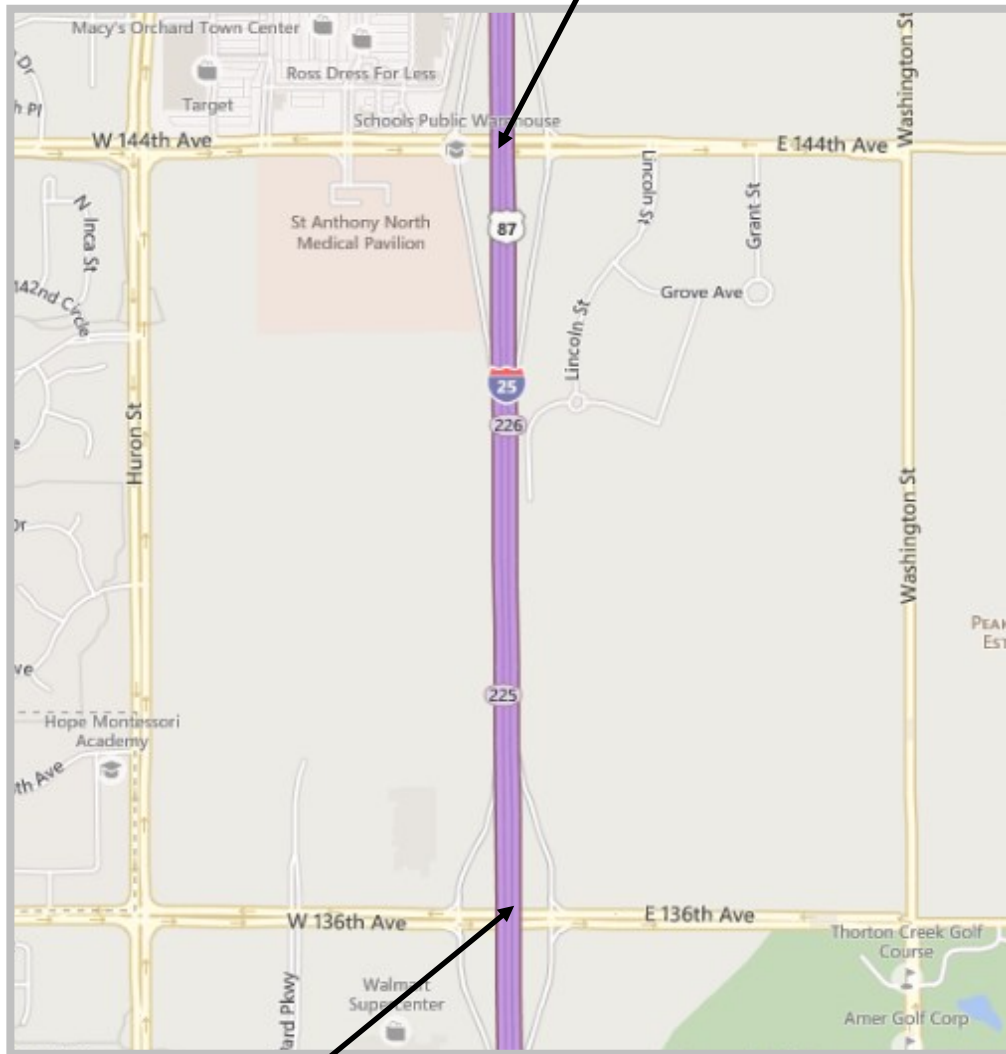
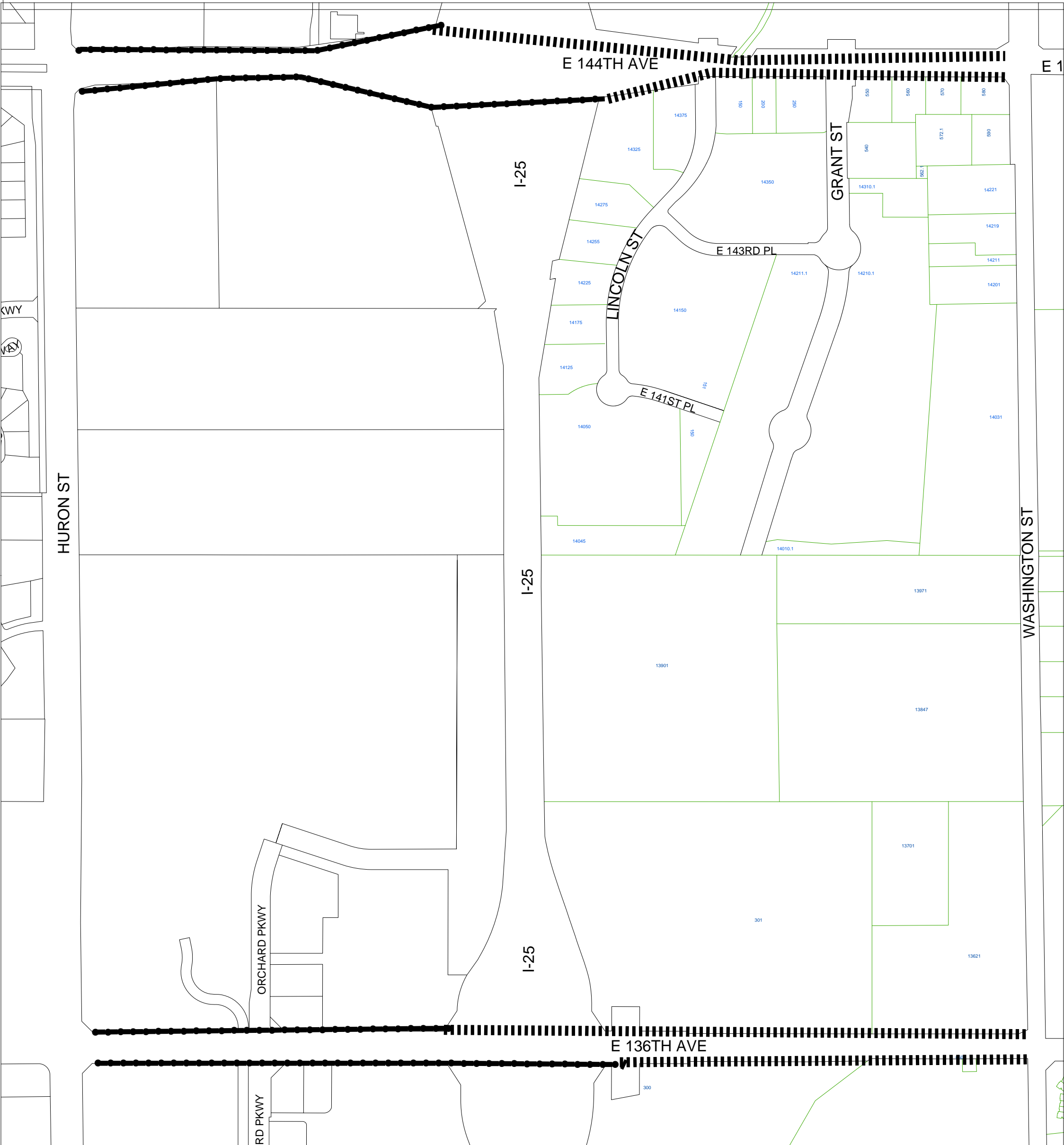
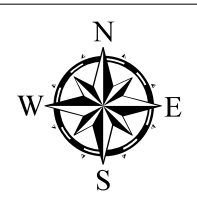


Exhibit A-1 Sidewalk Snow Removal Route



CITY OF THORNTON
 12450 WASHINGTON STREET
 THORNTON, COLORADO 80241-2405
 (720) 977-6210

PROPRIETARY INFORMATION - - NOT FOR RESALE
 Digital Data Produced by the City of Thornton GIS Project. This map is representational only, and does not determine exact locations or boundaries of any districts or properties. It is not intended to be relied upon for any legal descriptions or other land use documents.



October 2014
 1 inch = 325 feet

- Westminster
- Thornton



Agenda Item 8 F

Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Intergovernmental Agreement with Adams County Regarding Funding for Little Dry Creek Road and Drainage Improvements

Prepared By: Barbara Opie, Assistant City Manager
John Burke, Senior Projects Engineer

Recommended City Council Action

Authorize the Mayor to execute the Intergovernmental Agreement with Adams County Regarding Funding for Little Dry Creek Road and Drainage Improvements in substantially the same form as the attached agreement.

Summary Statement

- The City and the Regional Transportation District (RTD) entered into an intergovernmental agreement (IGA) for the Northwest Rail Electrified Segment Westminster Station in June 2012. The IGA allows the City to implement an alternative approach to RTD's base plan for commuter and bus access, parking, and pedestrian areas that will support the Westminster Station commuter rail station. As part of the improvements to the area surrounding the station and as part of the IGA, the City, in partnership with Adams County and Urban Drainage Flood Control District (UDFCD), is to construct significant improvements in the Little Dry Creek drainage way. These improvements will remove several properties located within unincorporated Adams County as well as Burlington Northern Santa Fe (BNSF) railroad tracks from the 100 year flood plain in the Westminster Station commuter rail area located between Lowell and Federal Boulevards south of BNSF's tracks.
- Staff has been in negotiations with Adams County staff to identify additional financial participation in these improvements. Adams County has been a financial partner in moving this project forward, assisting with key land acquisitions in the drainage way over the years. Early in discussions, Adams County staff indicated desire to assist with construction of improvements benefiting residents of both the City of Westminster as well as unincorporated Adams County, particularly directly to the south of the new commuter rail station.
- Staff recommends authorizing the agreement, which formalizes the partnership with Adams County and their financial participation in this important project. A key component of the IGA is financial participation by Adams County of approximately \$4.5 million that would be paid to the City over a ten year period; Staff is proposing to finance this amount utilizing a short term bank private placement bond in order to allow the drainage improvements to occur during 2015-2016 and meet the RTD IGA deadlines. This short term private placement bond is included within a separate Agenda Memorandum in Monday's City Council packet.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council authorize the Mayor to sign an intergovernmental agreement (IGA) with Adams County for the funding for Little Dry Creek Road and Drainage Improvements located near the Westminster Station?

Alternative

City Council could decline entering into an IGA with Adams County. Staff does not recommend this as this IGA supports the Strategic Plan goal for Proactive Regional Collaboration and Adams County has been a strong partner historically on a variety of City projects benefitting Westminster and Adams County residents. Furthermore, these funds are important to fully implement the drainage and transportation improvements envisioned in this area.

Background Information

Staff has briefed City Council about negotiations with Adams County at several Study Sessions in 2014 in pursuit of an IGA to recognize our partnership for improvements in the Westminster Station commuter rail area and to formalize additional financial participation by Adams County in completion of drainage and station area improvements.

Adams County, UDFCD and the City have been working together collectively over the last several years to identify solutions to address significant improvements needed in the Little Dry Creek (LDC) drainage way. These improvements will remove several properties located within unincorporated Adams County as well as BNSF railroad tracks from the 100 year flood plain in the Westminster Station commuter rail area located between Lowell and Federal Boulevards south of BNSF's tracks to the city limits.

While the Westminster Station area projects are moving forward, funding for the complete construction of the south infrastructure needs (primarily road and drainage improvements) continues to be a challenge. Adams County has agreed to participate in the funding for improvements along the southern side of the commuter rail station as it benefits Adams County residents both residing within the City of Westminster and within unincorporated Adams County primarily to the south of the station. The key points of the IGA are highlighted below and the full IGA is attached. The proposed Adams County financial contribution totals \$7,002,300 within this IGA (excluding previous County contributions included within the June 16, 2010 Agreement) as follows:

- \$4,566,110 towards completion of flood control improvements to Little Dry Creek (LDC) west of Federal Boulevard, funded by the County at \$456,611 each year, subject to annual appropriation as required by TABOR, commencing in 2015 and ending in 2024. The City proposes utilizing a short term bank private placement bond to finance this portion of the project and is proposed in a separate Agenda Memorandum in Monday's City Council packet; repayment is reflected in years 2017-2019 of the Adopted 2015-2019 Capital Improvement Program (CIP) in the Adopted 2015/2016 Budget.
- \$1,811,190 towards the construction of the Creekside Drive in its entirety along the south side of the Little Dry Creek drainage improvements and future park at Westminster Station.
- \$625,000 for the construction of the 165 foot long ADA compliant bicycle/pedestrian bridge over LDC to connect the LDC regional trail to the Westminster Station from the south (this includes Adams County's "second \$60 million" DRCOG funds of \$500,000 plus their local match of \$125,000).

As noted in previous briefings with City Council, previous drafts of this IGA included phased payments for the construction of Creekside Drive in between 2015 (\$819,318) and 2016 (\$991,872) from Adams County in part due to the financial challenges the City has in funding the road given the significant capital costs for the entire Westminster Station area (both north and south of the railroad tracks). In the Adopted

2015-2019 Capital Improvement Program (CIP) Budget, funding for only the first phase of the City's share of Creekside Drive is provided (2016=\$80,000 and 2017=\$680,000). Funds (\$90,537) were appropriated through 2013 carryover in 2014, bringing the total to \$850,537 available for phase one by 2017. Phase one of Creekside Drive was planned to construct the new road from Lowell Boulevard at approximately 69th Place east to the pedestrian bridge located directly south of the station platform and tunnel to a new parking lot that would service both the commuter rail station and future park site. No funding is identified in the Adopted 2015-2019 CIP for the second phase, which would extend Creekside Drive from the parking lot east towards Federal Boulevard with a second small parking lot proposed closer to the natural area near Federal Boulevard.

As reflected in the IGA attached, Adams County prefers that the full Creekside Drive be constructed at one time, with two small parking lots, in time for the commencement of commuter rail service at the Westminster Station. As noted, the 2015/2016 City Budget was adopted in October with funding for phase one only budgeted in 2016 and 2017. Staff discussed with City Council the challenges this creates and that we continue to work on ways to move the funding for phase one up to ensure it is complete in 2016 with the start of commuter rail service. Staff has identified a funding source (unrestricted project savings from the Orchard Parkway extension project, i.e., City money earmarked for this project but not needed as urban renewal area money is adequate to complete the project) that is being vetted. Staff plans to return to City Council this spring with appropriation of the funds committed in the original RTD Westminster Station IGA and open space grant funds awarded by Adams County Open Space and the Adams County Commissioners as the City enters into key contracts for constructing the Little Dry Creek drainage improvements and the parking garage to the north of the railroad tracks. Staff anticipates requesting Council's approval to reallocate project savings towards this project at that time.

Adams County Commissioners are scheduled to review and approve this IGA at their regular meeting on January 27.

The project to improve the drainage way along Little Dry Creek and improvements associated with the commuter rail Westminster Station (i.e., the pedestrian bridge and Creekside Drive) meets the City Council Strategic Plan goals of Proactive Regional Collaboration; Excellence in City Services; Visionary Leadership & Effective Governance; and Ease of Mobility.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - IGA

INTERGOVERNMENTAL AGREEMENT REGARDING FUNDING FOR LITTLE DRY CREEK ROAD AND DRAINAGE IMPROVEMENTS

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____, 2015, by and between the City of Westminster, located at 4800 West 92nd Avenue, Westminster, CO 80031 (hereinafter referred to as the “**City**”) and the Board of County Commissioners of Adams County, Colorado, located at 4430 South Adams County Parkway, Brighton, CO 80601 (hereinafter referred to as the “**County**”), collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, pursuant to Colorado Constitution Article XIV, § 18(2)(a) and § 29-1-203, C.R.S., as amended, the Parties may cooperate or contract with each other to provide any function or service lawfully authorized to each; and,

WHEREAS, the Parties are parties to that certain Intergovernmental Agreement Regarding Little Dry Creek Drainage and Park Improvements as executed on June 16, 2010 (the “June 16, 2010 Agreement”); and,

WHEREAS, the Parties now wish to enter into this agreement for the purpose of defining roles and responsibilities regarding the financing, design, construction and maintenance of the facilities shown in Westminster’s Little Dry Creek Drainage and Park Master Plan (Exhibit A, hereinafter referred to as “the Plan”); and,

WHEREAS, the Parties acknowledge that scarce funding and increasing construction costs make it difficult for a single jurisdiction to pursue these capital improvements; and,

WHEREAS, the Parties recognize that certain road and drainage improvements along shared jurisdictional boundaries will benefit both Parties as shown in Exhibits B and C (the “Project”); and,

WHEREAS, the Parties agree that the completion of said Project will be a transformative addition to southern Westminster and southwestern Adams County; and,

WHEREAS, the construction of the Northwest Rail commuter line station at 70th Avenue and Irving Street between Denver and Boulder (the “Westminster Station”) will benefit both Parties; and,

WHEREAS, the City and County have proactively acquired flood prone properties in advance of this Project, and the City and County have previously agreed to consider the value of the properties shown on Exhibit D that were acquired by both jurisdictions as in-kind contributions toward the Westminster Station project; and,

WHEREAS, the City, County and the Urban Drainage and Flood Control District (UDFCD) have collectively invested a significant amount of funds into the design and construction of the Westminster Station project.

NOW, THEREFORE, for and in consideration of the following promises, the sufficiency of which is acknowledged, the Parties agree as follows:

1. The above Recitals are hereby incorporated into this Agreement.
2. The City and County shall collectively work with the UDFCD to complete the construction of the storm drainage and flood control improvements within the Little Dry Creek basin located south of the Burlington Northern/Santa Fe Railroad rail tracks between Lowell Boulevard and Federal Boulevard as shown in the Plan.
3. Beginning in 2015, the County will contribute, subject to appropriation by the Adams County Board of County Commissioners, Four Hundred Fifty-Six Thousand, Six Hundred and Eleven Dollars (\$456,611) to be applied towards completing flood control improvements to Little Dry Creek west of Federal Boulevard. Each successive year thereafter, from 2016 through 2024, the County will, subject to annual appropriation by the Adams County Board of County Commissioners, contribute Four Hundred Fifty-Six Thousand, Six Hundred and Eleven Dollars (\$456,611) to be applied towards completing the flood control improvements to Little Dry Creek west of Federal Boulevard, as shown in Exhibit B. The maximum total amount contributed by the County for completing the flood control improvements to Little Dry Creek west of Federal Boulevard over the years 2015 through 2024 shall not exceed Four Million, Five Hundred Sixty-Six Thousand, One Hundred Ten Dollars (\$4,566,110).
4. The County will contribute, subject to appropriation by the Adams County Board of County Commissioners, a maximum of One Million Eight Hundred Eleven Thousand One Hundred Ninety Dollars (\$1,811,190) to be applied to the design and construction of Creekside Drive as shown in Exhibit C. All County funding for Creekside Drive will be provided at the time matching City funding for Creekside Drive is infused into the project, up to the \$1,811,190 ceiling set forth in this Section 4.
5. The County was successful in obtaining a \$500,000 grant from the Denver Regional Council of Governments (DRCOG) for the construction of a 165 foot long ADA compliant bicycle/pedestrian bridge over Little Dry Creek to connect the Little Dry Creek regional trail to the Westminster Station as shown within the Transit Area on Exhibit E. The County is required to provide a match of \$125,000 to this DRCOG grant. Since this bridge falls within the larger project area, the City agrees to construct this bridge and will invoice the County \$625,000 for this work. The County will pay such invoice within 30 days of its receipt of the DRCOG grant money, or sooner if authorized by the Board of County Commissioners.
6. The City will accept as financial contributions in kind the properties conveyed by the County to the City pursuant to the June 16, 2010 Agreement between the County and the City.

7. Subject to annual appropriation by City Council, the City will pay for the balance of the flood control improvements to Little Dry Creek West of Federal Boulevard as shown in Exhibit B, which currently has a total projected cost estimate of Fourteen Million Dollars (\$14,000,000). The City will work collaboratively with the County and UDFCD to redesign the Little Dry Creek drainage project shown in Exhibit B, if required, to mitigate the potential of any additional structures being placed in the regulatory FEMA floodplain.
8. Subject to annual appropriation by City Council, the City will pay for the balance of the Transit Area project, as shown in Exhibit E.
9. In addition to the funding of the improvements identified in this Agreement, the Parties shall cooperate in good faith to request funding in their annual budget process for future phases of the Plan, contingent upon annual appropriation and available resources. Nothing in this Agreement shall be construed as creating a multi-year fiscal obligation. In the event either Party fails to appropriate funds in a given fiscal year, the Parties may amend this Agreement or either Party may terminate it accordingly.
10. Any contributions by the County pursuant to this Agreement shall be considered by the City as a part of the County's local match towards the NWES FasTracks project.
11. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. Neither this Agreement, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is duly approved and executed by the Parties.

IN WITNESS THEREOF, the City of Westminster and the Adams County Board of Commissioners have executed this Intergovernmental Agreement with its exhibits.

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

City Attorney

ADAMS COUNTY

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

Adams County Attorney's Office

EXHIBIT A



EXHIBIT B



EXHIBIT C

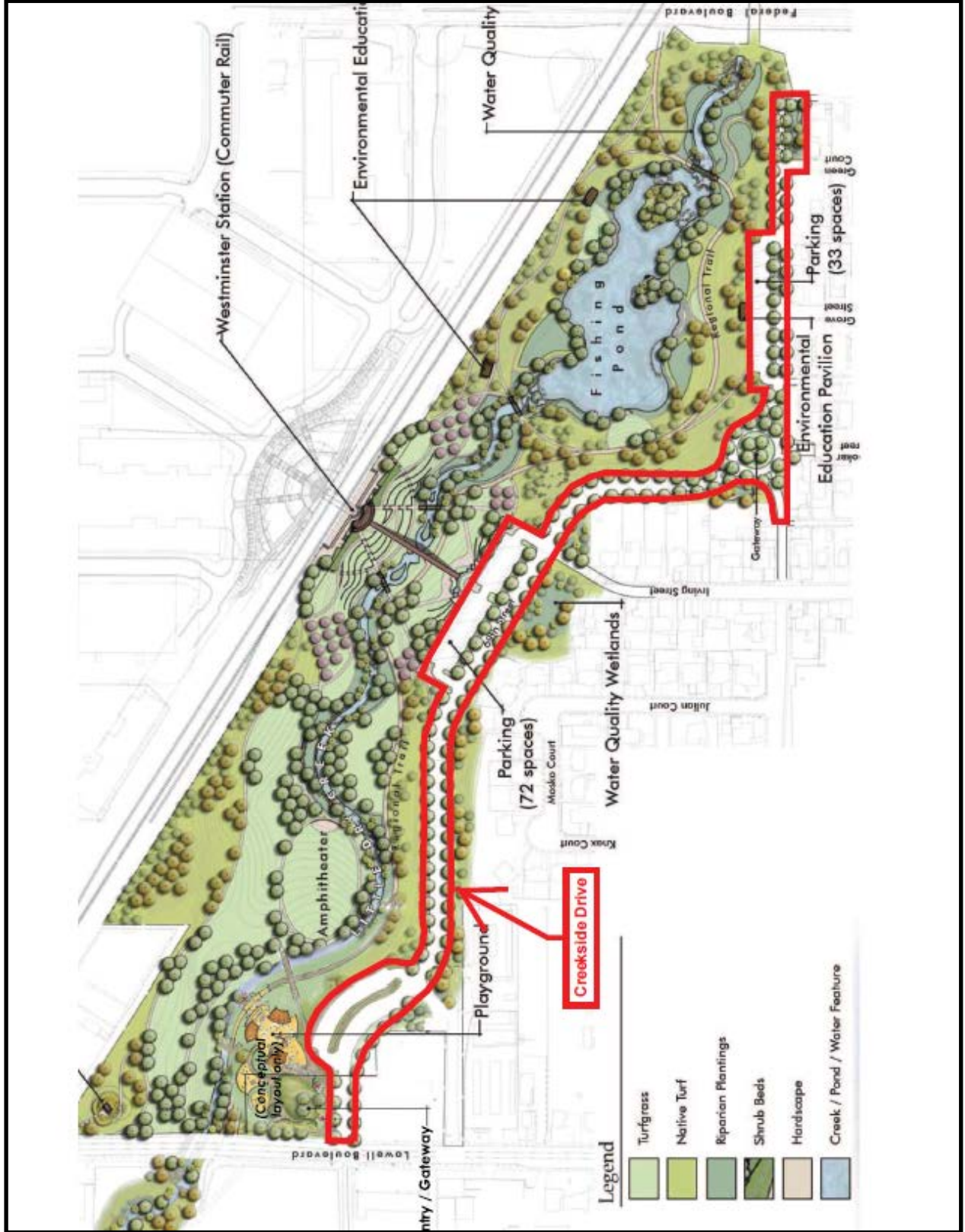


EXHIBIT D

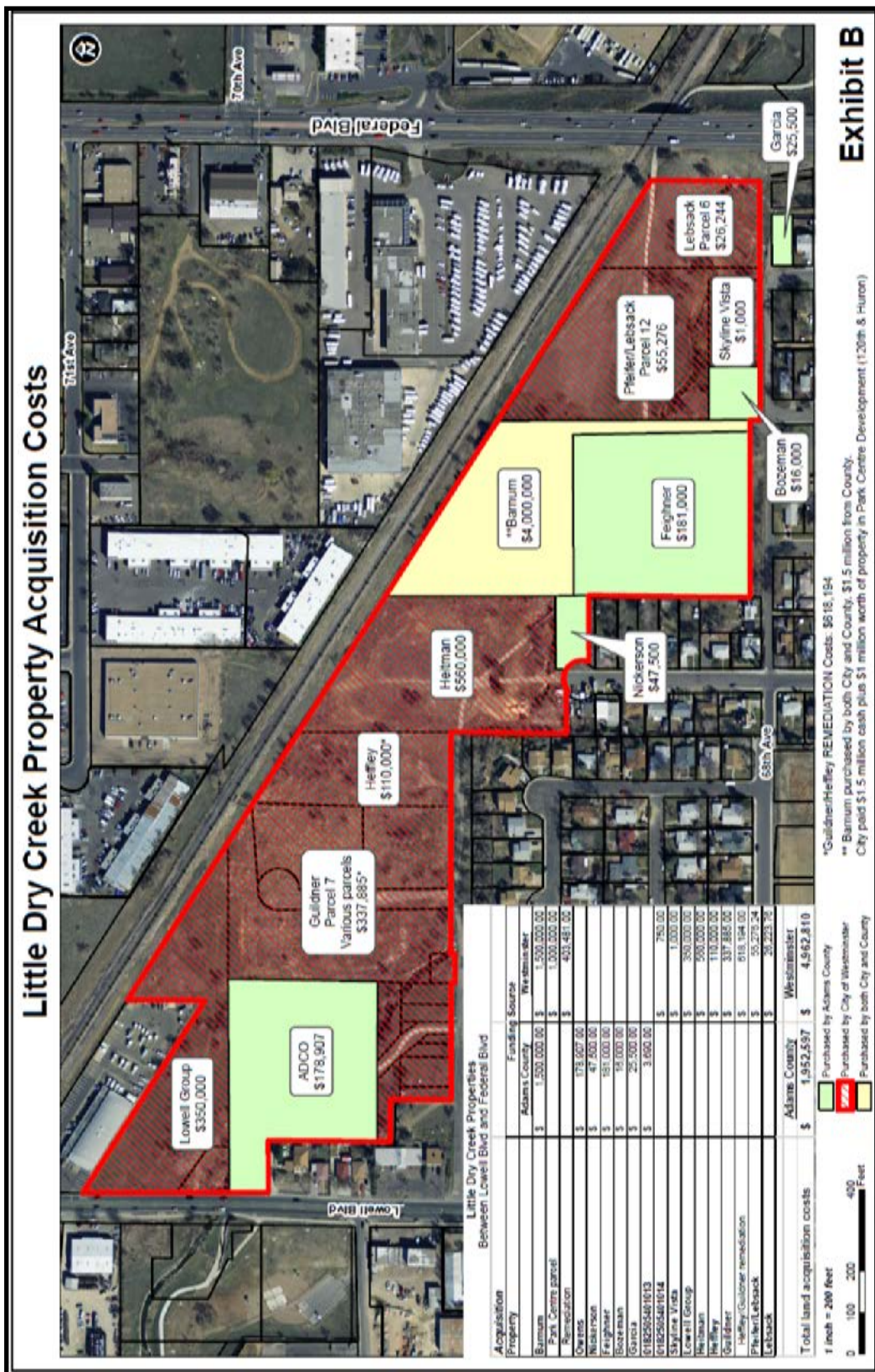
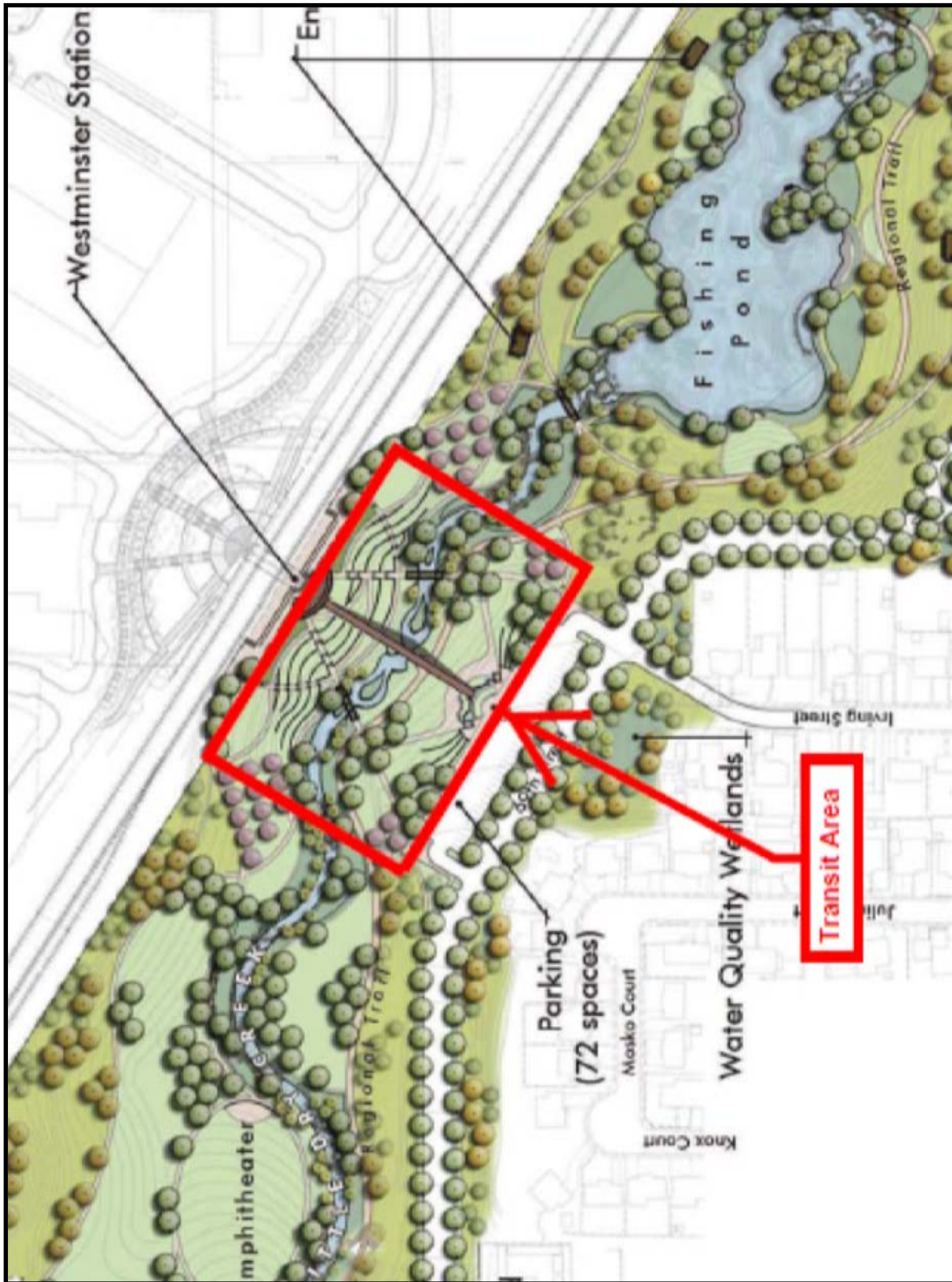


EXHIBIT E





Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Little Dry Creek Regional Detention Pond - Seventh Amended Intergovernmental Agreement with the Urban Drainage and Flood Control District and Adams County

Prepared By: John Burke, P.E. Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to sign the seventh amended intergovernmental agreement with the Urban Drainage and Flood Control District and Adams County for the Little Dry Creek Regional Detention Pond and related channel improvements.

Summary Statement

- This is the seventh amendment to the intergovernmental agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) for the Little Dry Creek drainage project, which was originally approved by City Council on February 9, 2009. This amendment is necessary to encumber additional District funds and continue to accrue sufficient funding for the construction of the next phase of the project, located east of Federal Boulevard.
- The first phase of construction work began in February 2013 with the boring of three pipes through the Federal Boulevard embankment near Little Dry Creek. The first pipe bored was for the City's proposed 36-inch diameter sanitary sewer. The second boring was for the Crestview Water & Sanitation District's 10-inch sanitary sewer line, and the third boring was for a 108-inch diameter storm drainage culvert.
- This amended IGA will add \$615,000 from the District into the project account in order to complete the construction of the culvert extension project in advance of the Federal Boulevard Bridge replacement project.
- The IGA contains provisions for amending the document to allocate additional funding in future budget years.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City amend the Intergovernmental Agreement with the Urban Drainage and Flood Control District and Adams County for the design and construction of drainage and flood control improvements for Little Dry Creek from Lowell Boulevard to Federal Boulevard?

Alternative

Council could choose not to authorize this amended intergovernmental agreement at this time. Staff recommends approving the amendment since it is not an additional cost to the City and merely encumbers funds for the District to use for this project. Further, approving the amendment will help complete this project in a timely manner. Should Council choose not to approve this IGA, it would take longer to complete the project without UDFCD assistance, thus delaying the drainage improvements necessary to accommodate the construction of the proposed transit-oriented development in the vicinity of Westminster Station.

Background Information

Construction of the Little Dry Creek regional detention pond upstream of Federal Boulevard will lower the floodplain by approximately four feet, eliminating its direct impact on the proposed commuter rail track serving Westminster Station. It will also formalize regional storm water detention to facilitate the redevelopment of the future Transit Oriented Development area and provide a regional park and open space to serve residents and commuter rail users. The first phase of this project involved boring three separate utility tunnels under Federal Boulevard.

The original IGA for this project was authorized by City Council on February 9, 2009. At that time, the UDFCD contributed \$100,000, Adams County contributed \$150,000 and the City contributed \$150,000 to the project budget. The first amendment to the IGA, authorized by Council on October 25, 2010, added \$600,000 in funding from UDFCD and \$500,000 from the City. The second amended IGA, authorized by Council on December 10, 2012, added \$275,000 from UDFCD and \$275,000 from the City. The third amended IGA, authorized by Council on January 28, 2013, added \$300,000 from UDFCD and \$1,700,000 from the City. The fourth amendment to the IGA, authorized by Council on April 22, 2013, added \$600,000 from the City increasing the total funding for the project to \$4,650,000. The Fifth Amendment to the IGA added an additional \$800,000 from the City and \$175,000 from UDFCD. The sixth amendment to the IGA added \$660,000 from UDFCD to bring the project total to \$6,285,000. This proposed seventh amendment will add \$615,000 from UDFCD to bring the project total to \$6,900,000.

The timing of this seventh amendment is sensitive in order to construct the downstream improvements prior to the Colorado Department of Transportation (CDOT) Federal Boulevard Bridge Replacement project, anticipated to begin in March of 2015.

This phase of the Little Dry Creek project will extend the culvert headwalls both east and west of Federal Boulevard and will allow the construction of the Federal Boulevard bridge replacement and widening of the highway to a six-lane facility. City staff is currently working collaboratively with CDOT on a cost sharing agreement since both projects will benefit from this work.

The current amount of funding that is being administered through UDFCD is as follows:

| | Previously Contributed | Additional Contribution | Current Total | Percentage Share |
|--------------|------------------------|-------------------------|--------------------|------------------|
| DISTRICT | \$2,110,000 | \$615,000 | \$2,725,000 | 40% |
| COUNTY | \$150,000 | \$0 | \$150,000 | 2% |
| CITY | \$4,025,000 | \$0 | \$4,025,000 | 58% |
| TOTAL | \$6,285,000 | \$615,000 | \$6,900,000 | 100.0% |

This project will dramatically change and revitalize this area once the regional open space and active recreational uses as identified in the Little Dry Creek Park Master Plan are implemented. It is a multi-faceted project and will help advance the City of Westminster's Strategic Plan Goals of *Beautiful, Desirable, Environmentally Responsible City, Proactive Regional Collaboration* and *Ease of Mobility*. Additionally this project will assist in the development of a multi-modal transportation system and a transit oriented development around the Westminster Station.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Seventh Amendment to IGA
- Project Vicinity Map

SEVENTH AMENDMENT TO AGREEMENT REGARDING FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR LITTLE DRY CREEK FROM LOWELL BOULEVARD TO FEDERAL BOULEVARD

Agreement No. 08-09.09G

THIS AGREEMENT, made this _____ day of _____, 2015, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY OF WESTMINSTER (hereinafter called "CITY") and ADAMS COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Little Dry Creek from Lowell Boulevard to Federal Boulevard" (Agreement No. 08-09.09) dated August 19, 2009, as amended, and

WHEREAS, PARTIES now desire to proceed with construction; and

WHEREAS, PARTIES desire to increase the level of funding by \$615,000; and

WHEREAS, the City Council of CITY, the County Commissioners of COUNTY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:
 4. PROJECT COSTS AND ALLOCATION OF COSTS
 - A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:
 1. Final design services;
 2. Delineation, description and acquisition of required rights-of-way/ easements;
 3. Construction of improvements;
 4. Contingencies mutually agreeable to PARTIES.
 - B. It is understood that PROJECT costs as defined above are not to exceed \$6,900,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

| <u>ITEM</u> | <u>AS AMENDED</u> | <u>PREVIOUSLY AMENDED</u> |
|-----------------|-------------------|---------------------------|
| 1. Final Design | \$ 1,400,000 | \$ 1,400,000 |
| 2. Right-of-way | 200,000 | 200,000 |
| 3. Construction | 5,200,000 | 4,585,000 |
| 4. Contingency | 100,000 | 100,000 |
| Grand Total | \$6,900,000 | \$6,285,000 |

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

| | <u>Percentage Share</u> | <u>Previously Contributed</u> | <u>Additional Contribution</u> | <u>Maximum Contribution</u> |
|-------------|-------------------------|-------------------------------|--------------------------------|-----------------------------|
| DISTRICT | 40.0% | \$2,110,000 | | \$2,725,000 |
| Capital | | | \$265,000 | |
| Maintenance | | | \$350,000 | |
| COUNTY | 2.0% | \$ 150,000 | \$ -0- | \$ 150,000 |
| CITY | 58.0% | \$4,025,000 | \$ -0- | \$4,025,000 |
| TOTAL | 100.0% | \$6,285,000 | \$615,000 | \$6,900,000 |

3. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval. Payment of each party's full share (CITY - \$4,025,000; COUNTY - \$150,000; DISTRICT - \$2,725,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special interest bearing account to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY and COUNTY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall

be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13). Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

of such monies, which shares shall be computed as were the original shares.

5. All other terms and conditions of Agreement No. 08-09.09 shall remain in full force and effect. WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

_____ Date _____
ADAMS COUNTY

(SEAL)

By _____

ATTEST:

Title _____

_____ Date _____

APPROVED AS TO FORM:

County Attorney

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

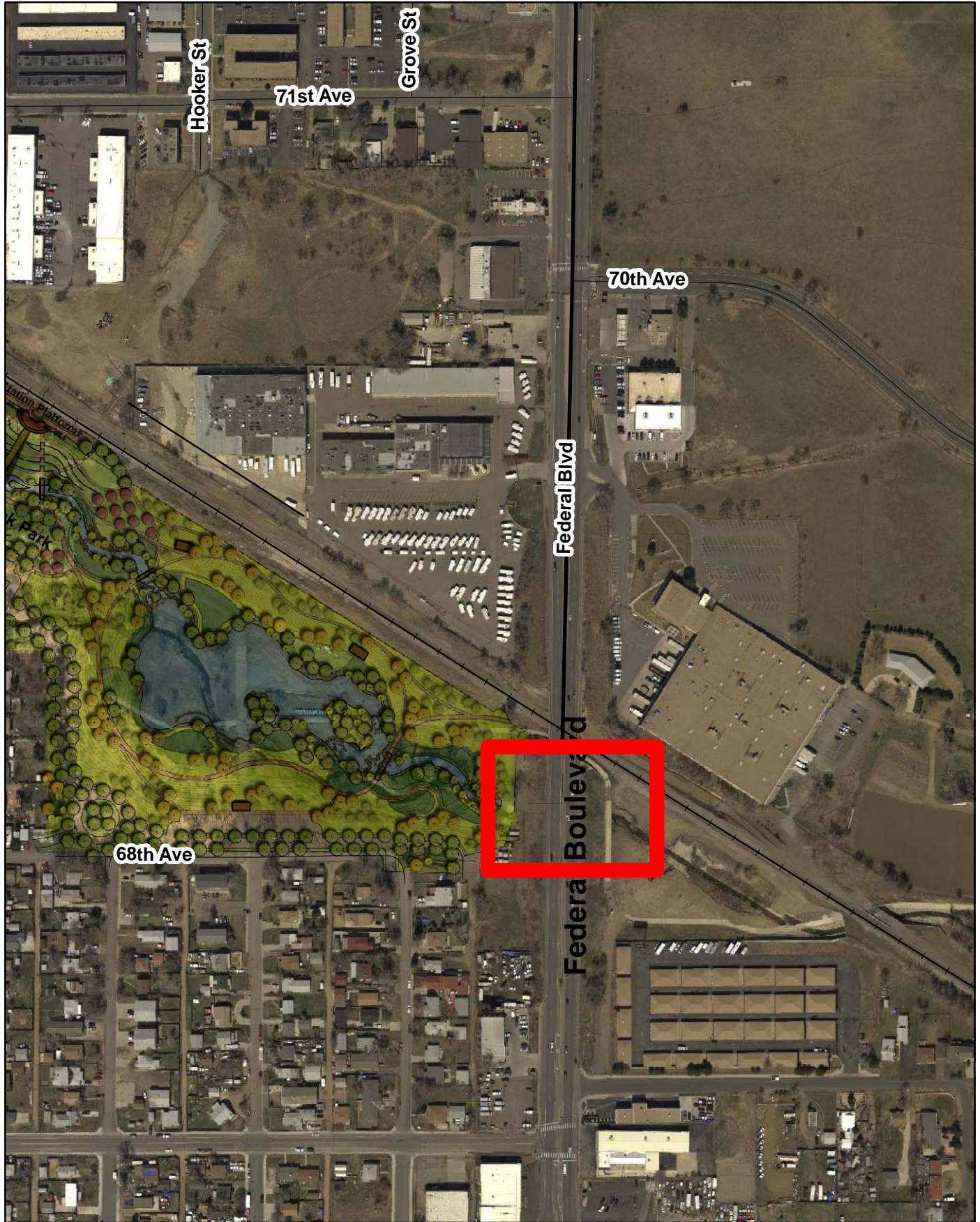
Title _____

Date _____

APPROVED AS TO FORM:

City Attorney

Vicinity Map



0 150 300 600
Feet 1 inch = 300 feet



Agenda Item 8 H

Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Amendment of Pacific Companies and Urban Pacific Multi-Housing LLC Contract to Buy and Sell Real Estate

Prepared By: Steve Smithers, Deputy City Manager

Recommended City Council Action

Authorize the City Manager to execute a fifth amendment to the Contract to Buy and Sell Real Estate, with Urban Pacific Multi-Housing, LLC and Pacific West Communities, Inc in a form satisfactory to the City Attorney and to take all actions necessary to close this land sale.

Summary Statement

- The City owns approximately 15.8 acres between The Promenade and Circle Point (see vicinity map).
- The Contract to Buy and Sell Real Estate with Urban Pacific Multi-Housing, LLC and Pacific West Communities (the Contract) was approved by City Council on July 9, 2012.
- The current sale price is approximately \$4,619,931 (\$6.71/sf).
- The 2nd Amendment to the Contract was approved on March 25, 2014 that provided for a new closing date of September 30, 2014; increased the purchase price by \$150,000; provided for early closing incentives; and makes the existing \$100,000 deposit currently in escrow non-refundable should closing of the Contract not occur. The third amendment provided for changing the closing date from September 30, 2014 to December 15, 2014. The fourth amendment extended the closing date to January 31, 2015.
- This Fifth Amendment extends the closing date until February 27, 2015, adds a provision for the City to participate in the cost of several small land parcels (less than 1/2 acre total), and alters the legal description slightly to reflect the property line agreed to in the Official Development Plan approved for the Axis development. The other terms of the deal remain the same.
- The reason for the changing of the closing date is because of the many complexities in resolving the metro district exclusion issue and in no way was caused by the buyer.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City enter into a fifth amendment to the current contract with Urban Pacific Multi-Housing LLC, per the terms and conditions outlined in the Agenda Memorandum?

Alternative

Don't approve the fifth amendment to the Purchase and Sale Agreement. This is not recommended as the closing has been complicated by the issues around accomplishing exclusion from the NBC Metropolitan District, which is one of the conditions for this sale to move forward. Staff is reasonably confident that these issues can be resolved allowing this important development to move forward.

Background Information

Council is asked to authorize the Fifth Amendment to the Pacific Companies and Urban Pacific Multi-Housing, LLC Contract to Buy and Sell Real Estate (i.e., the Axis Project land sale). The purpose of the amendment is to extend the closing date, allow for a small land payment (approximately \$98,000), and adjust the legal description in the Purchase and Sale Agreement. City staff has been working diligently to get this deal closed and to achieve exclusion of the property from the district.

The Buyer/Developer is set to move forward in anticipation of a spring 2015 ground breaking. Staff sees the Axis project as a generator of activity for both The Promenade and The Shops at Walnut Creek.

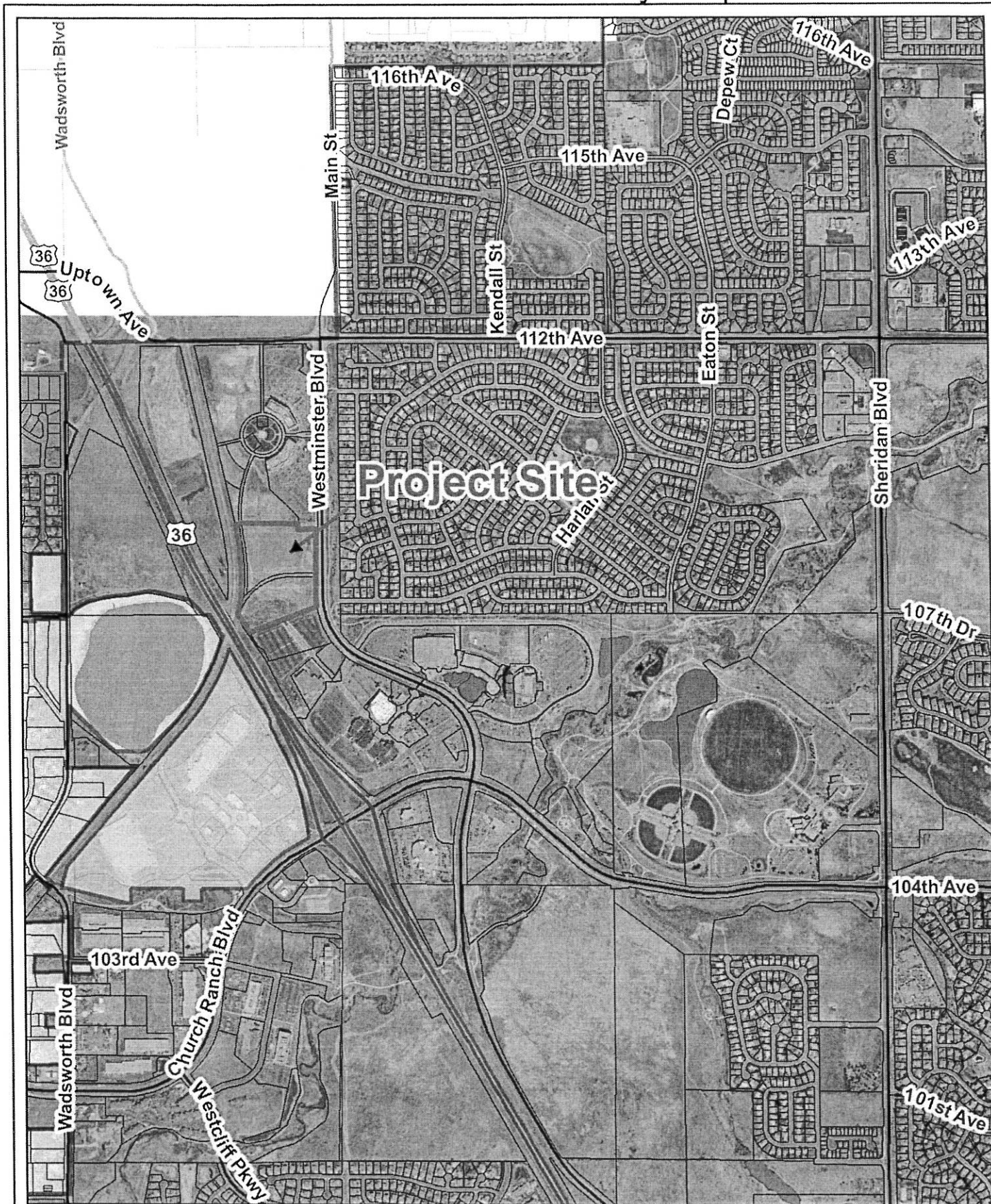
The approval of this amendment is consistent with City Council Strategic Goal of creating Vibrant and Inclusive Neighborhoods in Westminster.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Vicinity Map

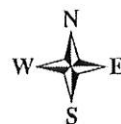
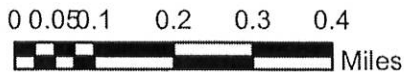
15.8 Acre Parcel Vicinity Map



Date: 3/6/2014

GIS-Apps\West\GIS\ArcGIS93\Templates\Westminister_Basic_03.mxd

City of Westminister





Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Second Reading of Councillor’s Bill No. 48 re FY2014 Budget Amendment to the General Capital Improvement Fund

Prepared By: David W. Loseman, Assistant City Engineer

Recommended City Council Action

Pass Councillor’s Bill No. 48 on second reading appropriating General Fund Contingency funds to the General Capital Improvement Fund.

Summary Statement

On July 28, 2014, the City awarded a contract to Hamilton Construction Co. for the construction of the 72nd Avenue/Raleigh Street Bridge Project. This contract included a provision for the full closure of 72nd Avenue for the duration of the construction, which was anticipated to occur from June 2015 to November 2015. On September 24, 2014, a public meeting was held to inform local businesses of the status of the project. Significant opposition from many of the local business owners relating to the proposed closure of 72nd Avenue compelled Staff to relay this concern to Council, and Council directed staff to prepare different alternatives for consideration at the Study Session held on October 6, 2014. Council then directed staff to move forward with the most feasible alternative that did not require the complete and full closure of 72nd Avenue for long durations.

Based on Council’s direction, Staff studied in more detail two alternatives that included (1) the re-phasing of the method in which the bridge would be constructed at a cost of \$453,000 and (2) a “Slide-in-Place” bridge option at a cost of \$858,400. Staff recommends amending the contract with Hamilton Construction Co. to implement the re-phasing method for the bridge construction.

Council is requested to approve the attached ordinance amending the General Capital Improvement Fund with a transfer from the General Fund Contingency Fund to pay for this additional expense.

This Councillor’s Bill was passed on first reading by City Council on December 22, 2014.

Expenditure Required: \$498,000

Source of Funds: General Fund Contingency

Respectfully submitted,

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO. **3759**

COUNCILLOR'S BILL NO. **48**

SERIES OF 2014

INTRODUCED BY COUNCILLORS
Winter - Briggs

**A BILL
FOR AN ORDINANCE AMENDING THE 2014 BUDGET OF THE GENERAL CAPITAL
IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2014 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3655 is hereby increased by \$498,000. This appropriation is due to the need to supplement the budget for the re-phasing of the project for the replacement of the bridge at 72nd Avenue and Raleigh Street.

Section 2. The \$498,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 B-D dated December 22, 2014 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

| | |
|----------------------------------|------------------|
| General Capital Improvement Fund | <u>\$498,000</u> |
| Total | <u>\$498,000</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 22nd day of December, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of January, 2015

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Second Reading of Councillor's Bill No. 1 Amending the Comprehensive Plan for Lots 4, 7, and 10 in the Northwest Business Park

Prepared By: Walter Patrick, Planner

Recommended City Council Action

Pass Councillor's Bill No. 1 on second reading approving a Comprehensive Plan Amendment changing the designation of Lots 4, 7, and 10 of the Northwest Business Park from Office/RD High Intensity to Mixed-Use. This recommendation is based on a finding that:

- The proposed amendment will be in the public good; and that
- The proposed amendment is in compliance with the overall purpose and intent of the Comprehensive Plan.

Summary Statement

- The Westminster Municipal Code Section 11-4-16(D)(1) allows the City to initiate an amendment to the Comprehensive Plan.
- The proposed Comprehensive Plan Amendment changing the designation of Lots 4, 7, and 10 of the Northwest Business Park from Office/RD High Intensity to Mixed-Use is a City initiated action with the larger purpose of facilitating appropriate development for the Church Ranch focus area as identified in the Comprehensive Plan.
- This Councillor's Bill was approved on first reading by City Council on January 12, 2015.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Ordinance

BY AUTHORITY

ORDINANCE NO. **3760**

COUNCILLOR'S BILL NO. **1**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Seitz - Briggs

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds that:

a. The City of Westminster has initiated an amendment to the Westminster Comprehensive Plan, pursuant to Section 11-4-16(D), W.M.C., incorporated herein by reference, requesting a change in the land use designations from Office/R&D High Intensity to Mixed-Use for Lot 4, Lot 7, Lot 10, Tract D2, and Tract E1 of the Northwest Business Park located at the southeast corner of Westminster Boulevard and 112th Avenue.

b. Such application has been referred to the Planning Commission, which body held a public hearing thereon on December 23, 2014, after notice complying with Section 11-4-16(B), W.M.C., and has recommended approval of the requested amendment.

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

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

e. The City of Westminster has met its burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Plan, as it relates to focus areas, particularly Goal F-G-9 for the provision to "Create an active, mixed-use district that supports high-intensity employment along US 36."

Section 2. The City Council approves the requested amendment and authorizes City staff to make the necessary changes to the map and text of the Westminster Comprehensive Plan to change the designation of the property more particularly described as follows Lot 4, Lot 7, Lot 10, Tract D2, and Tract E1 of the Northwest Business Park, from Office/RD High Intensity to Mixed-Use, as depicted on the map attached as Exhibit A, hereto and incorporated herein.

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of January, 2015.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Second Reading of Councillor’s Bill No. 2 re Early Supplemental Appropriation of 2014 Parks, Open Space and Trails (POST) Fund

Prepared By: Jacob P. Kasza, Open Space Technician

Recommended City Council Action

Pass Councillor’s Bill No. 2 on second reading appropriating \$26,576 of 2014 Parks, Open Space and Trails Fund Carryover to the General Capital Improvement Fund.

Summary Statement

- This Councillor’s Bill was passed on first reading on January 12, 2015.
- City Council previously awarded the contract for the 2014 Open Space Demolition Project with Bid Schedules A, B, C, and Revised D. At the time, funding was not available to add Bid Schedule E to the contract. Funding has become available in 2014 carryover funds to add Bid Schedule E to the project as a contract amendment.
- The Request for Bids for the demolition of the four properties was sent to a select list of 10 demolition and asbestos abatement contractors, and bids were opened on November 20. Three bids were received, and the lowest responsible bidder was Property Assurance with an overall bid of \$259,190. Due to limited funding available, Staff recommended and City Council approved at the December 8 City Council meeting only awarding Bid Schedules A, C, and Revised D, with Schedule B as an add alternate for a reduced construction contract totaling \$218,840 to Property Assurance with a \$21,884 contingency. The proposed contract amendment will increase the base contract to \$259,190 plus a revised contingency of \$25,919 for a total authorized expenditure of \$285,109. Funds are available in the POST Fund due to a year-end 2014 payment of \$200,000 for water utility tap-credits. Staff recommends funding this last component of the demolition project through an early carryover supplemental appropriation. The balance of carryover will be considered in July/August after the full annual audit is completed.

Expenditure Required: \$44,385

Source of Funds: 2014 POST Carryover Funds

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Site Map - Schedule E

BY AUTHORITY

ORDINANCE NO. **3761**

COUNCILLOR'S BILL NO. **2**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Briggs - Garcia

**A BILL
FOR AN ORDINANCE AMENDING THE 2015 BUDGETS OF THE PARKS OPEN SPACE AND
TRAILS AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A
SUPPLEMENTAL APPROPRIATION FROM THE 2015 ESTIMATED REVENUES IN THE
FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2015 appropriation for the Parks Open Space and Trails and General Capital Improvement Funds initially appropriated by Ordinance No. 3737 is hereby increased by \$53,152. This appropriation is due to carryover appropriation and the need to supplement the budget for the addition of Bid Schedule E to the 2014 Open Space Demolition Project.

Section 2. The \$53,152 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 D-E dated January 12, 2015 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

| | |
|------------------------------------|-----------------|
| Parks, Open Space, and Trails Fund | \$26,576 |
| General Capital Improvement Fund | <u>26,576</u> |
| Total | <u>\$53,152</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 12th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 26th day of January, 2015

ATTEST:

Mayor

City Clerk

**Bid Schedule E
McKay Lake Overlook Property
14330 Zuni Street, North House
2014 Demolition Project
City of Westminster, 2014**

144th Ave

Zuni St

Remove
Landscaping
and Russian
Olive Trees

LIMIT OF WORK

Parking Area

North House

 Property Boundary

0 75 150 Feet





City Council Meeting
January 26, 2015



SUBJECT: Public Hearing and Action on an Annexation, Comprehensive Plan Amendment, Zoning, Preliminary Development Plan and Official Development Plan for the Moorings at Hidden Lake Property

Prepared By: Patrick Caldwell, Senior Planner

Recommended City Council Action

1. Hold a public hearing.
2. Adopt Resolution No. 2 making certain findings of fact as required under Section 31-12-110, C.R.S., regarding the Moorings at Hidden Lake property annexation.
3. Pass Councillor's Bill No. 3 on first reading annexing the Moorings at Hidden Lake property into the City.
4. Pass Councillor's Bill No. 4 on first reading approving a Comprehensive Plan amendment for the Moorings at Hidden Lake property changing the designation from Adams County Water Body to City of Westminster R-2.5, to Private Parks/Open Space, and to City Owned Open Space, and; change the designation of a .377 acre City owned open space parcel within the City (Lot 1 of the East Bay Senior Housing Preliminary Development Plan and Official Development Plan) from City Owned Open Space to R-2.5. This recommendation is based on a finding that:
 - The proposed amendment will be in the public good, and;
 - The proposed amendment is in compliance with the overall purpose and intent of the Comprehensive Plan.
5. Pass Councillor's Bill No. 5 on first reading approving the zoning of the Moorings at Hidden Lake property City of Westminster Planned Unit Development, changing the zoning of the parcel being annexed from Adams County R-1-C, and CO to City of Westminster Planned Unit Development, to allow single-family detached residential uses, private parks and private open space use, and City Owned Open Space use. The designation of Lot 1 of the East Bay Senior Housing Preliminary Development Plan and Official Development Plan is presently Planned Unit Development and that is not proposed to change.
6. Approve the Preliminary and Official Development Plan of the Moorings at Hidden Lake. This recommendation is based on a finding that the criteria set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code have been met.

Summary Statement

- The Moorings at Hidden Lake Preliminary Development Plan (PDP) and Official Development Plan (ODP) site is south of 68th Avenue, and east of Utica Street. It consists of 6.5 acres, inclusive of a portion of Hidden Lake.
- Eight single-family residential lots with a minimum lot size of 12,000 square feet are proposed. A one acre parcel, called Outlot B, will be dedicated to the City for public open space. A 2.5 acre parcel, called Outlot A within Hidden Lake, will be private open space available to the owners of the eight lots.
- Additional right-of-way for 68th Avenue will be dedicated.
- A small portion of 68th Avenue will be vacated where it is not needed.

- The existing City owned public open space parcel known as Lot 1 of the East Bay Senior Housing PDP will be exchanged for an equal amount of non-floodplain land in Outlot B, a proposed City owned open space parcel.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

On January 13, 2015 the Planning Commission reviewed the Annexation, Comprehensive Plan Amendment, Rezoning, and PDP/ODP of the Moorings at Hidden Lake property. The Planning Commission voted unanimously (7-0) to recommend approval of the Annexation, Comprehensive Plan Amendment, and Zoning to the City Council.

Policy Issues

1. Should the City annex the Moorings at Hidden Lake Property?
2. Should the City approve a Comprehensive Plan (CP) amendment for the Moorings at Hidden Lake Property changing the designation from Adams County Water Body to City of Westminster R-2.5, to Private Parks/Open Space, and to City Owned Open Space, and; change the designation of a .377 acre City owned open space parcel within the City (Lot 1 of the East Bay Senior Housing PDP/ODP) from City Owned Open Space to R-2.5?
3. Should the City approve a zoning designation of the Moorings at Hidden Lake Property changing the designation of the parcel being annexed from Adams County R-1-C, and CO to City of Westminster Planned Unit Development (PUD), to allow single-family detached residential uses, private parks and private open space use, and City Owned Open Space use? The designation of Lot 1 of the East Bay Senior Housing PDP/ODP is presently PUD and that will not change.
4. Should the City approve a Preliminary and Official Development Plan of the Moorings at Hidden Lake Property?

Alternatives

1. Determine that annexation of this parcel is not desirable at this time. If this action is taken the privately owned property will remain unincorporated and subject to Adams County regulations, and the existing City owned open space would remain a public open space parcel. This action is not recommended because the annexation would assemble, add to, and make the public owned open space very functional as a spectacular view opportunity on Hidden Lake. The annexation will put the entire right-of-way of 68th Avenue within the City's jurisdiction, and will place the residential property and adjacent lake area under the City's jurisdiction.
2. Deny the Comprehensive Plan amendment of the Moorings at Hidden Lake, or assign a different designation. This is not recommended since R-2.5, the Private Parks/Open Space, the City Owned Open Space, and the change of the designation of Lot 1 of the East Bay Senior Housing PDP/ODP from City Owned Open Space to R-2.5 are the logical designations of this parcel.
3. Deny the rezoning of the Moorings at Hidden Lake Property from Adams County R-1-C, and CO to City of Westminster Planned Unit Development (PUD), to allow single-family detached residential uses, private parks and private open space use, and City Owned Open Space use, or assign an alternative zoning category. This is not recommended because the PUD zone district allows the flexibility of uses customized to the site, and the single family uses and development standards proposed on this 6.5 acre site are appropriate to the location and the City's long-range planning goals.
4. Deny the Preliminary and Official Development Plan of the Moorings at Hidden Lake Property. This action is not recommended because the Preliminary and Official Development Plan provide the site details as well as the general conditions and limits for the property. Without the Preliminary and Official Development Plan there would be no clarity on these items for the three general use areas on the plan. These uses areas are the City owned open space shown as Outlot B, the private open space shown as Outlot B, and the 8 residential lots.

Background InformationNature of Request

The owner of the property proposed for annexation proposes 8 single-family dwellings with all lots exceeding the 10,000 square feet minimum lot size requirement. The homes are proposed as custom home sites. All lots will have direct access to 68th Avenue, and will utilize existing water and sanitation subs. All lots will have frontage at the rear on Outlot A, an area of approximately 2.5 acres that includes

the waters of Hidden Lake. Outlot A is proposed as a private open space area. Adjacent to the annexation parcel the City received a peninsula shaped .377 acre parcel for open space in 1994 when the East Bay Senior Housing PUD was annexed to the City. This is Lot 1 of the East Bay Senior Housing PDP/ODP. Lot 1 fronts 68th Avenue, is not accessible to a protected view of Hidden Lake, and is not a very functional open space parcel. The proposal is to exchange the .377 acre parcel for open space land at the western part of the annexation parcel in Outlot B, and combine the required public land dedication with the relocated .377 acres. The new public open space area totaling approximately 1 acre provides a spectacular view opportunity across Hidden Lake to the Front Range in the background. To accomplish the land exchange the City's Open Space Division will submit an agenda memo that seeks Council's approval to allow the City Manager to sign contracts and documents to facilitate the purchase of property. This agenda memo will be reviewed by the City Council after the annexation, the Comprehensive Plan, the zoning and the PDP/ODP are approved, but prior to the approval of the final plat. Additionally, the south half of the existing 68th Avenue is not within the City, and will be annexed into the City.

Location

The site is located adjacent to the south side of 68th Avenue directly south of Westminster High School, and is east of Utica Street. (Please see attached vicinity map).

Annexation

The Moorings at Hidden Lake PDP/ODP is proposed to total 6.5 acres. The .377 acre Lot 1 of the East Bay Senior Housing PDP/ODP is already within the City's corporate limits. Approximately 6.123 acres total is being annexed into the City. The land to be annexed includes additional future right-of-way of 68th Avenue as well as existing 68th Avenue right-of-way. The existing, but not annexed south half of the right-of-way of 68th Avenue was purchased by the City in 2009 and utilities and curb and gutter were installed at that time. No changes to the physical improvements of 68th Avenue are proposed as a result of the annexation. The proposed sidewalk and the tree lawn adjacent to the south side of 68th Avenue are part of the private property that is being annexed, and will become part of the 68th Avenue right-of-way with the plat of the Moorings at Hidden Lake subdivision. Also, land to be annexed includes Outlot A, the 2.5 acres of the surface of Hidden Lake. Land area between the lake's edge and 68th Avenue is being annexed, and this land will compose the area for the public open space, and the eight individual residential lots. Outlot B, the 1 acre public open space area, is also being annexed.

The City has coordinated with the Mayham Reservoir Corporation, George Kast, owner and applicant, to complete an Annexation Agreement. Outlined in the Agreement are: additional dedication of 68th Avenue; dedication of public land; the land exchange involving the platted City owned Open Space lot of Lot 1 of the East Bay Senior Housing Subdivision; improvements to the proposed City owned Open Space parcel called Outlot B, and; reference to an agreement with the Adams 50 School District to improve a short length school land along the frontage of 68th Avenue. A copy of the Agreement is included herein.

All required notice to special districts in the annexation area has been accomplished.

Comprehensive Plan Amendment

The Westminster Municipal Code (WMC) requires the owner of the property requesting an amendment to the Comprehensive Plan (CP) to prove the amendment is in the public good and in overall compliance with the purpose and intent of the CP. Staff has found the proposed CP Amendment to be in the public good and in compliance with the CP as the proposal will meet the CP goal of locating new residential development within walking distance to commercial and public services such as personal services, schools, parks and open space. A small commercial center is located a few blocks east at 68th Avenue and Lowell Boulevard, the Westminster High School is across 68th Avenue at the north side of the site. A new/reconfigured City open space is being added with this development. Other goals include the provision of safe, direct walkways that link to streets and adjacent bus stops. With this development, the 5 ft. wide detached sidewalk will be constructed to connect from the existing Utica Street sidewalk, east to the existing East Bay Senior Housing site at the approximate alignment of Osceola Street. The guard

rail at the Utica Street curve to 68th Avenue will be extended a small amount for safety. The proposed 8 single-family residential dwellings will be custom homes with a minimum of 30% masonry, and other quality materials. All homes will be different, and this meets the goal of maintaining the City's high-quality design and development character. With the 1-acre public open space the development will meet the goal of preserving the City's views to the mountains and surrounding Denver region. The goal of lower density as transition to more rural and environmentally sensitive areas is achieved with the density of 2.5 dwellings per acre at the south edge of the City adjacent to the privately owned Hidden Lake. A lower density residential land use, rather than a commercial or industrial use adjacent to Hidden Lake is consistent with the CP goals. The provision of the public open space at the west adjacent to 68th Avenue meets a CP policy of providing unfettered public access while preserving the environmental integrity of the property. The 8 lots are served by existing utilities and meet the CP goal of adequate infrastructure and public services available for new development.

Establishment of Zoning

Per WMC 11-5-2(A) the property shall be zoned Planned Unit Development. The existing Lot 1 of the East Bay Senior Housing PDP/ODP is presently zoned PUD, and will remain PUD, but the use on the current area of Lot 1 will be changed to allow residential uses. The areas being annexed shall be zoned PUD with the uses shown on the Moorings PDP/ODP.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures for annexations, Comprehensive Plan amendments, and zonings or rezonings:

- **Published Notice:** Notice of public hearings scheduled before City Council shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. For annexations the notice is required to be published for four consecutive weeks with the first published notice at least 30 days prior to the public hearing for the annexation. The first notice was published in the Westminster Window on December 25, 2014.
- **Property Posting:** Notice of public hearings before the City Council shall be posted at least 10 days prior to the hearing on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on January 15, 2015.
- **Written Notice:** At least 10 days prior to the date of the City Council public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner's associations registered with the City within 300 feet of the subject property. The notices were mailed on January 15, 2015.

Applicant/Property Owner

City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031

George Kast
c/o Mayham Reservoir Corporation
P.O. Box 125
Westminster, Colorado 80036

Surrounding Land Use and Comprehensive Plan Designation

| | Development Name | Zoning | Comprehensive Plan Designation | Use |
|-------|-----------------------------|---------------|---------------------------------------|----------------|
| North | Westminster High School | R-1 | Public/Quasi-Public | School |
| West | Unincorporated Adams County | CO | NA | Lake |
| East | East Bay Senior Housing | PUD | R-18 | Senior Housing |
| South | Unincorporated Adams County | CO | NA | Lake |

Site Plan Information

The PDP/ODP consists of three major components.

- a. Eight residential lots will be lined along 68th Avenue. The lot depth varies from 130 ft. to 187 ft. with the deeper lots at the eastern end of the PDP/ODP.
- b. To the west of the residential lots, a one acre public open space will be available. The public open space, called Outlot B has approximately 400 feet of frontage along 68th Avenue, and the land slopes southward to the lake edge. Outlot B will remain undeveloped and be available for public viewing of Hidden Lake and the Front Range to the west.
- c. Along the south of the public open space, and south of the residential lots is a 2.55 acre private open space called Outlot A. The private open space composes the surface of the adjacent Hidden Lake. Outlot A will be available for use by the 8 lot owners. Docks and related aquatic activities will be allowed in Outlot A.

Circulation and Parking

The proposed lots will have direct access to 68th Avenue. Direct backout of vehicles onto 68th Avenue will be limited. All lots will be required to have driveways that will have a backout area that will allow vehicles to access 68th Avenue with the vehicle in a forward direction. The public open space area will have pedestrian access via a sidewalk parallel to 68th Avenue. The sidewalk will also front the residential lots and connect at the east to the existing sidewalk along the front of the East Bay Senior Housing PDP/ODP.

Site and Landscape Design

From the back of the curb of 68th Avenue the individual residential lots will have a 6 ft. tree lawn, a 5 ft. concrete sidewalk, and an open style of wrought iron fence 8 ft. from the back of the sidewalk. The fence will have brick columns at the property corners and at the driveway edges and will be set atop a 3 ft. earth berm with a minimum of 4 to 1 slope. The berm will be landscaped per the guidelines in the Moorings PDP/ODP.

The City's public open space parcel will have a two-rail open style fence set back 1 ft. from the back of the 5 ft. wide public sidewalk that parallels 68th Avenue. The one acre public open space will remain in a natural state. No trails, sidewalks, monuments, benches or other improvements are planned at this time.

Public Land Dedication/Open Space

Public Land Dedication is required for residential developments in the City. For this site, the City has determined that land dedication, and related improvements will serve the public interest. A fee in lieu of land dedication is not required. The City Code (11-6-8(B)) requires 12 acres per 1,000 residents for a Single-Family Detached Residential development. The projected population for this development is 3 persons per dwelling unit. For 8 dwelling units the total population will be 24 persons. For 24 persons the total public land dedication required is .288 acres which is 12,545 square feet. The City will grant full credit for non-floodplain acreage of .196 acres, and 1/6th credit for floodplain acreage of .55 acres (1/6th of .55 equals .091 acres). Total floodplain and non-floodplain

acreage is 32,520 square feet, or .75 acres. The Public Land Dedication will become part of Outlot B at the west side of the PDP/ODP. Outlot B will be dedicated to the City on the final plat for the Moorings PDP/ODP.

In 1994 the City received Lot 1 of the East Bay Senior Housing PDP/ODP as a public open space parcel. After the public right-of-way of 68th Avenue is subtracted the actual public land area is .287 acres. The .287 acre lot is long and narrow with the length along the 68th Avenue frontage, and has never been an active open space parcel. The City will exchange this acreage for an equal acreage of non-floodplain land in Outlot B. The former area of Lot 1 of the East Bay Senior Housing PDP/ODP will become part of Lots 5, 6, 7, and 8 of the Moorings PDP/ODP. An amendment to the East Bay Senior Housing PDP/ODP has been prepared, and prior to the land exchange, Lot 1 will be removed from the borders of the East Bay Senior Housing PDP/ODP.

In summary, the required public land dedication for the Moorings PDP/ODP, plus the exchanged land area of Lot 1 of the East Bay Senior Housing PDP/ODP will be combined in Outlot B to create a 1.033 acre open space parcel. Outlot B will be dedicated to the City and become a property of the City's Open Space.

School Land Dedication

The City Code (§11-6-8(F)) requires a dedication of school land or cash-in-lieu of land. For this site, the City has determined that a land dedication would not serve the public interest. Therefore, a fee in lieu of the land dedication is required. The cash-in-lieu fee is a fixed amount based on the type of unit and is due at the time of final plat. For 8 single-family detached dwellings a fee of \$876 per dwelling totals \$7,008. This amount may change prior to the completion of this project as the school fee is adjusted regularly.

Parks

The City has reviewed the property and a public park will not be required here.

The City Code (11-6-8(C)) requires a park development fee prior to issuance of a Certificate of Occupancy for the first residential dwelling unit. A fee of \$1,804 (2014 fee) per dwelling unit is due to the City. For eight residential dwellings the total fee is \$14,432. The fee amount may change prior to the completion of this project as the park fee is adjusted annually in accordance with the Consumer Price Index (CPI) as established for the Denver Metropolitan Area.

Architecture/Building Materials

All of the eight lots in the Moorings PDP/ODP are to be custom homes. Custom homes are single-family detached dwellings with interior plans and exterior elevations that are unique as compared to other single-family residences within the same subdivision. The Moorings PDP/ODP outlines an extensive list of criteria to assure quality exteriors. Building offsets on various wall planes are required. Standards for size of garage interiors and for garage doors are listed in the PDP/ODP. Roof materials may be concrete tile, slate, clay tile, ribbed metal, and standing seam metal only. Wood shingles are not allowed. A variety of exterior materials are allowed. A minimum of 30% of the total exterior wall surface area must be masonry. Materials will be finished to a minimum of 30 inches above the finish grade.

Signage

A monument sign is not proposed for this development. The City's public open space site, Outlot B, will have a sign consistent with the City's Open Space sign criteria.

Lighting

Street lights per the City Code will be added with the development of the site. The locations are shown on the Moorings PDP/ODP.

Service Commitment Category

The Moorings PDP/ODP site is south of 80th Avenue and is therefore not subject to a competition for Service Commitments. The project is considered a “South Westminster Residential Project”, and meets all applicable design criteria for residential projects. Service Commitments for South Westminster residential developments are included as part of the Category A allocation. Eight Service Commitments will be available for the Moorings PDP/ODP.

Referral Agency Responses

A copy of the proposed plans was sent to City Departments and Divisions and the plans were adjusted as needed per their review. Non-City agencies included Xcel Energy, Adams County School District 50, Adams County Planning, Crestview Water and Sanitation District, and the Urban Drainage & Flood Control District. There was no opposition expressed by these agencies.

Neighborhood Meeting(s) and Public Comments

A neighborhood mailing to property owners and homeowner associations within 300 feet was done in lieu of a meeting. The City received no inquiries from the mailing.

Westminster Municipal Code Requirements

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

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

- 1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.*
Staff Comment: The residential and open space land uses proposed by this amendment are in conformance with the City's Comprehensive Plan and all City Codes, ordinances and policies.
- 2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.*
Staff Comment: The PUD improves the quality of the public open space opportunity, is minimally invasive to the lake edge, requires on-lot backout areas for safe turning movements from the lots onto 68th Avenue, and offers large lot sizes adjacent to a recreational amenity.
- 3. Any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.*

Staff Comment: Exceptions to the City's Residential Design Guidelines and to the Landscape Regulations are noted on the Moorings PDP/ODP. There is a reduced setback for the dwellings from the required 50 ft. for collector roads such as 68th Avenue because each lot will have an internal backup area to allow vehicles to turn around on the lot, and then exit the lot in a forward position. Additionally, there is a 3-foot tall landscaped berm and attractive fencing that will buffer the dwellings from 68th Avenue.

- 4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.*

Staff Comment: The public open space will be compatible with the other City open space at Hidden Lake. Access will be limited, and the site will remain in a natural state. The residential development is consistent with other large lot custom single-family residential development on other parts of the lake.

5. *The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.*

Staff Comment: Staff believes that this criterion has been met. The plan provides adequate buffers on each side of the development. A private open space on the lake at the south side of the residential lots allows the lot owner use of the lake, and notes who may use the area of Outlot A. Outlot B at the west of the residential lots provides a public view opportunity of the lake and the Front Range without encroaching into the individual lots. A drainage way at the east side buffers the residential lots from the adjacent East Bay Senior Housing parking lot and detention pond.

6. *The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.*

Staff Comment: No adverse impacts are anticipated to existing or future development.

7. *Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions, and in a manner that creates minimum hazards for vehicles and pedestrian traffic.*

Staff Comment: The full pavement width of 68th Avenue adjacent to the Moorings was constructed in 2010. The Moorings PDP/ODP requires each residential lot to construct a backout area that will permit vehicles to turn around on the lot. This will allow vehicles to access 68th Avenue from the private lots with the front of the car directed to 68th Avenue, rather than in a backout condition onto 68th Avenue.

8. *The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.*

Staff Comment: The required additional right-of-way for 68th Avenue is shown on the Moorings PDP/ODP. The as-built condition of 68th Avenue does not include a tree lawn or a public sidewalk on the south side of 68th Avenue adjacent to the existing curb. An additional 9 ft. of right-of-way will be dedicated to accommodate a 6-ft. tree lawn and a 5-ft. wide sidewalk. An existing public utility easement has been shifted to the location where the as-built water line is located near the common lot lines of the proposed residential lots 1 and 2.

9. *Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15, W.M.C.*

Staff Comment: The Moorings PDP/ODP includes clear performance standards for residential and open space uses.

10. *The applicant is not in default or does not have any outstanding obligations to the City.*

Staff Comment: The applicant is in compliance with this criterion.

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

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

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

1. *The plan is in conformance with all City Codes, ordinances, and policies.*

Staff Comment: The plan complies with this criterion. Exceptions are noted on the PDP/ODP.

2. *The plan is in conformance with an approved Preliminary Development Plan (PDP) or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).*

Staff Comment: The proposed zoning is PUD. The ODP and the PDP plan are combined into one document and there is consistency within the document.

3. *The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.*

Staff Comment: Staff believes that the proposed residential buildings, landscaping, parking turnaround feature, pedestrian access, and design of the public and private open spaces proposed in this ODP are consistent with best planning practices. The land exchange of Lot 1 of the East Bay Senior Housing Subdivision to combine with other public open space on Outlot B will produce a larger lake and Front Range view opportunity on Open Space that was not possible on the existing Lot 1 as a stand alone parcel.

4. *For Planned Unit Developments, any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.*

Staff Comment: Exceptions to the City's Residential Design Guidelines and to the Landscape Regulations are noted on the Moorings PDP/ODP. There is a reduced setback for the dwellings from the required 50 ft. for collector roads such as 68th Avenue because each lot will have an internal backup area to allow vehicles to turn around on the lot, and then exit the lot in a forward position. Also, the retaining wall above 4 ft. in height as an edge to the lake will allow a small swale on the land side that will provide some water filtering of runoff on the lot prior to draining into the lake. These exceptions to the City's Single-Family Design Guidelines, and the Landscape Regulations are noted in the PDP/ODP.

5. *The plan is compatible and harmonious with existing public and private development in the surrounding area.*

Staff Comment: A mix of residential development surrounds most of Hidden Lake. Apartments, senior housing, and single-family detached residences have been constructed on all sides of the lake. The proposed PDP/ODP is compatible and harmonious with existing development and future development in the surrounding area.

6. *The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.*

Staff Comment: Landscaping, a berm, a fence and on-lot vehicle turnaround areas provide buffer, and protection from the traffic on 68th Avenue. Reasonable setbacks for structures on the lots, design standards, and defining the areas of private and public open space with Outlots A and B are methods to limit internal adverse impacts.

7. *The plan has no significant adverse impacts on future land uses and future development of the immediate area.*

Staff Comment: No adverse impacts are foreseen upon future land uses or other development in the immediate area.

8. *The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.*

Staff Comment: This proposed development has clustered the lots in a location to provide equal access to the private open space on Hidden Lake in Outlot A, and separated the public open space of Outlot B from these private uses in the PDP/ODP. The intended use of Outlot B is for passive open space viewing and its location is the best location in the PDP/ODP for this use.

9. *Building height, bulk, setbacks, lot size, and lot coverage are in accordance with sound design principles and practice.*

Staff Comment: This criterion has been met by being in conformance with Title XI of the Westminster Municipal Code. The PDP/ODP conforms to the requirements of the City's Single-Family Detached Residential Guidelines.

10. *The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.*

Staff Comment: The architectural standards are consistent with the requirements for the development of detached single-family dwellings. Standards are listed in the PDP/ODP for these

custom homes. Standards include building offsets on various wall planes. Standards for size of garage interiors and for garage doors. Roof materials may be concrete tile, slate, clay tile, ribbed metal, and standing seam metal only. Wood shingles are not allowed. A variety of exterior materials are allowed. A minimum of 30% of the total exterior wall surface area must be masonry.

11. *Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.*

Staff Comment: The landscaping design along the 68th Avenue edge is shown on the PDP/ODP with trees, a 3-ft. tall berm, and open style fence with corner masonry columns, and this provides adequate screening and buffering from 68th Avenue for the single-family dwellings.

12. *Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.*

Staff Comment: The landscaping design along the 68th Avenue edge is shown on the PDP/ODP with trees, a 3-ft. tall berm, and open style fence with corner masonry columns, and this provides adequate screening and buffering from 68th Avenue for the single-family dwellings. This is in conformance with City Code and policies. Outlots A and B will remain in their natural condition, and this is in conformance with all City requirements for public and private open space parcels.

13. *Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.*

Staff Comment: The design of the existing 68th Avenue contemplated single-family dwellings with driveway access in the locations on the PDP/ODP.

14. *Streets, parking areas, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.*

Staff Comment: As noted earlier the individual residential lots will have driveways with a backup area to allow vehicles to safely maneuver onto 68th Avenue.

15. *Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.*

Staff Comment: The 5 ft. wide sidewalk proposed parallel to 68th Avenue is anticipated to be adequate for all pedestrian traffic on this south side of 68th Avenue. The north side of 68th Avenue has an existing 8 ft. wide sidewalk.

16. *Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.*

Staff Comment: The Drainage Report and Utility Study indicate that the existing and proposed utility systems and storm drainage facilities are adequate to serve the development.

17. *The applicant is not in default or does not have any outstanding obligations to the City.*

Staff Comment: The applicant is in compliance with this criterion.

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

City Council Goals

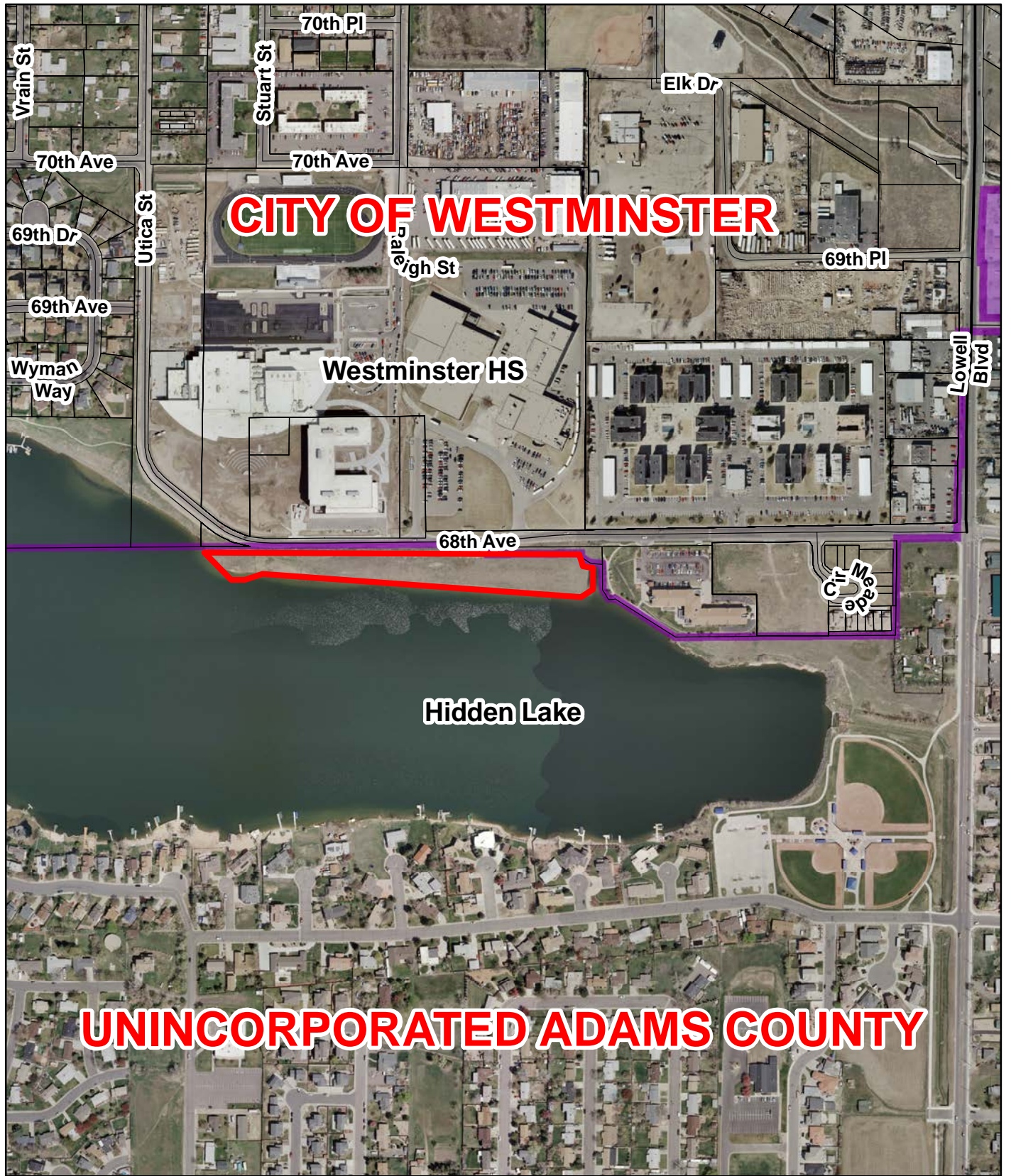
The requests meet the City Council's Strategic Plan goals of *Vibrant and Inclusive Neighborhoods, and; Beautiful, Desirable, Environmentally Responsible City*. These proposed amendments will allow the construction of 8 custom single-family dwellings with a common outdoor area in Outlot A; the addition of a 1-acre public open space with lake and mountain views for pastoral viewing on Outlot B, and; at the rear of each lot a small swale that will allow some filtering of on-lot water runoff prior to the water entering Hidden Lake.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

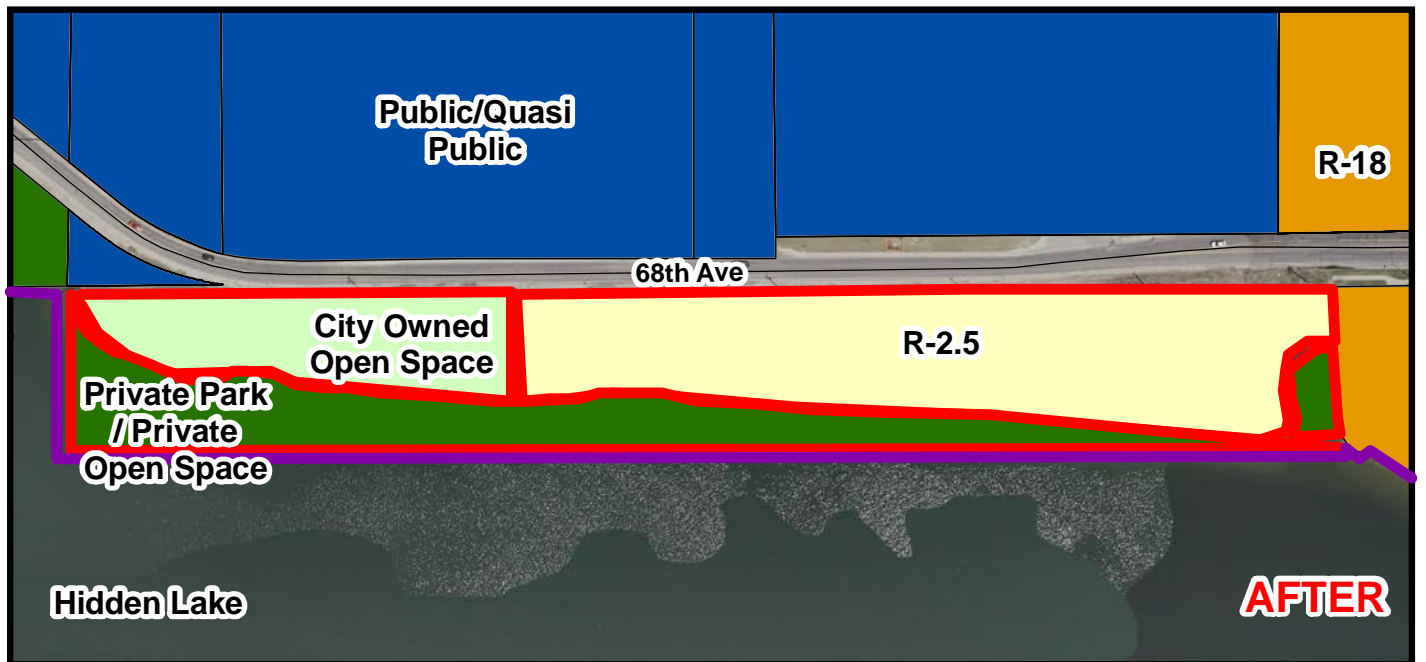
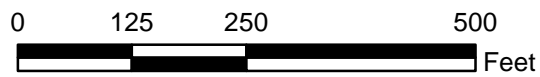
- Attachment A - Vicinity Map
- Attachment B - Comprehensive Plan Designation Map
- Attachment C - Zoning Map
- Annexation Agreement (Exhibit A, Exhibit B)
- Resolution – Findings of Fact
- Ordinance – Annexation
- Ordinance – Comprehensive Plan (Exhibit A, Exhibit B)
- Ordinance – Zoning (Exhibit A, Exhibit B)



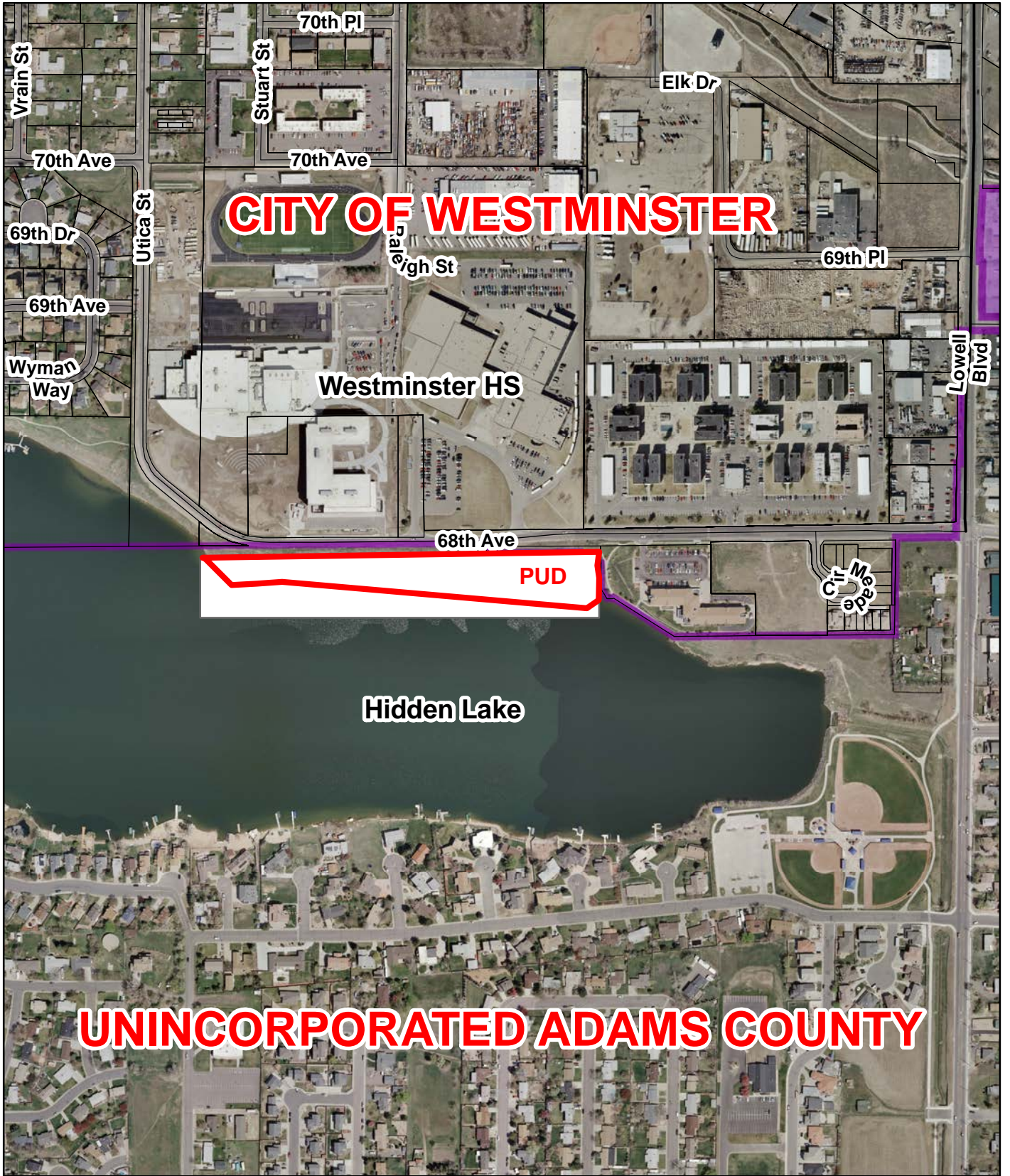
City of Westminster Planning/Engineering (GIS) - DWG - 11-26-14

VICINITY MAP - THE MOORINGS AT HIDDEN LAKE





Comprehensive Plan Map Changes: The Moorings at Hidden Lake



City of Westminister Planning/Engineering (GIS) - DWG - 12-31-14

ZONING MAP - THE MOORINGS AT HIDDEN LAKE



ANNEXATION AGREEMENT

THIS AGREEMENT is made and entered into this 7th day of January, 2015, by and between Mayham Reservoir Corporation, a Colorado entity, the entity address of which is P.O. Box 125, Westminster, CO 80036 (the "Owner"), and THE CITY OF WESTMINSTER, a Colorado home-rule municipality, the address of which is 4800 West 92nd Avenue, Westminster, CO 80031 (the "City"). The Owner and the City are sometimes hereinafter collectively referred to as the Parties.

RECITALS

- A. The Owner is the owner of the real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").
- B. The Owner has submitted to the City an Annexation Petition to annex the Property, a request to zone the Property to PUD, a request for a land use designation of R-2.5-Residential in the City's Comprehensive Plan, and a combined Preliminary Development Plan/Official Development Plan application for the development of the Property.
- C. The City is the owner of Lot 1 of the East Bay Senior Housing Subdivision-Filing No. 1, Westminster, Colorado, generally located northeast of the Property.
- D. The Parties wish to set forth their agreement concerning certain matters relative to the annexation and development of the Property.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged, the Parties hereto agree as follows:

1. Definitions. Unless the context clearly indicates otherwise, the following terms shall have the following meanings in this Agreement:
 - (a) Annexation Petition. The petition for annexation filed with the City on December 3, 2013.
 - (b) City. The City of Westminster Colorado, a Colorado home-rule municipality organized in accordance with Colorado Constitution Article XX and its Home-Rule Charter and Municipal Code.
 - (c) Council or City Council. The duly elected City Council for the City of Westminster, Colorado.
 - (d) Conditions to Annexation. The conditions to final annexation of the Property by the City as set forth in paragraph 3 of this Agreement.

(e) Final Approval. The date of final approval by City Council of the ordinance annexing the Property to the City in accordance with this Agreement.

(f) Municipal Code or Code. The Westminster Municipal Code, as it may be amended from time to time.

(g) Official Development Plan (“ODP”). The final development plan for the Property approved by the City consistent with the PDP in accordance with the Municipal Code.

(h) Preliminary Development Plan (“PDP”). The preliminary plan for development of the Property approved by the City in accordance with the Municipal Code.

(i) Owner. The Mayham Reservoir Corporation.

(j) Property. The real property described on Exhibit A attached to this Agreement.

(k) Zoning Applications. The applications for the PUD zoning, CLUP amendment designation, and the PDP/ODP approval, as such Zoning Applications are amended or supplemented in writing from time to time.

2. Annexation and Zoning.

(a) The Owner hereby consents to the annexation of its Property subject to the terms of the Annexation Petition and this Agreement. The annexation ordinance shall contain the Conditions to Annexation as a condition precedent to the effectiveness of the legislation, unless such conditions have been waived or otherwise satisfied.

(b) The City shall simultaneously process, to the maximum extent permitted by State law and the Municipal Code, the Annexation Petition and the Zoning Applications. If the City does not approve the Zoning Applications or if the Conditions to Annexation have not been satisfied or accepted by the Parties, the Owner shall have the absolute right to withdraw the Annexation Petition and to terminate the annexation proceedings.

(c) The City acknowledges that the binding effect of this Agreement is expressly conditioned upon the City Council's final approval of the annexation ordinance and the Zoning Applications.

3. Conditions to Annexation.

(a) ROW dedication for 68th Ave. The Owner shall dedicate to the City, at no charge, additional easements or right of ways reasonably necessary to align the 68th Avenue surface improvements including curb, gutter, landscape strip (tree lawn) and detached sidewalk, as shown on attached Exhibit B.

(b) Public Land Dedication. The owner shall dedicate to the city, at no charge and free of all restrictions, liens, or covenants of record, as and for the Code required public land dedication in a location and an amount as shown on the Owner's PDP/ODP application. The

Parties acknowledge that Note Y on Sheet 3 of 13 of the PDP/ODP documents describes the calculation for this public land dedication and its location as part of proposed Outlot B at the western edge of the Property. See attached Exhibit B.

(c) Land Exchange. The City will grant Lot 1 of the East Bay Senior Housing Subdivision to Owner in exchange for an equal amount of land in proposed Outlot B at the western edge of the Property. Said exchange will involve an amendment to the East Bay Senior Housing PDP/ODP and the City agrees, as owner of Lot 1, to initiate this amendment and to join in the final plat for the Moorings at Hidden Lake Subdivision. This land exchange will occur at the same time as the recordation of the final plat for the Moorings at Hidden Lake Subdivision, which subdivision shall reflect a dedication to the City of proposed Outlot B by Owner. The City's transfer of Lot 1 will be by Special Warranty Deed, which shall be recorded immediately after the recordation of the subdivision plat.

(d) Proposed Outlot B Improvements. Within 90 days of the land exchange described in (c) above, Owner shall make certain minimal improvements to Outlot B, as shown on the approved PDP/ODP documents at pages 5-13. Phasing and surety for these improvements will be addressed in the Public Improvements Agreement. The improvements shall include, but are not limited to:

(i) Reseeding/revegetation of disturbed areas per City of Westminster specifications for disturbed areas.

(ii) Installation of the 5 ft. wide concrete sidewalk detached 6 ft. from the curb of 68th Avenue.

(iii) Grading for the sidewalk platform along 68th Avenue. Slope should not exceed 25% at the back of the sidewalk.

(iv) Installation of an open style 2 rail split rail fence, 1 ft. back of the sidewalk along 68th Avenue.

(v) Guard rail realignment/extension along 68th Avenue to accommodate new 5 ft. wide sidewalk installation 6 ft. from the back of the 68th Avenue curb.

(e) Agreement with Adams 50 School District. The Owner has provided to the City a signed agreement with the Adams 50 School District indicating the degree of improvements that Owner shall make to the school district property located to the west of Owner's Property. The Owner and Adams 50 School District have recorded this Agreement at Adams County, Colorado at Reception #2014000081987 on November 11, 2014.

4. Miscellaneous.

(a) Waiver of Damages. If Owner requests the granting of vested property rights associated with the approval of the site-specific development plan for this Property and the City subsequently receives an initiated measure that would change any term of this Agreement, imposes a moratorium on or otherwise materially delays the development of the Property, or limits the number of building permits to which the owner would otherwise be entitled, the owner

agrees to waive any right to damages against the City to which Owner might otherwise be entitled under the Colorado vested rights statute. Further, Owner's sole remedy for any failure by the City to grant the Zoning Applications shall be the withdrawal of the Annexation Petition.

(b) Amendment. Only an instrument in writing signed by both parties may amend this Agreement.

(c) Recording. This Agreement may be recorded in the office of the Clerk and Recorder of Adams County, Colorado.

(d) Effective Date. This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City Council considers but does not adopt an ordinance annexing the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to potential annexation of the Property.

(e) Binding Effect. The benefits and burdens of this Agreement shall run with the Property and shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, personal representative, successors, and assigns. If a new Owner takes title to the Property, the new owner shall be bound by the terms and conditions of this Annexation Agreement and the Owner shall be released from any liabilities arising after the date of the transfer.

(f) Waiver. No waiver by the City or Owner of any term or condition of this Agreement shall be deemed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach. The conditions for approval for this Agreement and any other requirements for development may be waived by the Party benefited by the condition or requirement, provided such waiver is made in writing at or before the date of Final Approval.

(g) Severability. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall remain in full force and effect. If any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof shall be entitled to an equitable adjustment in its corresponding obligations and or benefits, and in that event, the Owner and the City agree to negotiate in good faith to accomplish such equitable adjustment.

(h) Paragraph Headings. The heading of paragraph are for convenience only and are not intended to define, limit, or prescribe the scope or intent of any provision of this Agreement.

(i) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.

(j) No Third-Party Benefits. This Agreement is not intended, and shall not be deemed, to confer any rights on any person or entity that is not a Party to this Agreement.

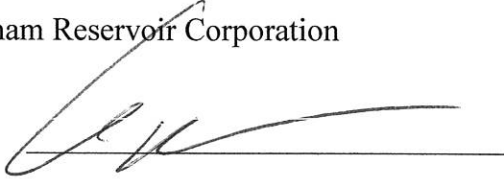
(k) No Presumption. The Parties to this Agreement and their respective attorneys have had a full opportunity to review and participate in the drafting of this Agreement. Accordingly, this Agreement shall be construed as if prepared by both parties and without regard to any presumption or other rule of construction against the Party causing this Agreement to be drafted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER

Mayham Reservoir Corporation

By:



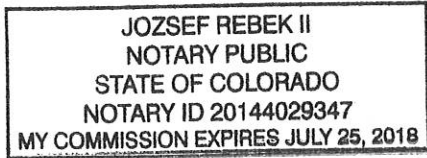
George Kast, its President

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 7th day of January, 2015, by George Kast, Mayham Reservoir Corporation as the president and authorized agent of Mayham Reservoir Corporation.

Witness my hand and official seal.

My commission expires: 07/25/2018



Notary Public 

CITY OF WESTMINSTER

THE CITY OF WESTMINSTER, A
COLORADO MUNICIPAL
CORPORATION

By: _____
_____, Mayor

Attest: _____, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires:

Notary Public

EXHIBIT A

**THE MOORINGS ON HIDDEN LAKE
ANNEXATION
LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTH 1/2 OF THE SOUTHEAST 1/4 SECTION 6, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO. SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

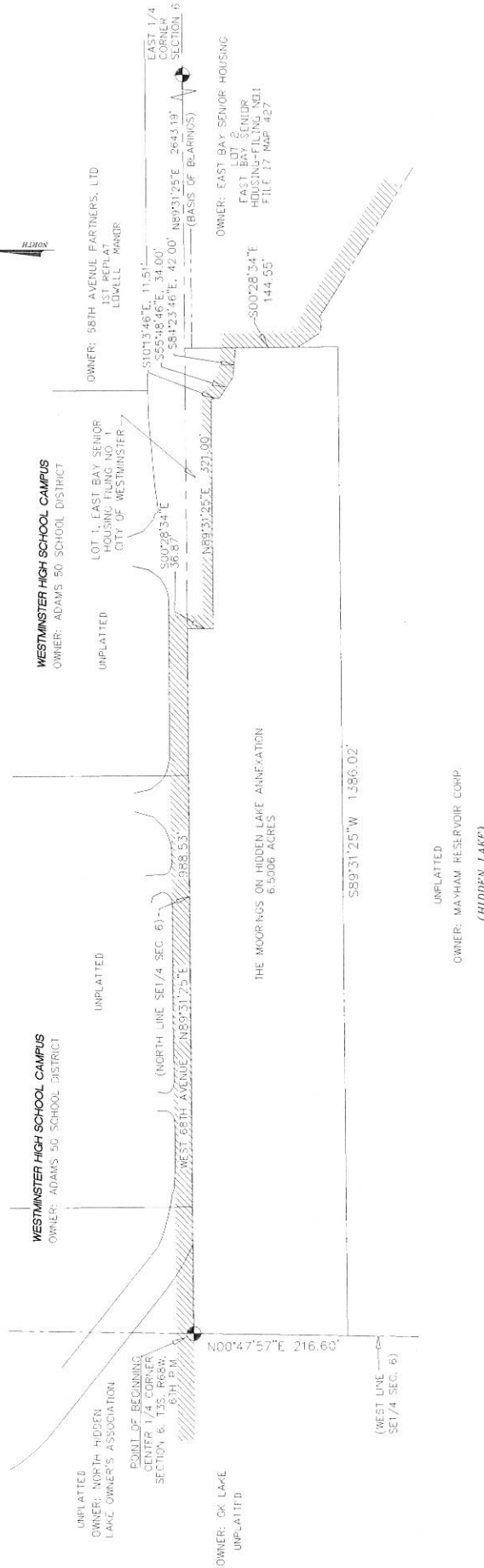
BEGINNING AT THE CENTER 1/4 CORNER SAID SECTION 6; THENCE N89°31'25"E ALONG THE NORTH LINE OF THE SOUTHEAST 1/4, 988.53 FEET TO THE NORTHWEST CORNER LOT 1, EAST BAY SENIOR HOUSING-FILING NO. 1 AS RECORDED AT FILE 17, MAP 427; THENCE ALONG THE WESTERLY AND SOUTHERLY LINE SAID LOT 1 THE FOLLOWING FIVE (5) COURSES:

- 1) THENCE S00°28'34"E, 36.87 FEET;
- 2) THENCE N89°31'25"E, 321.00 FEET;
- 3) THENCE S10°13'46"E, 11.51 FEET;
- 4) THENCE S55°48'46"E, 34.00 FEET;
- 5) THENCE S84°23'46"E, 42.00 FEET TO THE SOUTHEAST CORNER SAID LOT 1, WHICH POINT IS ALSO ON THE WESTERLY LINE LOT 2, SAID EAST BAY SENIOR HOUSING-FILING NO. 1; THENCE ALONG THE WESTERLY LINE OF SAID LOT 2 AND SAID WESTERLY LINE EXTENDED S00°28'34"E, 144.55 FEET; THENCE S89°31'25"W, 1386.02 FEET TO A POINT ON THE WEST LINE SAID SOUTHEAST 1/4 SECTION 6; THENCE N00°47'57"E ALONG SAID WEST LINE SOUTHEAST 1/4, 216.60 FEET TO THE POINT OF BEGINNING;

SAID TRACT OF LAND CONTAINING 6.5006 ACRES, MORE OR LESS.

PREPARED BY: DANNY R. MERTZ
 COLO. PLS NO. 30831

ANNEXATION MAP
THE MOORINGS ON HIDDEN LAKE ANNEXATION
 SITUATED IN THE NORTH 1/2 OF THE SOUTHEAST 1/4 SECTION 6, T3S, R68W, 6TH P.M.
 COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 2



| | |
|--|--|
| PREPARED: 9/14/13 DATE REVISIONS: NO. 1 9/26/14 | JCM DEVELOPMENT, LLC LAND DEVELOPMENT / ENGINEERING CONSTRUCTION MANAGEMENT 8300 GARLAND DRIVE ARVADA, COLORADO 80005 PHONE: 303-431-1921 FAX: 303-431-1921 |
| moorings\2014 resubmit\vevannemmap.dwg | |

**A RESOLUTION
PURSUANT TO SECTION 31-12-110, C.R.S., SETTING FORTH THE FINDINGS OF FACT
AND CONCLUSION OF CITY COUNCIL WITH REGARD TO THE PROPOSED
ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN SECTION 6,
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY
OF ADAMS, STATE OF COLORADO, ALSO KNOWN AS THE MOORINGS AT HIDDEN
LAKE PROPERTY**

WHEREAS, pursuant to the laws of the State of Colorado, there has been filed with the City Clerk petitions (the "Petition") for the annexation of the property described in said Petition; and

WHEREAS, City Council has previously adopted Resolution No. 33, series of 2014, finding the Petition to be in substantial compliance with the provisions of section 31-12-107(1), C.R.S., and;

WHEREAS, notice to all required parties has been given pursuant to series 31-12-108, C.R.S., and

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

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

1. The City Council finds:

- a. Not less than 1/6 of the perimeter of the area proposed to be annexed is contiguous with the City of Westminster;
- b. A community of interest exists between the area proposed to be annexed and the City;
- c. The area is urban or will be urbanized in the near future; and
- d. The area is integrated with or is capable of being integrated with the City.
- e. The requirements of Section 30(1) of Article II of the Colorado Constitution have been met.

2. The City Council further finds:

- a. With respect to the boundaries of the territory proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowners thereof, except to the extent such tracts or parcels are separated by dedicated street, road, or other public way; and

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

3. The City Council further finds:

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

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

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

PASSED AND ADOPTED this 26th day of January, 2015.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Moorings at Hidden Lake Annexation

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **3**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE ANNEXING A PARCEL OF LAND LOCATED IN SECTION 6,
TOWNSHIP 3 SOUTH, RANGE 68 WEST, 6TH P.M., ADAMS COUNTY, COLORADO,
COMMONLY KNOWN AS THE MOORINGS AT HIDDEN LAKE**

WHEREAS, pursuant to the laws of the State of Colorado, there was presented to the Council of the City of Westminster a petition for annexation to the City of Westminster of the hereinafter-described contiguous, unincorporated area, being in the County of Adams, State of Colorado; and

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

WHEREAS, City Council has heretofore adopted Resolution No. 33, Series of 2014 making certain findings of fact and conclusions regarding the proposed annexation, as required by Section 31-12-110, C.R.S., and now finds that the property proposed for annexation under the Annexation Petition may be annexed by ordinance at this time; and

WHEREAS, the City Council has satisfied itself that the proposed annexation conforms with the Comprehensive Plan of the City of Westminster; and

WHEREAS, the petitioner has executed, on January 7, 2015, an annexation agreement with the City, stating the terms and conditions under which this annexation will occur.

NOW, THEREFORE, the City of Westminster ordains:

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

**THE MOORINGS AT HIDDEN LAKE
LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO. SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE CENTER 1/4 CORNER OF SAID SECTION 6; THENCE N89°31'25"E ALONG THE NORTH LINE OF THE SOUTHEAST 1/4, 988.53 FEET TO A POINT ON THE

WEST LINE OF LOT 1, EAST BAY SENIOR HOUSING-FILING NO. 1 AS RECORDED AT FILE 17, MAP 427;

THENCE ALONG THE WESTERLY AND SOUTHERLY LINE OF SAID LOT 1 THE FOLLOWING FIVE (5) COURSES:

- 1) THENCE S00°28'34"E, 36.87 FEET;
- 2) THENCE N89°31'25"E, 321.00 FEET;
- 3) THENCE S10°13'46"E, 11.51 FEET;
- 4) THENCE S55°48'46"E, 34.00 FEET;
- 5) THENCE S84°23'46"E, 42.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1,

WHICH POINT IS ALSO ON THE WESTERLY LINE OF LOT 2, OF SAID EAST BAY SENIOR HOUSING-FILING NO. 1;

THENCE ALONG THE WESTERLY LINE OF SAID LOT 2 AND SAID WESTERLY LINE EXTENDED S00°28'34"E, 144.55 FEET;

THENCE S89°31'25"W, 1386.02 FEET TO A POINT ON THE WEST LINE OF SAID SOUTHEAST ¼ OF SECTION 6;

THENCE N00°47'57"E ALONG SAID WEST LINE OF THE SOUTHEAST ¼, 216.60 FEET TO THE POINT OF BEGINNING;

Consisting of approximately 6.506 acres

Section 2. The Mayor is authorized to sign the annexation agreement for this property.

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 26th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of February, 2015.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 4

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds that:

a. An application for an amendment to the Westminster Comprehensive Plan has been submitted to the City for its approval, pursuant to §11-4-16(D), W.M.C., by the owner of the properties described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from Adams County Water Body to the following three designations: City of Westminster R-2.5, Private Parks/Open Space, and City Owned Open Space, and to change the designation of a .377 acre City owned open space parcel (Lot 1 of the East Bay Senior Housing PDP/ODP) from City Owned Open Space to R-2.5.

b. Such amendment has been referred to the Planning Commission, which body held a public hearing thereon on January 13, 2015 after notice complying with §11-4-16(B), W.M.C., and has recommended approval of the requested amendment.

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

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

e. The owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Plan, particularly the policies that encourage unfettered public access while preserving the environmental integrity of the property, convenient recreational and wellness opportunities for Westminster residents, and the goal of adequate infrastructure and public services available for new development.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Plan to change the designation(s) of the property more particularly described on attached Exhibit A, to City of Westminster R-2.5, Private Parks/Open Space, and City Owned Open Space and to change the designation of a .377 acre City owned open space parcel (Lot 1 of the East Bay Senior Housing PDP/ODP) from City Owned Open Space to R-2.5, all as depicted on the map attached as Exhibit B.

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 26th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of February, 2015.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

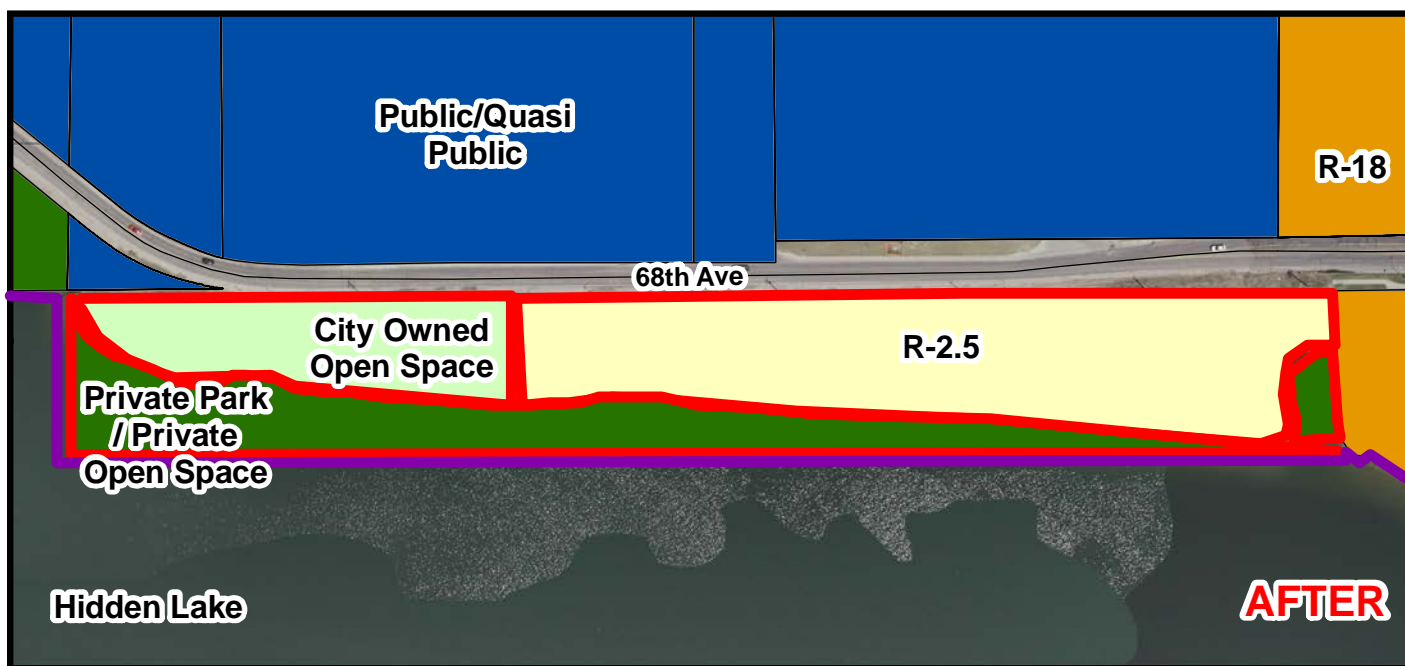
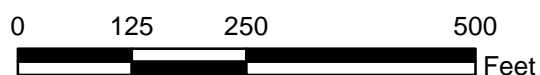
EXHIBIT A

**THE MOORINGS ON HIDDEN LAKE
COMPREHENSIVE PLAN AMENDMENT
LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTH 1/2 OF THE SOUTHEAST 1/4 SECTION 6, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO. SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE CENTER 1/4 CORNER SAID SECTION 6; THENCE N89°31'25"E ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, 143.55 FEET TO A POINT OF CURVATURE. SAID POINT ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE WEST 68TH AVENUE; THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY ALONG A NON-TANGENT CURVE TO THE LEFT WITH A CENTRAL ANGLE OF 19°55'50", A RADIUS OF 317.50 FEET, AN ARC LENGTH OF 110.44 FEET AND A CHORD OF S80°34'20"E, 109.89 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY N88°27'45"E, 736.72 FEET TO A POINT ON THE WEST LINE LOT 1, EAST BAY SENIOR HOUSING FILING NO. 1 AS RECORDED AT FILE 17, MAP 427; THENCE N00°28'34"W ALONG THE WEST LINE SAID LOT 1, 8.11 FEET TO THE NORTHWEST CORNER SAID LOT 1; THENCE N89°31'25"W ALONG THE NORTH LINE SAID LOT 1, 203.37 FEET TO A POINT OF CURVATURE; THENCE LEAVING THE NORTH LINE SAID LOT 1 ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 05°32'23", A RADIUS OF 1140.00 FEET, AN ARC LENGTH OF 110.23 FEET AND A CHORD OF N86°45'13"E, 110.19 FEET; THENCE N89°31'25"E, 79.25 FEET; THENCE S00°28'34"E, 5.32 FEET TO THE NORTHWEST CORNER OF LOT 2, EAST BAY SENIOR HOUSING FILING NO. 1 AS RECORDED AT FILE 17, MAP 427; THENCE S00°28'34"E ALONG THE WESTERLY LINE SAID LOT 2 AND WESTERLY LINE EXTENDED, 206.55 FEET; THENCE S89°31'25"W, 1386.02 FEET TO A POINT ON THE WEST LINE SAID SOUTHEAST 1/4 SECTION 6; THENCE N°47'57"E ALONG SAID WEST LINE SOUTHEAST 1/4, 216.60 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 6.463 ACRES, MORE OR LESS.



Comprehensive Plan Map Changes: The Moorings at Hidden Lake

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **5**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE AMENDING THE ZONING OF
THE MOORINGS AT HIDDEN LAKE PROPERTY, A 6.5006 ACRE PARCEL GENERALLY
LOCATED ON THE SOUTH SIDE OF 68TH AVENUE AND EAST OF UTICA STREET, ADAMS
COUNTY, COLORADO FROM R-1-C AND CO (ADAMS COUNTY) TO CITY OF
WESTMINSTER PLANNED UNIT DEVELOPMENT.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That a zoning of the property generally located south of 68th Avenue and east of Utica Street, as described in attached Exhibit A, incorporated herein by reference, from the Adams County R-1-C and CO zones to a Planned Unit Development (PUD) zone has been applied for as part of the annexation of the property into the City.

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

c. That such application has been referred to the Planning Commission, which body held a public hearing thereon on January 13, 2015 and has recommended approval of the requested zoning.

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

e. That based on the evidence produced at the public hearing, zoning the proposed property Planned Unit Development (PUD) complies with all requirements of Westminster Municipal Code, and §31-12-115, C.R.S.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property, described in Exhibit A, attached hereto and incorporated herein by reference, from the Adams County R-1-C, and CO zoning district to the Planned Unit Development zoning district, as depicted on Exhibit B, attached hereto.

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 26th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 9th day of February, 2015.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

**EXHIBIT A
THE MOORINGS ON HIDDEN LAKE
ZONING
LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO. SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE CENTER 1/4 CORNER OF SAID SECTION 6; THENCE N89°31'25"E ALONG THE NORTH LINE OF THE SOUTHEAST 1/4, 988.53 FEET TO A POINT ON THE WEST LINE OF LOT 1, EAST BAY SENIOR HOUSING-FILING NO. 1 AS RECORDED AT FILE 17, MAP 427;

THENCE ALONG THE WESTERLY AND SOUTHERLY LINE OF SAID LOT 1 THE FOLLOWING FIVE (5) COURSES:

- 1) THENCE S00°28'34"E, 36.87 FEET;
- 2) THENCE N89°31'25"E, 321.00 FEET;
- 3) THENCE S10°13'46"E, 11.51 FEET;
- 4) THENCE S55°48'46"E, 34.00 FEET;
- 5) THENCE S84°23'46"E, 42.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1, WHICH POINT IS ALSO ON THE WESTERLY LINE OF LOT 2, OF SAID EAST BAY SENIOR HOUSING-FILING NO. 1;

THENCE ALONG THE WESTERLY LINE OF SAID LOT 2 AND SAID WESTERLY LINE EXTENDED S00°28'34"E, 144.55 FEET;

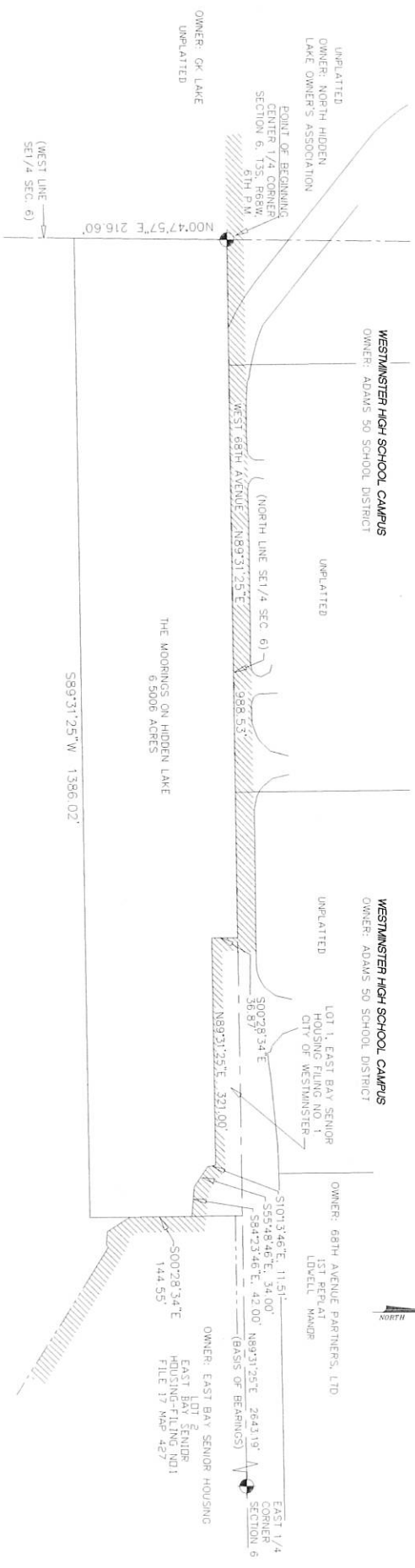
THENCE S89°31'25"W, 1386.02 FEET TO A POINT ON THE WEST LINE OF SAID SOUTHEAST ¼ OF SECTION 6;

THENCE N00°47'57"E ALONG SAID WEST LINE OF THE SOUTHEAST ¼, 216.60 FEET TO THE POINT OF BEGINNING;

SAID TRACT OF LAND CONTAINING 6.5006 ACRES, MORE OR LESS.

PREPARED BY: DANNY R. MERTZ
 COLO. PLS NO. 30831

ZONING MAP
THE MOORINGS ON HIDDEN LAKE ANNEXATION
 SITUATED IN THE NORTH 1/2 OF THE SOUTHEAST 1/4 SECTION 6, T3S, R68W, 6TH P.M.
 COUNTY OF ADAMS, STATE OF COLORADO
 SHEET 2 OF 2



moorings\2014_resubmittal\yevmexmap.dwg

| | | | |
|-------------------|---------------|--|--|
| PREPARED: 9/14/13 | DATE: 9/26/14 | JCM DEVELOPMENT, LLC LAND DEVELOPMENT / ENGINEERING CONSTRUCTION MANAGEMENT 8300 GARLAND DRIVE ARVADA, COLORADO 80005 | PHONE: 303 431-1921 FAX: 303-431-1921 |
| REVISIONS: NO. 1 | | | |



Agenda Item 10 G-H

Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Cooperation Agreement and Councillor's Bill No. 6 re Lease Agreement with the South Westminster Arts Group

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

1. Authorize the City Manager to execute a Cooperation Agreement, in substantially the same form as attached, with the Westminster Housing Authority and the South Westminster Arts Group relative to promoting and providing arts and cultural activities and programming in South Westminster.
2. Pass Councillor's Bill No. 6 on first reading authorizing the execution of a lease agreement in substantially the same form as attached for property located at 7287 Lowell Boulevard.

Summary Statement

- Over the last several years, the Westminster Housing Authority (WHA) has leased the South Westminster Arts Group (SWAG) two properties in support of community arts programming. The Rodeo Market building at 3915 W. 73rd Avenue has been run by SWAG as a community center and gallery, and a building at and 7287 Lowell Boulevard has been used as a theater.
- The City recently took ownership of the property at 7287 Lowell Boulevard from the WHA that has previously been leased to SWAG for a community theater.
- SWAG is proposing to continue operation of the theater at 7287 Lowell Boulevard by entering into a lease with the City to utilize the building through October 31, 2015. Upon approval of a lease, SWAG would sublease the premises to the Germinal Stage theater company that will conduct a full season of theatrical performances.
- SWAG is also proposing to enter into a Cooperation Agreement with the City of Westminster and the WHA, as attached, to facilitate the development of arts and cultural programs and activities.
- While the Cooperation Agreement note that the WHA would provide SWAG with a cash grant of \$8,000 to assist in paying for utilities, it imposes no direct financial funding obligation on the City of Westminster other than incurring the cost to maintain and repair the facility.

Expenditure Required: Not to Exceed \$500.00

Source of Funds: General Fund-Buildings Operation & Maintenance Operating Budget

Policy Issue

Should the City of Westminster enter into Cooperation and Lease Agreements with SWAG to promote and provide arts and cultural activities and programming in South Westminster?

Alternatives

1. Do not approve the Agreements. Staff recommends that this alternative not be given consideration as the future success of SWAG in its endeavors to promote and conduct arts and cultural activities and programs will continue to require cooperation and coordination with the City.
2. Approve the Agreements with modifications. While this may be a practical alternative, Staff believes the Agreement as proposed provides a judicious level of support to facilitate implementation of SWAG's programs and activities.

Background Information

The City of Westminster initiated the South Westminster revitalization efforts in 1997 with the redevelopment of the Westminster Plaza Shopping Center. The South Westminster Strategic Revitalization Plan was thereafter prepared and approved by City Council on January 22, 2001. Significant revitalization success has been made with implementation of the plan having led to the construction of 72 new townhouses and a 12,000 square foot commercial building, several street enhancement projects, and park and library improvements.

As another implementation effort, the City saw an opportunity in pursuing and developing arts and cultural programming as a means of attracting new residents and businesses, while also providing activities and events for the existing neighborhood population. In pursuit of this goal, an effort was made to increase the non-profit capacity in the South Westminster neighborhood to support the City promoting the arts and creating business incubator opportunities. The result of this effort was the creation of the South Westminster Arts Group (SWAG), which works with local Westminster artists to create and sustain a community-based arts network. SWAG was formed in 2007.

Concurrent with the creation of SWAG, the WHA made two properties it owns, the Vehicle Service Center (VSC) building at 7287 Lowell Boulevard and the Rodeo Market property at 3915 West 73rd Avenue, available for creating a 50-seat community theater and community arts and cultural center. Accordingly, the VSC was converted into the theater and the interior of the Rodeo Market building was remodeled and its historic exterior front façade restored to accommodate a gallery and class space. Upon completion of the improvements, SWAG opened and operated the gallery and conducted classes in the space. SWAG has been operating out of the Rodeo Market building for the past 5 years. SWAG remains instrumental in operating the community arts center and finding theater companies to provide performances. SWAG's endeavors have also helped attract artists and art galleries that have opened nearby, which participate in an organized monthly art walk and other arts related programs throughout the year. SWAG plans and hosts the annual Fall Orchard Festival and participates in the Spring Jazz Festival, both of which have continued to grow in vendor and attendee participation. SWAG also coordinates and sponsors the sculpture exhibit in the park adjacent to the Rodeo Market.

In support of SWAG's endeavors, the WHA has leased the Rodeo Market facility to SWAG since 2008 to serve as an art gallery and community center. The WHA has also made the VSC facility available to SWAG to serve as a community theater. Beginning in 2013, the WHA also began providing SWAG with a grant of between \$8,000 and \$10,000 to assist the organization pay for its water, gas and electrical utilities. The City in more recent years has increased its in-kind support towards SWAG providing assistance in planning for and staging the Orchard Festival, coordinating the marketing and promotion of activities a variety of activities and events, and responding to grounds and facility maintenance needs. In accordance with this increased level of WHA and City support, a cooperation agreement was approved in

2014, which provided a formal framework for future cooperation. Staff is proposing that the City renew its support towards SWAG and its related activities by entering into the proposed Cooperation Agreement for 2015.

Under the proposed Agreement, the WHA would be responsible for the leasing of the Rodeo Market and providing a grant of \$8,000 to SWAG. The grant from the WHA would be used towards payment for water, electrical and gas bills relative to utilization of the Rodeo Market building. By receiving the grant, SWAG will be better positioned to receive grant funding from the Scientific and Cultural Facilities District (SCFD), which requires evidence of a local cash contribution to the non-profit seeking grant funding. With this contribution, SWAG will proceed with applying for SCFD funding in March, 2015, with potential funding beginning in the fall 2015.

The City of Westminster purchased the property at 7287 Lowell Boulevard from the WHA on December 31, 2015. Accordingly, pursuant to the proposed Cooperation Agreement, the City would agree to lease the premises at 7287 Lowell Boulevard to SWAG for the purpose of using the space as a community theater. In 2014, SWAG was successful in attracting the Germinal Stage theater company to conduct several theatrical productions. Germinal Stage is a well-respected and reputable company in the Denver community theater scene, and was well received and performances well attended at the Lowell Boulevard location. The company proprietor is very excited to continue his relationship with the City of Westminster at this particular location for the upcoming and future seasons. Accordingly, he has expressed his intent to enter into a sublease with SWAG to again utilize the theater space at 7287 Lowell Boulevard subject to SWAG being able to lease the building from the City. Germinal Stage prefers the sublease arrangement with SWAG, rather than leasing the premises directly from the City, due to the company's limitations on meeting the City's insurance requirements. SWAG can more readily meet the City's insurance requirements.

In addition to the lease provision, the City of Westminster's other responsibilities under the proposed Agreement pertain primarily to a working relationship between City staff and the SWAG Board. Those responsibilities include:

- The City would appoint a City representative to serve on the SWAG Board of Directors. City Manager Brent McFall appointed John Carpenter, Community Development Director, as the City's representative to the SWAG Board representative in 2014.
- The City would support SWAG in its efforts to secure funding from the Scientific and Cultural Facilities District (SCFD);
- The City would provide logistical and coordination support, and equipment as available, such as a performance stage, relative to planning for and conducting the Orchard Festival; and,
- City staff would work cooperatively with SWAG to market and implement its programs.

The Agreement would also provide for the City to waive City fees pertaining to the planning and permitting of any events or activities, as applicable and permissible. By entering into the Agreement, the City of Westminster has no responsibility for providing direct financial resources to SWAG, other than providing maintenance and repairs to the facility.

As a condition for receiving assistance from the City and WHA, SWAG would provide the City with data and information pertaining to its operations and activities during the year, including copies of Board meeting minutes, a budget, an annual report and financial statements.

Subject: Cooperation and Lease Agreements with SWAG

Page 4

The approval of the proposed lease to SWAG meets the City's Strategic Plan Goal of creating "*Vibrant and Inclusive Neighborhoods*."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Ordinance
Cooperation Agreement
Lease Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **6**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE APPROVING A LEASE AGREEMENT FOR LEASE OF THE
PROPERTY LOCATED AT 7287 LOWELL BOULEVARD, WESTMINSTER, CO 80030**

WHEREAS, the City of Westminster owns the property located at 7287 Lowell Boulevard, Westminster, CO 80030 (also known as the Community Theater property); and

WHEREAS, the City intends to lease the property to the South Westminster Arts Group (SWAG) through October 31, 2015, for the purpose of making the premises available for use by a theatrical company that intends to use the facility to conduct several theatrical productions; and

WHEREAS, the tenant has been screened and determined to be suitable for the property; and

WHEREAS, the final form of the lease agreement has been agreed to by the parties; and

WHEREAS, the City Charter requires such lease be approved by ordinance.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreement between the South Westminster Arts Group (SWAG) and the City for the property located at 7287 Lowell Boulevard, Westminster, CO 80030, in substantially the same forms attached to this Ordinance, is approved.

Section 2. 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 26th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of February, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

ATTACHMENT "B"

A COOPERATION AGREEMENT

Between the

CITY OF WESTMINSTER, THE WESTMINSTER HOUSING AUTHORITY

And the

SOUTH WESTMINSTER ARTS GROUP

This Agreement is made and entered into this ____ day of February, 2015, by and between the CITY OF WESTMINSTER ("City"), the WESTMINSTER HOUSING AUTHORITY ("WHA") and the South Westminster Arts Group ("SWAG").

WHEREAS, the City believes that arts and cultural programming and activities can be a viable and valuable component of facilitating South Westminster revitalization; and

WHEREAS, the City, has supported the creation of SWAG to promote the arts and culture as a means of facilitating revitalization of the South Westminster community and has a vested interest in the continued success of SWAG; and

WHEREAS, SWAG has been successful in promoting and attracting arts-related activities and businesses into the South Westminster community; and

WHEREAS, the Westminster Housing Authority owns property at 3915 W. 73rd Avenue, known as the Rodeo Market Community Arts Center (Exhibit 1), and the City owns property at 7287 Lowell Boulevard that serves as a community theater (Exhibit 2), that can serve to support arts and culture-related programming; and

WHEREAS, the City, WHA and SWAG desire to continue working in partnership to further promote the arts as a means of facilitating revitalization of the South Westminster community.

NOW, THEREFORE, in consideration of the above premises and the covenants, promises, and agreements set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

A. GOVERNANCE AND OPERATION.

1. SWAG shall invite a City representative to serve on the SWAG board, and the City shall appoint a City staff person to sit and participate as a board member.

2. The City and SWAG shall work collectively to amend the SWAG bylaws to restructure the SWAG board so as to strengthen its capacity and effectiveness for the purpose of fulfilling its basic mission of promoting the arts and culture as a means of facilitating revitalization of the South Westminster community.
3. SWAG shall prepare and adopt a five year Strategic Action Plan for the years 2016 through 2020 by October 31, 2015.

B. FINANCE AND REPORTING.

1. SWAG shall prepare and submit a 2015 budget to the City by March 30, 2015.
2. As and when board meetings occur, SWAG shall provide the City with a copy of the Board meeting minutes within 15 days after SWAG Board approval or acceptance;
3. SWAG shall prepare and submit an annual report to the City by October 31 of each year detailing the following, at a minimum:
 - a. Board member information including names, roles, and operational responsibilities;
 - b. Membership and volunteer numbers and information pertaining to total volunteer hours served by members, functions served, and residency;
 - c. Existing year budget and adopted upcoming year budget;
 - d. Grant pursuit details including the number of grant applications submitted and to what funding agencies, amount of request and what the grant would fund (i.e. operational expenses, specific projects), and the results of said applications;
 - e. Profit and loss statement for a period beginning November 1 of prior budget year through October 31st of active budget year with detailed explanation of income and expenses;
 - f. Performance assessment and accomplishments relative to the SWAG Strategic Action Plan;
 - g. A detailed synopsis of classes, events and programs offered during the year along with attendance and revenue/cost details;
 - h. Community outreach and organizational collaboration;
 - i. General information on persons or groups participating in SWAG sponsored activities and events, such as participation numbers, participants domicile, age cohorts, and ethnicity, through the distribution of voluntary information cards, so as to assist in identifying recruitment and marketing needs to increase participation and diversity.

4. SWAG shall diligently pursue funding from the Denver-metro Scientific and Cultural Facilities District, by preparing and filing a copy of the application in a timely manner relative to an eligibility determination and/or funding. The City shall support SWAG in its pursuit of such funding by providing staff assistance, as determined necessary and reasonable by the City, and based upon staff availability.

C. FACILITIES AND OPERATIONS.

1. The Westminster Housing Authority (WHA) shall lease the premises at 3915 W. 73rd Avenue, hereby referred to as the Rodeo Market Community Arts Center, to SWAG, on the following general conditions, which shall be more fully set forth in the Lease document:
 - a. The premises shall be leased to SWAG for a period not to exceed one year ending December 31, 2015, for the use of arts and cultural-related activities and programming.
 - b. SWAG shall pay a nominal lease rate of \$10.00 per year;
 - c. WHA shall contribute \$8,000.00 as a grant to SWAG that shall be used to assist SWAG in paying for the cost of water, gas and electric utilities for the duration of the lease. Such contribution shall be disbursed in four (4) equal quarterly payments with first payment to be processed by the WHA with thirty (30 days) of execution of this Agreement, and thereafter on March 30, June 30, and September 30 of the year 2015.
 - d. SWAG shall make utility payments in timely manner and remain in good standing with all utility providers. At the end of each quarter, SWAG shall provide the WHA with evidence of utility payments for the preceding quarterly period. Disbursement of remaining grant funds, beginning March 30, 2015, shall not be provide to SWAG until such documentation showing payments has been provided.
 - e. Failure of SWAG to abide by this Agreement may result in immediate termination of such lease.
2. The City shall make the property at 7287 Lowell Boulevard available to SWAG for use as a community theater on a negotiated basis and under a separate lease agreement with prospective users.
3. SWAG shall conduct or host classes and programming in the Rodeo Market Community Arts Center as it pertains to the total mission of the organization.
4. SWAG shall be able to utilize the adjacent park area on an as needed basis in consultation with and subject to terms and conditions established by the Department of Parks, Recreation and Libraries.

5. SWAG shall plan for, coordinate and run the annual Orchard Festival on the grounds of the Rodeo Market Community Arts Center and in the general vicinity of 73rd Avenue and Osceola Street in the fall, as follows:
 - a. SWAG and the City shall coordinate and agree on an appropriate date for the festival.
 - b. SWAG shall apply for and obtain all required permits from the City and other regulating agencies;
 - c. The City shall waive any permit and plan review fees required by the City, as applicable and permissible;
 - d. The City shall coordinate with SWAG in providing logistical and equipment related support.

6. SWAG shall plan for, recruit artist submissions, and arrange for installation of art sculptures in the park area immediately east and north of the Rodeo Market Community Arts Center.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CITY OF WESTMINSTER

SOUTH WESTMINSTER ARTS GROUP

 Debbie Teter
 Board Chair

ATTEST:

ATTEST:

 City Clerk

 SWAG Secretary

WESTMINSTER HOUSING AUTHORITY

ATTEST:

 Secretary to the Authority

APPROVED AS TO FORM:

By: _____
 City Attorney's Office

EXHIBIT 1

WHA-Owned Rodeo Market Community Arts Center



EXHIBIT 2

City-Owned Community Theater Property



ATTACHMENT "C"

LEASE AGREEMENT

This **Lease** is made between the **CITY OF WESTMINSTER**, a Colorado public housing authority (hereinafter called "Lessor" or "City"), and **SOUTH WESTMINSTER ARTS GROUP**, a Colorado nonprofit corporation (hereinafter called "Lessee" or "SWAG").

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the Premises described in Paragraph 1 below, subject to the terms, conditions, and agreements set forth herein below:

1. Premises. The Premises consist of the building and property located at 7287 Lowell Boulevard, Westminster, CO, and as depicted in Exhibit 1 attached hereto and incorporated herein by reference.

2. Term and Rent. Lessor demises the above Premises for an eight (8) month term for the period commencing at 12:00 a.m. on March 1, 2015 and terminating at 12:00 a.m. on November 1, 2015, or sooner as provided herein (hereinafter, the "Term"), for a nominal rent payment for the Term in the sum of Ten Dollars (\$10.00).

3. Use. Lessee shall use and occupy the Premises for activities and functions specifically related to theatrical performances and complimentary or supporting activities and functions. The Premises shall not be used for other purposes unless approved in writing by the Lessor. SWAG will maintain records of all third-party rentals of the property and the City, through its staff, shall retain the right to inspect such records at any time.

4. Utilities, Care and Maintenance of Premises.

a. Lessee's responsibilities: Lessee acknowledges and accepts the Premises in their "as-is" condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in the same condition as received, normal wear and tear excepted. In addition, Lessee shall be responsible for:

- paying the cost of utilities as defined in paragraph 8, below.
- the routine care and maintenance of the interior of the building on the Premises of a housekeeping nature, including custodial and janitorial services, normal and reasonable cleaning, and the replacement of all consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the building by the Lessee
- keeping the exterior of that portion of the Premises constituting the lot at 3915 West 73rd Avenue clean and free of weeds, including the plaza area to the west of the building.

b. Lessor's responsibilities: The Lessor shall be responsible for all general repairs relative to the building on the Premises, including roofing, plumbing, mechanical and electrical equipment, that individually do not exceed \$500.00 in cost. The Lessor shall not be obligated to make substantive repair to any of said components should the cost for repair or replacement of any one component exceed \$500.00. Should the cost exceed \$500.00, repairs shall only be made upon approval of the City Manager. The Lessor reserves the right to terminate the Lease immediately should the repair and replacement allowances as provided for above be exceeded, or upon a determination by the City of Westminster that the premises constitute a clear and present danger to the public health, safety and welfare.

5. Alterations. Lessee shall not make any interior or exterior alterations, additions, or improvements to the building on the Premises without first obtaining the prior written consent of City staff. Any such alterations, additions, or improvements approved by the City regardless of the party installing the same, become fixtures appurtenant to the Premises.

6. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.

7. Assignment, Subletting, and unauthorized Use. Lessee shall not assign this Lease, nor sublet or allow utilization of any portion of the Premises without the prior written consent of the Lessor, which shall be granted or refused in Lessor's sole discretion. Any such assignment, subletting or impermissible utilization without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's immediate termination of this Lease. Notwithstanding the foregoing, Lessor acknowledges that the parties anticipate that Lessee will sublet the Premises or portions thereof to a theatrical production and performance group.

8. Utilities. The Lessee shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer for the duration of the lease. All applications and connections for other services desired by Lessee for the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services.

9. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents or staff to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

10. Possession. If Lessor is unable to deliver possession of the Premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby.

11. Indemnification of Lessor. Lessor shall not be liable for any damage or injury to any person or property occurring on the Premises during the Term of this Lease. Lessee agrees to indemnify and save and hold Lessor harmless from any claims for such damage or injury, no matter how caused, except to the extent such damage or injury was the direct and proximate result of Lessor's negligent act or omission, provided, however, that nothing herein shall be deemed or construed as a waiver by Lessor of any of the protections or limitations against liability to which Lessor may be entitled under the Colorado Governmental Immunity Act. Lessee may satisfy its obligations pursuant to this paragraph by assuming the defense of and liability, if any, for any such claim brought against the Lessor, and retaining for such defense qualified legal counsel reasonably acceptable to the City.

12. Insurance.

a. Lessee, at its expense, shall maintain comprehensive commercial liability insurance, including coverage for bodily injury and property damage, insuring Lessee and naming Lessor as an additional insured with minimum coverage as follows: \$1,000,000 per occurrence. The insurance shall include coverage for contractual liability. Additional insurance shall be obtained in the event any aggregate limitations result in per occurrence coverage of less than \$1,000,000.

b. Prior to taking possession of the Premises pursuant to this Lease, Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional named insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies that may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation that might otherwise exist.

13. Eminent Domain. If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests in the condemnor pursuant to such taking.

14. Destruction of Premises. In the event that the Premises or any part of the building thereon is damaged or destroyed by any cause to an extent that renders the Premises unsafe or unusable for Lessee's purposes, either Lessee or Lessor may terminate this Lease forthwith. In no event shall the Lessor have any obligation to repair or replace the Premises in the event of any such damage or destruction and Lessee's sole and exclusive remedy in the event of such damage to or destruction of the Premises or the building in which it is located is the termination of this Lease.

15. Lessor's Remedies on Default. If Lessee defaults in the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within ten (10) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such ten (10) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than twenty (20) days' notice to Lessee. On the date specified in such notice, the Term of this Lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessor, without extinguishing Lessee's liability. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term or condition of default herein shall be deemed a waiver as to any future enforcement.

16. Taxes. Lessee shall be solely responsible for the payment of any property or other taxes that may arise as a result of Lessee's use of the Premises. The Lessee covenants and warrants to Lessor that Lessee is exempt from all federal, state and local taxes and further, that Lessee shall take no action to cause the loss of its exemption from said taxes. Lessee further covenants and agrees with the Lessor that in the event Lessee shall lose its exemption from taxes for any reason, Lessee shall timely pay all and any taxes accruing as a result thereof. Lessee further covenants and agrees to indemnify and hold Lessor harmless against any claims or judgments for unpaid taxes resulting from Lessee's use of the Premises.

17. Attorneys' Fees. In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees. For any controversy or claim arising out of or relating to this Lease, or the breach thereof, the parties agree to attempt to mediate any such disputes in good faith prior to filing any action against the other.

18. Waiver. No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

19. Heirs, Assigns, Successors. This Lease is binding upon and shall inure to the benefit of the heirs, assigns and successors in interest to the parties.

20. Subordination. This Lease is and shall be subordinated to all existing and future liens and encumbrances against the Premises.

22. Entire Agreement. This Lease constitutes the entire agreement between the parties concerning the Premises and may be modified only by a written amendment signed by both parties.

23. Survival. Paragraphs 8, 11, and 16 through 20 inclusive shall survive any termination of this Lease by either Lessee or Lessor.

Signed as of this ___ day of _____, 2015.

CITY OF WESTMINSTER

SOUTH WESTMINSTER ARTS GROUP

By: _____
City Manager

By: _____
Debbie Teter, Chair

Attest: _____
City Clerk

Attest: _____

APPROVED AS TO LEGAL FORM:

By: _____
Office of the City Attorney

EXHIBIT 1

Leasable Premises – 7287 Lowell Boulevard





Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Councillor's Bill No. 7 re Proposed Economic Development Agreement with Tenere, Inc.

Prepared By: Chris Gray, Economic Development Officer

Recommended City Council Action

Pass Councillor's Bill No. 7 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement (EDA) with Tenere, Inc.

Summary Statement

- Tenere, Inc. designs and fabricates complex metal and plastic components for the telecommunications, medical, aerospace and other industries. Tenere recently added rapid prototyping capability through its recent acquisition of Protogenic, a Westminster company.
- Tenere plans to consolidate and expand its operations in Westminster and will lease 131,000 square feet of light industrial space at Park 12 Hundred.
- The company will bring 72 manufacturing and office workers to the site with plans to add another 100 employees over the next three to five years. The average annual wage at the facility will be \$46,000.
- Assistance is based on the City's desire to attract and retain a successful and substantial manufacturing operation and primary employer.
- Should Tenere, Inc. decide to move out of Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.

Expenditure Required: Approximately \$85,818 (Rebates)

Source of Funds: The EDA with Tenere, Inc. will be fully funded through revenue received from permit fees, construction use tax, and use tax on equipment, furniture and fixture purchases for the Tenere project.

Policy Issue

Should the City provide assistance to Tenere, Inc. based upon the City's goal to create and maintain a dynamic, diverse economy by cultivating and strengthening a wide array of economic opportunities?

Alternatives

Offer no assistance: Tenere is choosing Westminster over other location options in metro Denver and Wisconsin. The company will incur larger-than-anticipated retrofitting costs to move into Park 12 Hundred. The City could have lost the project had assistance not been offered. Also, the City's value of attracting quality companies and filling existing vacant space would not be supported.

Provide Less: The City can provide less assistance than what is recommended. The recommended assistance package represents .45% of the value of the new and existing assets the company will bring into the City, and is considered modest.

Provide More: A third alternative would be to provide a greater amount of assistance than recommended. Staff has recommended an assistance package that is consistent with packages offered to other manufacturers. There is room for additional funding. However, it is staff's opinion that additional assistance is not needed.

Background

Tenere, Inc., designs and fabricates complex metal and plastic components for a variety of customers including those in the telecommunications, medical and aerospace industries. The company is headquartered in Dresser, Wisconsin and operates locally in Lakewood. Tenere has been in business since 1966 and acquired its Lakewood operation in 1995.

In May, 2013, Tenere acquired Protogenic, a rapid prototyping company that uses several advanced capabilities, including 3D printing, to help transform engineering concepts to commercial products. Protogenic was founded in 1990 and has operated in Westminster for 20 years, most recently in Church Ranch Office Center.

The combined companies, hereafter referred to as Tenere, generate \$19 million in annual revenues.

Over the past year, Tenere has searched for a location where they could combine operations. The company has considered locations in Westminster, Denver (Stapleton) and Arvada. The company also considered consolidating with existing Tenere operations in Wisconsin.

The company plans to invest \$5,000,000 in tenant improvements and new equipment, plus move another \$10,000,000 of assets it already owns to the new location. The company will bring 72 manufacturing and office workers to the site with plans to add another 100 employees over the next three to five years. The average annual wage at the facility will be \$46,000 which is above the Adams County average wage.

The company intends to lease 131,000 square feet of light industrial space at Park 12 Hundred and commence operations in June, 2015.

Based on the five year projection of revenue and a desire to have Tenere's consolidated manufacturing operation in Westminster, Staff recommends the following assistance:

Proposed Assistance

Approximate Value

Building Permit Fee Rebate

\$9,318

60% of the building related fees (excluding water and sewer tap fees) will be rebated ($\$15,530 \times 60\% = \$9,318$)

Construction Use Tax Rebate

\$13,500

60% of the General Use Tax (excludes the City’s .25% Open Space Tax and .6% Public Safety Tax) on construction materials for this project will be rebated ($\$1,500,000 \times 50\% \times 3\% = \$22,500$ Use Tax $\times 60\% = \$13,500$)

Sales/Use Tax on Equipment & Furnishings

\$63,000

Based on \$3,500,000 in equipment and furnishings purchased six months before and six months after move in, the City will rebate 60% of the Sales/Use Tax (excludes the City’s .25% Open Space Tax and .6% Public Safety Tax) collected on the purchased equipment and furnishings. ($\$3,500,000 \times 3\% = \$105,000$ Sales/Use Tax $\times 60\% = \$63,000$)

Total Proposed Assistance Package

\$85,818

This assistance package is based upon the City’s goal to maintain a “Dynamic, Diverse Economy” by cultivating and strengthening a wide array of economic opportunities. Tenere’s relocation and expansion in Westminster will make it the City’s second largest manufacturing operation. The proposed assistance package supports an effort to attract, retain and encourage Tenere to grow in Westminster.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Exhibit A – Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **7**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT
WITH TENERE, INC.**

WHEREAS, the successful attraction and retention of expanding primary businesses in the City of Westminster maintains and increases the pool of high paying jobs and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for businesses to expand or relocate in the City; and

WHEREAS, Tenere, Inc., plans to occupy 131,000 square feet of light industrial space at Park 12 Hundred; and

WHEREAS, a proposed Economic Development Agreement between the City and Tenere, Inc., is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 26th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of February, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Exhibit "A"
ECONOMIC DEVELOPMENT AGREEMENT
FOR
TENERE, INC.

THIS ECONOMIC DEVELOPMENT AGREEMENT is made and entered into this ___ day of _____, 2015, between the CITY OF WESTMINSTER (the "City") and TENERE, INC., a Wisconsin Corporation (the "Company").

WHEREAS, the City wishes to provide assistance to aid in the relocation and expansion of the Company in the City; and

WHEREAS, the Company plans to lease and occupy 131,000 square feet of light industrial space located at Park 12 Hundred (the "new facility") for the purpose of setting up a manufacturing operation, thus providing primary job growth within the City; and

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

In consideration of the mutual promises set forth below, the City and the Company agree to the following:

1. Building Permit Fee Rebates. The City shall rebate to the Company 60% of the building permit fees that are otherwise required under W.M.C. Section 11-10-3 (E) for the remodeling and improvements in the new facility. This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$9,318.

2. Use Tax Rebate-Construction. The City shall rebate to the Company 60% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on construction materials collected from the remodeling and improvements in the new facility that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The use tax rebate will be approximately \$13,500.

3. Sales and Use Tax Rebate – Furniture and Fixtures. For the period of 6 months prior and 6 months after the Company obtains a Certificate of Occupancy or passes a final inspection for the new facility, the City will rebate 60% of the Westminster General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on equipment and furnishings purchased by the Company for the new facility. The rebate will be approximately \$63,000.

- a. The rebate shall include use tax payments paid directly to the City by the Company, and/or sales tax collected from the Company and remitted to the City by City licensed businesses.
- b. Rebates will be based on the documentation prescribed by the City and provided by the Company which illustrates purchases or delivery of any such furnishings, fixtures, or equipment that occurred within the City of Westminster for the Park 12 Hundred facility and that taxes were paid to and collected by the City.

4. Payments of Rebates.

- a. The total rebate is not to exceed \$85,818. The Company will file returns and pay City sales and use taxes due no less frequently than on a calendar quarter. Rebates shall be calculated for each calendar quarter based upon revenue actually received by the City in connection with the opening and operation of the new facility.

- i. If the total amount of a quarterly rebate due to the Company is at least \$1,000, the rebate will be paid within thirty (30) days following the end of the calendar quarter.
 - ii. If the total amount of a quarterly rebate due to the Company is less than \$1,000, such rebate will be added to the next quarterly rebate due until the total amount to be rebated is at least \$1,000. The accumulated amount of such rebates will then be paid within thirty (30) days following the end of the most recent calendar quarter reported.
 - iii. Payments shall commence for the calendar quarter during which final occupancy approval is granted.
 - iv. No payment of the use taxes on construction material provided for in Paragraph 2 above will be made until the City approves a Construction Project Cost Report for construction at the Company's new space at Park 12 Hundred.
 - v. No payment shall be made until the Company has obtained a City of Westminster business license for the new facility.
 - vi. All payments by the City shall be made electronically to the Company's designated financial institution or other account.
- b. In the event the Company fails to comply in any material respect with provisions of the City regulations or code relative to the development, use, occupancy or operation of the project the City may, after providing the Company with not less than ten (10) days advance written notice, suspend payment of the quarterly installments until the Company complies with such provisions of the City regulations or code.

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

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if the Company has not moved into the new facility by December 31, 2015 or should the Company not comply with the City regulations or code.

7. Business Termination. In the event the new facility ceases to conduct business operations within the City at any time prior to June 30, 2020, then the Company shall pay to the City the total amount of fees and taxes that were paid by or for the Company for the new facility to the City and were subsequently rebated by the City to the Company pursuant to this Agreement within sixty (60) days of business termination.

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

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

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

TENERE, INC.

CITY OF WESTMINSTER

Tom Hennings
General Manager

J. Brent McFall
City Manager

ATTEST:

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.



Agenda Item 10 J

Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Councillor's Bill No. 8 re Proposed Economic Development Agreement with Trimble Navigation

Prepared By: Chris Gray, Economic Development Officer

Recommended City Council Action

Pass Councillor's Bill No. 8 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement (EDA) with Trimble Navigation.

Summary Statement

- Trimble Navigation is best known for its global positioning system (GPS) technology and services that integrate a wide range of positioning technologies including GPS, laser, optical and inertial technologies.
- Trimble desires to expand its presence in Westminster and has acquired acreage in Westmoor Technology Park to build a new 125,000 s.f. office building.
- The company currently employs 600 high tech employees at an average annual wage of \$102,000 at the Westminster location and expects to grow employment to 917 by 2018.
- Assistance is based on the City's desire to retain and expand one of the City's major employers in a key industry sector.
- Should Trimble Navigation decide to move out of Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.

Expenditure Required: Approximately \$703,364 (Rebates)

Source of Funds: The EDA with Trimble Navigation will be fully funded through revenue received from permit fees, construction use tax, and use tax on equipment, furniture and fixture purchases for the Trimble Navigation project.

Policy Issue

Should the City provide assistance to Trimble Navigation based upon the City's goal to create and maintain a dynamic, diverse economy by cultivating and strengthening a wide array of economic opportunities?

Alternatives

Offer no assistance: Trimble is a highly desirable member of the City's business community. The company has many location options. Offering assistance represents the City's desire to partner with the Trimble to achieve mutual success. Offering no assistance could jeopardize the company's continued willingness to expand in the City.

Provide Less: A 60% rebate is proposed and is consistent with the City's assistance to its most desirable business prospects. Offering a smaller rebate is an alternative, but not recommended due to the importance of the partnership with the company and the company's options for future expansion outside the City.

Provide More: The proposed package is consistent with the City's most aggressive assistance offers. It is Staff's opinion that additional assistance is not needed.

Background

Trimble Navigation commenced business in Sunnyvale, California, in 1978. The company is best known for its global positioning system (GPS) technology. It also provides services that integrate a wide range of positioning technologies including GPS, laser, optical and inertial technologies. Trimble has grown rapidly in recent years, often via acquisition. Trimble is a publicly traded company with the symbol TRMB. Its website is www.trimble.com.

Trimble first moved to Church Ranch Corporate Center in Westminster in September, 2000, with approximately 68 employees. Subsequent growth resulted in a relocation to Westmoor Technology Park where the company leased office space for several years. In 2012, Trimble built a 125,000 square foot, LEED Gold office building where the company houses significant portions of its sales, marketing and R&D operations and employs 600 people. The City provided a business assistance package to support the 2012 office project.

Trimble purchased enough land in Westmoor to accommodate a second building as part of its 2012 office development project. Given that Trimble has several primary locations around the country, it was not clear when or if Trimble would build a second building on the Westmoor land. Then, in August, 2014, Steve Berglund, Trimble's CEO, met with Mayor Atchison, City Manager Brent McFall and City staff to discuss the possibility of a new building on the site. Mr. Berglund was clear that the City was the leading candidate to win development of the new office building and 500 jobs to go with it. Financial assistance and expedited plan review were conditions for the site selection discussed during the meeting.

Trimble submitted plans for its new building to the City in October and closed on more land in Westmoor in late November. Trimble purchased the additional land to accommodate space needs for its new building. The company anticipates beginning construction on the new \$43 million, 125,000 square foot building in March, 2015, with occupancy scheduled for March, 2016.

Based on the five year projection of revenue and a desire to have Trimble Navigation's new office in Westminster, Staff recommends the following assistance:

| Assistance | Approximate Value |
|--|--------------------------|
| <u>Building Permit Fee Rebate</u> 60% of the building related fees (excluding water and sewer tap fees) will be rebated ($\$386,724 \times 60\% = \$232,034$) | \$232,034 |
| <u>Construction Use Tax Rebate</u> 60% of the General Use Tax (excludes the City’s .25% Open Space Tax and .6% Public Safety Tax) on construction materials for this project will be rebated ($\$43,000,000$ construction valuation $\times 50\% \times 3\% \times 60\% = \$387,000$) | \$387,000 |
| <u>Sales/Use Tax on Equipment & Furnishings</u> Based on \$4,685,000 in equipment and furnishings purchased six months before and six months after move in, the City will rebate 60% of the Sales/Use Tax (excludes the City’s .25% Open Space Tax and .6% Public Safety Tax) collected on the purchased equipment and furnishings. ($\$4,685,000 \times 3\% = \$140,550$ Sales/Use Tax $\times 60\% = \$84,330$) | \$ 84,330 |

Total Proposed Assistance Package **\$703,364**

It should be noted that Paragraph 4c in the proposed EDA provides that the \$703,364 rebate will be reduced by \$11,525.74. This adjustment is to resolve a City overpayment issue resulting from the contractor on Trimble’s first building overestimating construction costs and therefore the use tax due on construction materials.

This assistance package is based upon the City’s goal to maintain a “Dynamic, Diverse Economy” by cultivating and strengthening a wide array of economic opportunities. The expansion of Trimble represents a significant economic opportunity for the City. The proposed assistance package supports an effort to retain and encourage the company to continue to grow in the City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Exhibit A – Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **8**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT
WITH TRIMBLE NAVIGATION LIMITED**

WHEREAS, the successful retention and expansion of primary businesses in the City of Westminster maintains and increases the pool of high paying jobs and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for businesses to expand or relocate in the City; and

WHEREAS, Trimble Navigation Limited plans to construct and occupy a new 125,000 square foot office building in Westmoor Technology Park; and

WHEREAS, a proposed Economic Development Agreement between the City and Trimble Navigation Limited is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 26th day of January, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of February, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Exhibit "A"
ECONOMIC DEVELOPMENT AGREEMENT
FOR
TRIMBLE NAVIGATION LIMITED

THIS ECONOMIC DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2015, between the CITY OF WESTMINSTER, a Colorado home rule city (the "City") and TRIMBLE NAVIGATION LIMITED, a California Corporation authorized to do business in the State of Colorado (the "Company").

WHEREAS, the City wishes to provide assistance to aid in the expansion of the Company in the City; and

WHEREAS, the Company plans to build and furnish 125,000 square feet of office space in Westmoor Technology Park, thus continuing to provide primary job growth within the City; and

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

In consideration of the mutual promises set forth below, the City and the Company agree to the following:

1. Building Permit Fee Rebates. The City shall rebate to the Company 60% of the building permit fees, that are otherwise required under W.M.C. Section 11-10-3 (E) for the construction of the Company's new office building in Westmoor Technology Park. This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$232,034.

2. Use Tax Rebate--Construction. The City shall rebate to the Company 60% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on construction materials collected from the Company for the construction of its new office building in Westmoor Technology Park that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The rebate of use tax on construction is estimated to be approximately \$387,000.

3. Sales and Use Tax Rebate--Furniture and Fixtures. For the period of 6 months prior and 6 months after the Company obtains its Certificate of Occupancy for its new facility in Westmoor Technology Park, the City will rebate 60% of the Westminster General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected from the Company on the purchased equipment and furnishings for the new office. The rebate is anticipated to be approximately \$84,330.

- a. The rebate shall include use tax payments paid directly to the City by the Company, and/or sales tax collected from the Company and remitted to the City by City licensed businesses.
- b. Rebates will be based on the documentation prescribed by the City and provided by the Company which illustrates purchases or delivery of any such furnishings, fixtures, or equipment that occurred within the City of Westminster for the new office facility and that taxes were paid to and collected by the City.

4. Payments of Rebates.

a) The total rebate is not to exceed \$703,364. The Company will file returns and pay City sales and use taxes due no less frequently than on a calendar quarter. Rebates shall be calculated for each calendar quarter based upon revenue actually received by the City in connection with the opening and operation of the new facility.

- i. If the total amount of a quarterly rebate due to the Company is at least \$1,000, the rebate will be paid within thirty (30) days following the end of the calendar quarter.
- ii. If the total amount of a quarterly rebate due to the Company is less than \$1,000, such rebate will be added to the next quarterly rebate due until the total amount to be rebated is

at least \$1,000. The accumulated amount of such rebates will then be paid within thirty (30) days following the end of the most recent calendar quarter reported.

- iii. Payments shall commence for the calendar quarter during which final occupancy approval is granted.
- iv. No payment of the use taxes on construction material provided for in Paragraph 2 above will be made until the City approves a Construction Project Cost Report for construction of the Company's new office building in the Westmoor Technology Park.
- v. No payment shall be made until the Company has obtained a City of Westminster business license for the new facility.
- vi. All payments by the City shall be made electronically to the Company's designated financial institution or other account.

b) In the event the Company fails to comply in any material respect with provisions of the City regulations or code relative to the development, use, occupancy or operation of the project the City may, after providing the Company with not less than ten (10) days advance written notice, suspend payment of the quarterly installments until the Company complies with such provisions of the City regulations or code.

c) The initial rebate payments provided for by this Agreement shall be reduced by \$11,525.74 which represents the amount due to the City from the Company under the terms of the Economic Development Agreement between the City and the Company dated March 19, 2012.

5. Entire Agreement. This Agreement shall constitute the entire agreement between the City and the Company and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. However, both parties acknowledge the continued existence and effect of the Economic Development Agreement between the City and the Company dated March 19, 2012.

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if the Company has not moved into the new Westmoor offices by December 31, 2017.

7. Business Termination. In the event the Company ceases business operations within the City at any time prior to December 31, 2020, then the Company shall pay to the City the total amount of fees and taxes that were paid by or for the Company to the City and were subsequently rebated by the City to the Company pursuant to this Agreement.

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

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

10. Governing Law: Venue. This agreement shall be governed and construed in accordance with the laws of the State of Colorado. This agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experience

mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.

11. Authority. The undersigned represent on behalf of their respective parties that the execution, delivery and performance of this agreement has been duly authorized by all necessary corporate or governmental action and is not prohibited by any provision of law or other, applicable governing documents.

TRIMBLE NAVIGATION LIMITED
A California Corporation

CITY OF WESTMINSTER

Raj Bahri
Chief Financial Officer

J. Brent McFall
City Manager

ATTEST:

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Councilor’s Bill No. 9 re Financing for Little Dry Creek Drainage Improvements; and Councillor’s Bill No. 10 re Supplemental Appropriation to Budget Storm Drainage Fund

PREPARED BY: Tammy Hitchens, Finance Director
Robert Byerhof, Treasury Manager
Fred Kellam, Senior Financial Analyst

Recommended City Council Action:

1. Pass Councillor’s Bill No. 9 as an emergency ordinance, approving the issuance of private placement bonds (Bonds) in a principal amount not to exceed \$4,650,000 with UMB Bank, n.a. for purposes of financing a portion of the drainage improvements in the Transit Oriented Development (TOD) in South Westminster along Little Dry Creek, and direct the Mayor, City Manager, Finance Director and City Clerk to sign necessary documents on behalf of the City.
2. Pass Councillor’s Bill No. 10 as an emergency ordinance, providing for a supplemental appropriation of funds to the 2015 budget of the Storm Drainage Fund.

Summary Statement

- City Council was presented with information at the December 15, 2014 Study Session regarding road and drainage improvements required on the south side of the Westminster commuter rail station, in addition to the funding challenges given the magnitude of the improvements.
- One of the funding challenges identified was the need to finance a portion of the costs to be paid by Adams County per an Intergovernmental Agreement (IGA), which outlines the commitment by the County to contribute \$4,566,110; however, they need to structure the commitment in \$456,611 annual payments over a ten year period from 2015 through 2024.
- Finance staff investigated short-term financing solutions to the funding issue and through a competitive bid process recommends accepting UMB Bank, n.a.’s bid to structure a 5-year private placement bond.
- Source of repayment for the Bonds is storm water revenues, including payments identified in the IGA with Adams County.
- The estimated closing costs on the Bonds include origination fees (\$11,500), bank legal fees (\$5,000), City legal fees (\$20,000), and miscellaneous fees (\$5,000) for a total of \$41,500.
- Council is requested to approve the ordinance as an Emergency Ordinance as it provides the Finance Team the ability to obtain financing at a rate close to current rates. If the ordinance was presented to be approved over a two reading horizon, the Finance Team would be required to wait approximately two months from the initial Council approval to obtain the financing and within that time frame, the capital markets may move adversely and increase the total financing cost.
- Appropriating the bond proceeds simultaneously will allow the project manager to commence work on the project without further delay upon closing of the financing. Closing is anticipated to occur in early February.

Expenditure Required: Not to exceed \$41,500

Source of Funds: All fees will be paid from the Bond proceeds; no additional funds need to be budgeted

Policy Issue

Should the City Council authorize staff to proceed with work required to secure a tax-exempt private placement bond issue in the amount not to exceed \$4,650,000 with UMB Bank, n.a. to finance a portion of the drainage improvements along Little Dry Creek west of Federal Boulevard, south of Westminster Station?

Alternative

Do not secure a private placement bond issue with UMB Bank, n.a. This alternative is not recommended. The terms of the IGA with Adams County dictate that they will pay for their commitment of the improvements over a 10-year period and the City does not have the available monies to fund their portion of the project. By securing a private placement issue, the City is able to ensure timely construction of drainage infrastructure improvements on the south side of Westminster Station.

Background Information

The Project and Funding Mechanism

City Council was presented with information at the December 15, 2014, Study Session regarding road and drainage improvements required on the south side of the Westminster commuter rail station. Council was also informed about the funding challenges given the magnitude of the improvements.

In particular, one of the funding challenges identified was the need to finance a portion of the costs to be paid by Adams County per an IGA. The County has committed \$4,566,110 per the IGA; however, they need to structure the commitment in \$456,611 annual payments over a ten year period from 2015 through 2024.

Since Adams County will not be able to fully fund their commitment in a lump sum nor are they willing to obtain their own financing, Finance investigated short-term financing solutions. Adams County is not obligated to fund any of the project and to get their commitment to fund a portion of the necessary improvements is welcomed, even if the City needs to obtain financing in order to efficiently complete the storm water project.

Selection Process for the Financing Partner

Using a competitive bid process, Staff received five financing proposals and evaluated them based on interest cost, origination and bank legal fees, prepayment terms and other requirements such as financing covenants. Staff requested bids for both five and six year repayment terms; however, it was determined that the City has sufficient cash flows to cover a 5-year amortization period.

Out of the five respondents, UMB Bank, n.a. was selected as the financial institution with the most favorable terms, including the lowest interest rate. The table below highlights some of the criteria utilized in the financing proposal evaluation for a 5-year term obligation. Please note that until financing is secured with a commitment by the City to engage in the financing, all the rates submitted will fluctuate; however, UMB's rate will still be considered the best proposal given the lower anticipated rate increase relative to the other responses as well as the other terms the bank is providing, such as a cap on legal fees, low origination fee, and no prepayment penalty.

These appropriations will amend Storm Drainage Fund revenue and expense accounts as follows:

| Bank | Current Rate | Interest Cost | Origination Fees | Bank Legal Fees |
|--------------|---------------------|----------------------|-------------------------|------------------------|
| Compass Bank | 2.40% | \$294,725 | \$0 | \$20,000 |
| KeyBank | 1.59% | \$190,283 | \$0 | \$20,000 |
| UMB Bank | 1.35% | \$161,370 | \$11,500 | \$5,000 |
| US Bank | 1.99% | \$278,202 | \$0 | \$15-30,000 |
| Vectra Bank | 3.55% | \$435,947 | \$23,000 | \$20,000 |

REVENUES

| Description | Account Number | Current Budget | Amendment | Revised Budget |
|--------------------------|-----------------|----------------|--------------------|----------------|
| Bond Proceeds | 2500.40620.0000 | \$0 | <u>\$4,650,000</u> | \$4,650,000 |
| Total Change to Revenues | | | <u>\$4,650,000</u> | |

EXPENSES

| Description | Account Number | Current Budget | Amendment | Revised Budget |
|------------------------------------|------------------------|----------------|--------------------|----------------|
| LDC Regional Detention – ADCO Note | 81525030829.80400.8888 | \$0 | <u>\$4,650,000</u> | \$4,650,000 |
| Total Change to Expenses | | | <u>\$4,650,000</u> | |

The recommended action of issuing tax-exempt Bonds to fund flood control improvements near the Westminster Station supports the strategic objectives of a Dynamic, Diverse Economy and Proactive Regional Collaboration.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: 2015 Stormwater Revenue Bond Ordinance
2015 Stormwater Supplemental Appropriation Ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2015

COUNCILOR'S BILL NO. **9**
INTRODUCED BY COUNCILORS

A BILL

FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF WESTMINSTER, COLORADO, OF ITS "CITY OF WESTMINSTER, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER UTILITY ENTERPRISE, ITS STORMWATER REVENUE BONDS, SERIES 2015", IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$4,650,000, PAYABLE SOLELY OUT OF THE PLEDGED REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S STORMWATER FACILITIES; PROVIDING OTHER DETAILS CONCERNING THE BONDS, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING OTHER MATTERS RELATING THERETO.

THE COUNCIL OF THE CITY OF WESTMINSTER, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER UTILITY ENTERPRISE, ORDAINS:

Section 1. Definitions. Terms used in this Ordinance shall have the meanings specified in this section for all purposes of this Ordinance and of any ordinance amendatory hereof, supplemental hereto or relating hereto, and of any instrument or document appertaining hereto, except where the context by clear implication otherwise requires. All definitions include the singular and plural and include all genders. Certain terms are parenthetically defined elsewhere herein.

"Additional Bonds" shall mean one or more series of bonds or other securities or obligations authorized to be issued by the City pursuant to Section 16 hereof and having a lien on the Pledged Revenues on a parity with the lien of the Bonds.

"Average Annual Debt Service" shall mean the sum of principal and interest requirements on the Bonds to be paid during each Fiscal Year for the period beginning with the Fiscal Year in which such computation is being made and ending with the last Fiscal Year in which any Bond becomes due, divided by the number of Fiscal Years (including portions thereof) during the period beginning with the Fiscal Year in which such computation is being made and ending with the last Fiscal Year in which any Bond becomes due.

"Bond Account" shall mean the account by that name described in Section 14 hereof.

"Bond Reserve Insurance Policy" shall mean any insurance policy, surety bond, irrevocable letter of credit or similar instrument deposited in or credited to the Reserve Account in lieu of or in partial substitution for moneys on deposit therein.

"Bonds" shall mean the City's single Stormwater Revenue Bond, Series 2015 issued to the Purchaser pursuant to this Ordinance.

“Business Day” shall mean a day on which banks located in the cities in which the principal offices of each of the Paying Agent and the Registrar are not required or authorized to be closed and on which the New York Stock Exchange is not closed.

“City” shall mean the City of Westminster, Colorado.

“City Council” or “Council” shall mean the City Council of the City or any successor in functions thereto, acting as the Governing Body of the Enterprise.

“Charter” shall mean the home rule Charter of the City, including all amendments thereto prior to the date hereof.

“Commercial Bank” shall mean any depository for public funds permitted by the laws of the State for political subdivisions of the State which has a capital and surplus of \$10,000,000 or more, and which is located within the United States.

“Construction Account” shall mean the account by that name established by Section 14 hereof.

“Cost of the Project” shall mean all costs, as designated by the Enterprise, of the Project, or any interest therein, which cost, at the option of the Enterprise (except as may be otherwise limited by law) may include all, any one or other portion of the incidental costs pertaining to the Project, including, without limitation:

(1) All preliminary expenses or other costs advanced by the Enterprise or advanced by the Federal Government, the State or by any other Person from any source, with the approval of the Council, or any combination thereof, or otherwise;

(2) The costs of making surveys and tests, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;

(3) The costs of contingencies;

(4) The costs of premiums on any builders’ risk insurance and performance bonds during the construction, installation and other acquisition of the Project, or a reasonably allocated share thereof;

(5) The costs of appraising, printing, estimates, advice, inspection, other services of engineers, architects, accountants, financial consultants, attorneys at law, clerical help and other agents and employees;

(6) The costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the Project and the issuance of the Bonds;

(7) All costs and expenses of issuing the Bonds including, without limitation, fees of the Paying Agent, bond counsel, counsel to the Purchaser, counsel to the Enterprise, financial advisor, and the origination/direct purchase fee of the Purchaser;

(8) The costs of the filing or recording of instruments and the cost of any title insurance premiums;

(9) The costs of funding any construction loans and other temporary loans pertaining to the Project and of the incidental expenses incurred in connection with such loans;

(10) The costs of demolishing, removing, or relocating any buildings, structures, or other facilities on land acquired for the Project, and of acquiring lands to which such buildings, structures or other facilities may be moved or relocated;

(11) The costs of machinery and equipment;

(12) The costs of any properties, rights, easements or other interests in properties, or any licenses, privileges, agreements and franchises;

(13) The costs of labor, material and obligations incurred to contractors, builders and materialmen in connection with the acquisition and construction of the Project;

(14) The costs of amending any resolution or other instrument pertaining to the Bonds or otherwise to the Stormwater Facilities; and

(15) All other expenses pertaining to the Project.

“Custodial Agreement” shall mean the agreement by and between the Enterprise and the Custodian dated as of the date of delivery of the Bonds.

“Custodian” shall mean UMB Bank, n.a., or any successor custodian under the Custodial Agreement.

“Enterprise” shall mean The City of Westminster, Colorado, Water and Wastewater Utility Enterprise, which consists of the City’s Water Facilities, Wastewater Facilities, and Stormwater Facilities.

“Enterprise Ordinance” shall mean Ordinance No. 2264 of Series 1994 of the City, as amended, authorizing the Enterprise to have and exercise certain powers in furtherance of its purposes.

“Finance Director” shall mean the Finance Director of the City, acting in his or her capacity as Treasurer of the Enterprise.

“Fiscal Year” shall mean the twelve (12) months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other twelve-month period as may from time to time be designated by the Council as the Fiscal Year of the Enterprise.

“Governing Body” shall mean the City Council of the City, acting as the Governing Body of the Enterprise.

“Governmental Obligations” shall mean any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein: (1) cash, (2) non-callable direct obligations of the United States of America (“Treasuries”), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the

investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) pre-refunded municipal obligations rated in one of the four highest rating categories by S&P and Moody's, respectively, or (5) any combination of the foregoing.

"Manager" shall mean the City Manager of the City, acting as the Manager of the Enterprise.

"Maximum Annual Debt Service Requirement" shall mean the maximum amount of all required payments of principal and interest on the Outstanding Bonds which will become due in any Fiscal Year.

"Ordinance" shall mean this Ordinance of the Enterprise, which provides for the issuance and delivery of the Bonds.

"Outstanding" shall mean as of any date of calculation, all Bonds or Additional Bonds theretofore executed, issued and delivered by the Enterprise except:

(1) Bonds or Additional Bonds theretofore cancelled by the Enterprise or any paying agent, or surrendered to the Enterprise or any paying agent for cancellation;

(2) Bonds or Additional Bonds in lieu of or in substitution for which other Bonds or Additional Bonds shall have been executed, issued and delivered by the Enterprise and authenticated by any registrar unless proof satisfactory to any registrar is presented that any such Bonds or Additional Bonds are duly held by the lawful owners thereof; or

(3) Bonds deemed to have been paid as provided in Section 19 hereof or bonds that are deemed to have been paid as provided in any similar section of an ordinance authorizing Additional Bonds.

"Owner" or "registered owner" shall mean the registered owner of any Bond as shown on the registration books kept by the Registrar.

"Parity Maximum Annual Debt Service Requirement" shall mean the maximum amount of all required payments of principal and interest which will become due in any Fiscal Year on the Outstanding Bonds, Outstanding Additional Bonds, and any Additional Bonds to be issued at the time of computation.

"Paying Agent" shall mean UMB Bank, n.a., or any successor thereto.

"Paying Agent Agreement" shall mean the agreement between the Enterprise and the Paying Agent.

"Permitted Investment" shall mean any investment or deposit permitted by the Charter, Ordinances of the City and State law.

"Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association or body politic; and the term includes any trustee, receiver, assignee or other similar representative thereof.

"Pledged Revenues" shall mean the Stormwater Revenues, the proceeds of the Bonds or other legally available moneys deposited into and held in the Bond Account and the Reserve Account; and interest or investment income on the Bond Account and the Reserve Account; all to the extent that such moneys are at any time required by Section 14 hereof to be deposited into and held in the Bond Account and Reserve Account.

“President” shall mean the Mayor of the City, acting as the President of the Enterprise.

“Principal Operations Office” shall mean the principal operations office of the Registrar and Paying Agent.

“Project” shall mean the stormwater improvements of the Enterprise.

“Purchaser” shall mean UMB Bank, n.a., as the initial purchaser of the Bonds.

“Rebate Account” shall mean the account by that name described in Section 14 hereof.

“Registrar” shall mean UMB Bank, n.a., or any successor thereto.

“Regular Record Date” shall mean the fifteenth day of the calendar month next preceding each interest payment date for the Bonds (other than a special interest payment date hereafter fixed for the payment of defaulted interest).

“Reserve Account” shall mean the account by that name described in Section 14 hereof.

“Reserve Account Requirement” shall mean zero, unless a different amount is set forth in the Sale Certificate as the Reserve Account Requirement.

“Sale Certificate” shall mean the certificate executed by the Manager or the Finance Director dated on or before the date of delivery of the Bonds, setting forth (i) the rate or rates of interest on the Bonds, (ii) the conditions on which and the prices at which the Bonds may be called for redemption; (iii) the price at which the Bonds will be sold; (iv) the principal amount of the Bonds; (v) the amount of principal of the Bonds maturing on each date; (vi) the dates on which interest will be paid and the first interest payment date; (vii) the Reserve Account Requirement, if any; and (viii) any other matters which may be determined by the Manager or the Finance Director pursuant to Section 11-57-205 of the Supplemental Act.

“Secretary” shall mean the City Clerk of the City, acting in his or her capacity as Secretary to the Enterprise.

“Special Record Date” shall mean a special date fixed to determine the names and addresses of registered owners for purposes of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 5 hereof.

“State” shall mean the State of Colorado.

“Stormwater Facilities” shall mean any one or more of the various devices used in the collection, treatment, or disposition of storm, flood or surface drainage waters, including all manmade structures or natural watercourses for the conveyance of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins and street facilities; all inlets; collection, drainage, or disposal lines; intercepting sewers; disposal plants; settling basins; outfall sewers; all pumping, power and other equipment and appurtenances; all extension, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities.

“Stormwater Revenues” shall mean all income from rates, fees, tolls and charges for the services furnished by, or the direct or indirect use of, the Stormwater Facilities, but excluding special assessments for Stormwater purposes.

“Supplemental Public Securities Act” shall mean Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended.

“Tax Code” shall mean the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds, and any regulations promulgated thereunder.

“Term Bonds” shall mean any Bonds that are payable on or before their specified maturity dates from sinking fund payments pursuant to Section 6B hereof.

“Treasurer” shall mean the Director of Finance of the City, or his or her successor in functions, if any, acting as treasurer for the Enterprise.

“Trust Bank” shall mean a Commercial Bank which is authorized to exercise and is exercising trust powers.

“Wastewater Facilities” shall mean any one or more of the various devices used in the collection, treatment, or disposition of sewage and industrial wastes of a liquid nature, including, without limitation, all inlets; collection, drainage, or disposal lines; intercepting sewers; wastewater disposal plants; outfall sewers; sewage lagoons; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; any and all rights or interests for such wastewater facilities; and all other necessary, incidental, or appurtenant properties, facilities, equipment, and costs relating to the foregoing.

“Water Facilities” shall mean water rights, raw water and any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements, and all other necessary, incidental, or appurtenant properties, facilities, equipment and costs relating to the foregoing.

Section 2. Recitals.

(A) The City is a municipal corporation duly organized and existing under the City’s Charter adopted pursuant to Article XX of the Constitution of the State of Colorado.

(B) The City operates the Stormwater Facilities and imposes and collects the Stormwater Revenues for the use of the Stormwater Facilities.

(C) The City operates its Stormwater Facilities as an enterprise for purposes of Article X, Section 20 of the State Constitution.

(D) The City has heretofore established the Enterprise and authorized the Enterprise to have and exercise certain powers in furtherance of its purposes.

(E) Pursuant to Article X, Section 20 and Article XX, Section 6 of the State Constitution, Chapter XI, and Section 11.1(c) of the Charter, the Enterprise is authorized to issue the Bonds, without voter approval in advance.

(F) The Council has determined that it is in the best interests of the City and the inhabitants thereof and the Enterprise, that stormwater revenue bonds in an aggregate principal amount of not to exceed \$4,650,000 be issued for the purpose of paying the Costs of the Project.

(G) The Enterprise intends to issue the Bonds to defray in part the cost of the Project.

(H) There is not now a pledge of the Pledged Revenues to the payment of any bonds or for any purposes.

(I) The Pledged Revenues may now be pledged lawfully and irrevocably for the payment of the Bonds.

(J) The City has received a proposal from the Purchaser for the private placement purchase of the Bonds.

(K) There is on file with the Secretary the proposed form of the Proposal, the Custodial Agreement and the Paying Agent Agreement.

(L) The City Council desires to cause the Bonds to be issued by the Enterprise, to authorize and direct the application of the proceeds thereof as set forth herein, and to provide security for the payment thereof, all in the manner hereinafter set forth.

Section 3. Short Title and Ratification. This ordinance shall be known and may be cited by the short title "2015 Stormwater Revenue Bond Ordinance."

All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council and other officers of the Enterprise with respect to the imposition and collection of the Pledged Revenues, the Project, and selling and issuing the Bonds for those purposes are ratified, approved and confirmed.

Section 4. Authorization of Project; Sale of Bonds. The Project hereby is authorized at a cost of not exceeding \$4,650,000. There hereby are authorized to be issued fully registered revenue securities of the Enterprise, to be designated "City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds, Series 2015" in the aggregate principal amount of not to exceed \$4,650,000, to be payable and collectible, both as to principal and interest, from the Pledged Revenues. The Bonds shall be sold to the Purchaser. Pursuant to the Supplemental Public Securities Act, the Council hereby delegates to the Manager or the Finance Director the authority to accept the proposal of the Purchaser.

Pursuant to Section 11-57-204 of the Supplemental Public Securities Act, a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Public Securities Act. The Council hereby elects to apply all of the provisions of the

Supplemental Public Securities Act to the Bonds. Either the Manager or the Finance Director is hereby independently authorized and directed to execute and deliver the Sale Certificate and to make and approve the final determinations contained therein, subject to the parameters and restrictions of this Ordinance.

Section 5. Bond Details. The Bonds shall be issued in fully registered form (i.e., registered as to both principal and interest) initially registered in the name of the Purchaser or its designee, shall be dated as of the date of delivery of the Bonds, shall be issued in the denomination of \$5,000 or any integral multiple thereof (provided that no Bond may be in a denomination which exceeds the principal coming due on any maturity date, and no individual Bond will be issued for more than one maturity and interest rate) and shall be numbered in such manner as the Registrar may determine.

The Bonds shall be dated as of the date of their delivery to the Purchaser. The Bonds shall mature, bear interest from their dated date to maturity and be sold, all as provided in the Sale Certificate; provided that

- (1) the aggregate principal amount of the Bonds shall not exceed \$4,650,000;
- (2) the Bonds shall mature no later than December 31, 2020;
- (3) the purchase price of the Bonds, shall not be less than 98% of the principal amount of the Bonds;
- (4) the Bonds shall be subject to redemption prior to maturity at any time at the option of the Enterprise without prior redemption premium;
- (5) the maximum annual repayment cost of the Bonds shall not exceed \$1,700,000;
- (6) the maximum total repayment cost of the Bonds shall not exceed \$5,100,000; and
- (7) the net effective interest rate on the Bonds shall not exceed 2.00%.

The Bonds shall mature on June 1 in the years set forth in the Sale Certificate, and interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on June 1 and December 1, commencing on the date provided in the Sale Certificate.

The principal of and premium, if any, on any Bond shall be payable to the registered owner thereof as shown on the registration records kept by the Registrar at the Principal Operations Office, upon maturity thereof or prior redemption and upon presentation and surrender at the Principal Operations Office of the Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity or prior redemption, it shall continue to draw interest at the same interest rate borne by said Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made by check or draft mailed or wire sent by the Paying Agent from the Principal Operations Office, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof at the address shown on the registration records kept by the Registrar at the close of business on the Regular Record Date for such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner thereof at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date and the date fixed for payment of the defaulted interest shall be fixed by the Registrar whenever moneys become available for payment of the

defaulted interest. Notice of the Special Record Date and the date fixed for payment of the defaulted interest shall be given to the registered owners of the Bonds not less than ten days prior to the Special Record Date by first-class mail to each such registered owner as shown on the Registrar's registration records on a date selected by the Registrar, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to between the owner of such Bond and the Paying Agent (provided, however, that the City shall not be required to make funds available to the Paying Agent prior to the payment dates stated in the Registrar Agreement). All such payments shall be made in lawful money of the United States of America without deduction for the services of the Paying Agent or Registrar.

Section 6. Prior Redemption.

(A) **OPTIONAL PRIOR REDEMPTION:** The Bonds designated in the Sale Certificate, if any, shall be subject to redemption at the option of the Enterprise from any legally available funds on the dates set forth in the Sale Certificate in whole, or in part from any maturities, in any order of maturity and by lot within a maturity from Bonds of the same maturity and interest rate, in such manner as the Enterprise may determine (giving proportionate weight to Bonds in denominations larger than \$5,000), at the price set forth in the Sale Certificate, subject to the parameters and restrictions of this Ordinance.

(B) **MANDATORY REDEMPTION:** The Term Bonds shall be subject to mandatory sinking fund redemption at the times, in the amounts and at the prices provided in the Sale Certificate.

On or before the thirtieth day prior to each such sinking fund payment date, the Registrar shall proceed to call the Term Bonds for redemption from such sinking fund on the next June 1, and give notice of such call without further instruction or notice from the Enterprise.

At its option, to be exercised on or before the sixtieth day next preceding any such sinking fund redemption date, the Enterprise may (a) deliver to the Registrar for cancellation Term Bonds in an aggregate principal amount desired or (b) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the Enterprise on such sinking fund redemption date and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The Enterprise will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding sentence are to be availed with respect to such sinking fund payment. Failure of the Enterprise to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this paragraph B.

So long as the Purchaser is the sole owner of 100% of the Bonds, the Purchaser shall not be required to surrender the Bonds to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption, but shall be required to surrender such Bond on the final maturity date thereof to receive payment of the final principal payment thereof.

(C) **PARTIAL REDEMPTION:** In the case of Bonds of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the owner of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof.

(D) NOTICE: Notice of redemption shall be given by the Registrar in the name of the Enterprise, by sending a copy of such notice by certified, first-class postage prepaid mail, or by electronic means, not more than 60 nor less than 30 days prior to the redemption date, to the Purchaser, and to each registered owner of any Bond, all or a portion of which is called for prior redemption, at his address as it last appears on the registration records kept by the Registrar. Failure to give such notice by mailing to the registered owner of any Bond or to the Purchaser or any defect therein, shall not affect the validity of the proceedings for the redemption of any other Bonds.

Such notice shall identify the Bonds or portions thereof to be redeemed (if less than all are to be redeemed) and the date fixed for redemption, and shall further state that on such redemption date the principal amount thereof and the designated premium thereon, if any, will become due and payable at the Paying Agent, and that from and after such date interest will cease to accrue. Accrued interest to the redemption date will be paid by check or draft mailed to the registered owner (or by alternative means if so agreed to by the Paying Agent and the registered owner). Notice having been given in the manner hereinabove provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation and surrender thereof at the Paying Agent, the Enterprise will pay the principal of and premium, if any, on Bond or Bonds so called for redemption.

Notwithstanding the provisions of this Section, any notice of redemption shall either (a) contain a statement that the redemption is conditioned upon the receipt by the Paying Agent on or before the redemption date of funds sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be cancelled by written notice to the Owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed, or (b) be given only if funds sufficient to pay the redemption price of the Bonds so called for redemption are on deposit with the Paying Agent in the applicable fund or account.

Section 7. Special Obligations. All of the Bonds, together with the interest accruing thereon shall be payable and collectible solely out of the Pledged Revenues, which are hereby irrevocably so pledged; the owner or owners of the Bonds may not look to any general or other fund for the payment of principal and interest on the Bonds, except the designated special funds pledged therefor; and the Bonds shall not constitute an indebtedness nor a debt within the meaning of any applicable charter, constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the Enterprise or the City.

Section 8. Form of Bonds and Registration Panel. The Bonds and the registration panel shall be substantially as follows (provided that any portion of the Bond text may, with appropriate references, be printed on the back of the Bonds), with such omissions, insertions, endorsements, and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this Ordinance, or be consistent with this Ordinance and necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto:

| <u>June 1 of the Year</u> | <u>Principal Amount</u> |
|-------------------------------|-----------------------------|
| 2015 | |
| 2016 | |
| 2017 | |
| 2018 | |
| 2019 | |
| 2020 | |
| TOTAL | |

*Maturity.

So long as the Purchaser is the sole owner of 100% of this Bond, the Purchaser shall not be required to surrender this Bond to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption, but shall be required to surrender this Bond on the final maturity date thereof to receive payment of the final principal payment thereof.

Reference is made to the Ordinance and to all Ordinances supplemental thereto, with respect to the nature and extent of the security for the Bonds, the accounts, funds or revenues pledged, rights, duties and obligations of the Enterprise, the Paying Agent the rights of the Owners of the Bonds, the events of defaults and remedies, the circumstances under which any Bond is no longer Outstanding, the issuance of additional bonds and the terms on which such additional bonds may be issued under and secured by the Ordinance, the ability to amend the Ordinance, and to all the provisions of which the Owner hereof by the acceptance of this Bond assents.

THE BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, AND PURSUANT TO THE CHARTER AND THE ORDINANCE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ENTERPRISE, SECURED BY THE PLEDGED REVENUES. THE BONDS DO NOT CONSTITUTE A DEBT OF THE ENTERPRISE OR THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE ENTERPRISE, THE CITY, THE STATE NOR ANY OF THE POLITICAL SUBDIVISIONS THEREOF IS LIABLE THEREFOR. NEITHER THE MEMBERS OF THE CITY COUNCIL NOR ANY PERSONS EXECUTING THIS BOND SHALL BE PERSONALLY LIABLE FOR THIS BOND.

It is certified, recited and warranted that all the requirements of law have been fully complied with by the proper officers of the Enterprise in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the Constitution of the State, with the Charter of the City, the Enterprise Ordinance, and with the Ordinance and any ordinances supplemental thereto; and that this Bond does not contravene any Constitutional, statutory or Charter limitation.

It is also certified, recited, and warranted that the Bonds are issued under the authority of the Ordinance and the Supplemental Public Securities Act. It is the intention of the Enterprise, as expressed in the Ordinance, that this recital shall conclusively impart full compliance with all of the provisions of the Ordinance and shall be conclusive evidence of the

validity and the regularity of the issuance of the Bonds after their delivery for value and that all of the Bonds issued are incontestable for any cause whatsoever after their delivery for value.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the certificate of authentication hereon shall have been duly executed by the Paying Agent.

IN TESTIMONY WHEREOF, the City Council of the City of Westminster, acting by and through its Water and Wastewater Utility Enterprise, has caused this bond to be signed and executed in its name with a manual or facsimile signature of the President, and to be signed, executed and attested with a manual or facsimile signature of the Secretary, with a manual or facsimile impression of the seal of the City affixed hereto, all as of the date specified above.

(Manual or Facsimile Signature)
President

(MANUAL OR FACSIMILE SEAL)

Attest:

(Manual or Facsimile Signature)
Secretary

(End of Form of Bond)

(Form of Registrar's Certificate of Authentication)

This is one of the Bonds described in the within-mentioned Bond Ordinance, and this Bond has been duly registered on the registration records kept by the undersigned as Registrar for such Bonds.

UMB BANK, N.A.,
as Registrar

Date of Authentication
and Registration:

By: _____
Finance Director/Treasurer

(End of Form of Registrar's Certificate of Authentication)

(Form of Prepayment Panel)

The following installments of principal (or portion thereof) of this bond have been prepaid in accordance with the terms of the Bond Ordinance authorizing the issuance of this bond.

| <u>Date of Prepayment</u> | <u>Principal Prepaid</u> | <u>Signature of Authorized Representative of the Depository</u> |
|-------------------------------|------------------------------|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

(End of Form of Prepayment Panel)

(Form of Assignment)

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within bond and hereby irrevocably constitutes and appoints _____ attorney, to transfer the same on the records of the Registrar, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed by a member
of the Medallion Signature Program:

Address of transferee:

Social Security or other tax
identification number of transferee:

NOTE: The signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

EXCHANGE OR TRANSFER FEES MAY BE CHARGED

(End of Form of Assignment)

Section 9. Uniform Commercial Code. Subject to the registration provisions hereof, the Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the owner or owners thereof shall possess all rights enjoyed by the holders or owners of negotiable instruments under the provisions of the Uniform Commercial Code-Investment Securities. The principal of and interest on the Bonds shall be paid, and the Bonds shall be transferable, free from and without regard to any equities between the City and the original or any intermediate owner of any Bonds or any setoffs or cross-claims.

Section 10. Execution. The Bonds shall be executed in the name and on behalf of the Enterprise by the signature of the President, shall be sealed with a manual or facsimile impression of the seal of the City and attested by the signature of the Secretary. Each Bond shall be authenticated by the manual signature of an authorized officer or employee of the Registrar as hereinafter provided. The signatures of the President and the Secretary may be by manual or facsimile signature. The Bonds bearing the manual or facsimile signatures of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the Enterprise (subject to the requirement of authentication by the Registrar as hereinafter provided), notwithstanding that before the delivery thereof and payment therefor or before the issuance of the Bonds upon transfer or exchange, any or all of the persons whose manual or facsimile signatures appear thereon shall have ceased to fill their respective offices. The President and the Secretary shall, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures any facsimiles thereof appearing on the Bonds. At the time of the execution of the signature certificate, the President and the Secretary may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds.

No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly manually executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by the Registrar if manually signed by an authorized officer or employee of the Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds issued hereunder. By authenticating any of the Bonds initially delivered pursuant to this Ordinance, the Registrar shall be deemed to have assented to the provisions of this Ordinance.

Section 11. Registration, Transfer and Exchange.

(A) The Bonds shall be registered in the name of the Purchaser or its designee. Upon the surrender for transfer of any Bond at the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall enter such transfer on the registration records and shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same series, of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not previously assigned. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the series and the same maturity and interest rate of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not previously assigned. The Registrar may impose reasonable charges in connection with such exchanges and transfers of Bonds, which charges (as well as any tax or other governmental charge required to be paid with respect to such exchange or transfer) shall be paid by the registered owner requesting such exchange or transfer.

(B) The Registrar shall not be required to transfer or exchange (1) any Bond or portion thereof during a period beginning at the opening of business 15 days before the day of the mailing of notice of prior redemption as herein provided and ending at the close of business on the day of such mailing, or (2) any

Bond or portion thereof after the mailing of notice calling such Bond or any portion thereof for prior redemption, except for the unredeemed portion of the Bonds being redeemed in part.

(C) The person in whose name any Bond shall be registered on the registration records kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes; except as may be otherwise provided in Section 5 hereof with respect to payment of interest; and, subject to such exception, payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

(D) If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it and the Enterprise may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not previously assigned. If such lost, stolen, destroyed, or mutilated Bond shall have matured or is about to become due and payable, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

(E) The officers of the Enterprise are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.

(F) Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Registrar for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the Enterprise.

Section 12. Book Entry. The Bonds shall be registered in the name of the Purchaser and shall not be registered in book-entry format.

Section 13. Delivery of Bonds and Disposition of Proceeds. When the Bonds have been duly executed by appropriate Enterprise officers and authenticated by the Registrar, the Enterprise shall cause the Bonds to be delivered to the Purchaser on receipt of the agreed purchase price. The Bonds shall be delivered in such denominations as the Purchaser shall direct (but subject to the provisions of Sections 11 and 12 hereof); and the Registrar shall initially register the Bonds in such name or names as the Purchaser shall direct.

The proceeds of the Bonds shall be deposited promptly by the Enterprise into the Construction Account and shall be accounted for as described in the Custodial Agreement and are hereby pledged therefor, but the Purchaser of the Bonds or any subsequent Owner in no manner shall be responsible for the application or disposal by the Enterprise or any of its officers of any of the funds derived from the sale.

All proceeds of the Bonds shall be credited to the Construction Account and used by the Enterprise, together with any other available moneys therefor, to pay the Costs of the Project, and costs incidental to the issuance of the Bonds. After payment of all Costs of the Project and of issuance of the Bonds, or after adequate provisions therefor is made, any unexpended balance of the proceeds of the Bonds shall be deposited in the Bond Account and applied to the payment of the principal of and interest on the Bonds.

Section 14. Lien on Pledged Revenues; Use of Pledged Revenues. The Bonds constitute a pledge of, and an irrevocable lien (but not necessarily an exclusively such lien) on all of the Pledged Revenues. The Bonds and any Additional Bonds authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance thereof, it being the intention of the Enterprise that there shall be no priority among the Bonds and Additional Bonds, regardless of the fact that they may be actually issued and delivered at different times.

So long as any Bonds shall be Outstanding, either as to principal or interest, the Pledged Revenues shall, upon receipt by the Enterprise, be applied as follows.

(A) BOND ACCOUNT: First, there shall be credited from the Pledged Revenues to a special account hereby created, known as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bond Account,” the following amounts:

(1) Interest Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next maturing installment of interest on the Bonds then Outstanding.

(2) Principal Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, or commencing on the first day of the month one year next prior to the first principal payment date of any of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next installment of principal of the Bonds coming due at maturity, or pursuant to mandatory redemption, if any.

If prior to any interest payment date or principal payment date there has been accumulated in the Bond Account the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraph (1) or (2) (whichever is applicable) of this paragraph, may be appropriately reduced; but the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date. The moneys in the Bond Account shall be used only to pay the principal of, prior redemption premium if any, and interest on the Bonds as the same becomes due. The payments required in subparagraph (1) or (2) of this paragraph shall be made concurrently with payments required to be made to pay the principal of or interest on Additional Bonds pursuant to any ordinance authorizing the issuance of Additional Bonds.

(B) RESERVE ACCOUNT: Second, except as hereinafter provided, from any remaining Pledged Revenues there shall be credited monthly to a special account hereby created, known as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds Reserve Account” an amount, if any, which is necessary to maintain the Reserve Account as a continuing reserve in an amount not less than the Reserve Account Requirement or to pay the issuer of any Bond Reserve Insurance Policy (if any) any amounts owing to such issuer under the terms of such Bond Reserve Insurance Policy. Investment earnings on deposits in the Reserve Account shall remain in the Reserve Account if the amount on deposit in the Reserve Account does not equal the Reserve Account Requirement. No credit need be made to the Reserve Account so long as the moneys and/or a Bond Reserve Insurance Policy (if any) therein equal the Reserve Account Requirement (regardless of the source of such accumulations). The Reserve Account Requirement shall be accumulated and maintained as a continuing reserve to be used, except as provided in paragraphs C and E of this Section and Section 19 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the

Bonds resulting from the failure to credit to the Bond Account sufficient funds to pay said principal and interest as the same accrue or to pay the issuer of any Bond Reserve Insurance Policy (if any) any amounts owing to such issuer under the terms of the Bond Reserve Insurance Policy.

In lieu of all or a portion of the moneys required to be deposited in the Reserve Account by this Ordinance, the Enterprise may at any time or from time to time deposit a Bond Reserve Insurance Policy in the Reserve Account in full or partial satisfaction of the Reserve Account Requirement. Any such Bond Reserve Insurance Policy shall be payable (or available to be drawn upon) on any date on which moneys will be required to be withdrawn from the Reserve Account as provided herein. Upon deposit of any Bond Reserve Insurance Policy in the Reserve Account, the Enterprise may transfer moneys equal to the amount payable under the Bond Reserve Insurance Policy from the Reserve Account and apply such moneys to any lawful purpose.

If the tax covenant contained in Section 18L of this Ordinance does not permit the use of proceeds of any series of Bonds for a full funding of the Reserve Account in the amount necessary to have the Reserve Account funded at the Reserve Account Requirement, the maximum amount of proceeds of such series of Bonds which may be deposited to the Reserve Account pursuant to Section 18L shall be deposited to the Reserve Account upon the issuance of the Bonds and Pledged Revenues shall be deposited to the Reserve Account monthly so that not later than twelve calendar months after the date of issuance of the Bonds the amount on deposit in the Reserve Account shall equal the Reserve Account Requirement.

The payments required to be made by this paragraph shall be made concurrently with payments required to be made to any reserve fund or account pursuant to any ordinance authorizing Additional Bonds and concurrently with any repayment or similar obligations payable to any surety provider issuing any reserve fund insurance policy with respect to any Additional Bonds. If there are insufficient Pledged Revenues to comply with the requirements of the first sentence of this paragraph, available Pledged Revenues shall be credited or paid to the Reserve Account and to reserve funds or accounts which may be established by any ordinance authorizing Additional Bonds (or to the issuer of any Bond Reserve Insurance Policy or any other surety provider issuing any reserve fund insurance policy with respect to any Additional Bonds) pro rata, based upon the aggregate principal amount of the Bonds and any such Additional Bonds then Outstanding; provided, however, that compliance with the provisions of this sentence shall not cure any Event of Default caused by non-compliance with the first sentence of this paragraph.

(C) **TERMINATION UPON DEPOSITS TO MATURITY OR REDEMPTION DATE:** No payment need be made into the Bond Account, the Reserve Account, or both, if the amount in the Bond Account and the amount in the Reserve Account total a sum at least equal to the entire amount of the Outstanding Bonds, both as to principal and interest to their respective maturities, or to any redemption date on which the Enterprise shall have exercised its option to redeem the Bonds then Outstanding and thereafter maturing, including any prior redemption premiums then due, and both accrued and not accrued, in which case moneys in the Bond Account and Reserve Account in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue, and any moneys in excess thereof in the two Accounts may be withdrawn and used for any lawful purpose.

(D) **DEFRAYING DELINQUENCIES IN BOND AND RESERVE ACCOUNTS:** If on any required monthly payment date the Enterprise shall for any reason fail to pay into the Bond Account the full amount above stipulated, then an amount shall be paid into the Bond Account on such date from the Reserve Account equal to the difference between the amount paid and the full amount so stipulated. Any cash on deposit in the Reserve Account shall be transferred to the Bond Account to cover such a deficiency prior to the transfer of funds drawn under the Bond Reserve Insurance Policy. After such a

draw any available Pledged Revenues, after the payments required by paragraph A of this Section, shall be used first to repay the issuer of the Bond Reserve Insurance Policy (if any), to reinstate the Bond Reserve Insurance Policy and then to replenish cash in the Reserve Account. The cash so used shall be replaced in the Reserve Account from the first Pledged Revenues received that are not required to be otherwise applied by this Section, but excluding any payments required for any subordinate obligations; provided, however, that an amount equal to the amount withdrawn from the Reserve Account shall be deposited by the Enterprise in the Reserve Account no later than twelve months from the date of such withdrawal. If at any time the Enterprise shall for any reason fail to pay into the Reserve Account the full amount above stipulated from the Pledged Revenues, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first Pledged Revenues thereafter received not required to be applied otherwise by this Section, but excluding any payments required for any subordinate obligations. The moneys in the Bond Account and in the Reserve Account shall be used solely for the purpose of paying the principal and any redemption premium of and the interest on the Bonds, except that moneys in the Reserve Account shall be used to pay the issuer of any Bond Reserve Insurance Policy any amounts owing to such issuer under the terms of the Bond Reserve Insurance Policy; provided, however, that any moneys at any time in excess of the Reserve Account Requirement calculated with respect to the Bonds in the Reserve Account may be withdrawn therefrom and used for any lawful purpose; and provided, further, that any moneys in the Bond Account and in the Reserve Account in excess of accrued and unaccrued principal and interest requirements to the respective maturities of the Outstanding Bonds may be used as provided in paragraphs G and H of this Section.

(E) REBATE ACCOUNT: Second, concurrently with any payments required to be made pursuant to any ordinance authorizing the issuance of Additional Bonds with respect to any rebate funds established thereby, there shall be deposited in a special account hereby created, known as the “City of Westminster, Colorado, 2015 Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds Rebate Account” amounts required by Section 148(f) of the Tax Code to be held until such time as any required rebate payment is made. Amounts in the Rebate Account shall be used for the purpose of making the payments to the United States required by Section 148(f) of the Tax Code. Any amounts in excess of those required to be on deposit therein by Section 148(f) of the Tax Code shall be withdrawn therefrom and deposited into the Bond Account. Funds in the Rebate Account shall not be subject to the lien created by this Ordinance to the extent such amounts are required to be paid to the United States Treasury.

(F) CONSTRUCTION ACCOUNT: A special fund is hereby created and established with the Custodian to be designated as the “City of Westminster, Colorado, 2015 Stormwater Revenue Bonds Construction Account.” Moneys on deposit in the Construction Account shall be disbursed, upon the written direction of the Enterprise, to pay the Costs of the Project and shall be governed by the terms of the Custodial Agreement.

(G) INTEREST ON BOND RESERVE INSURANCE POLICY DRAWS: After the payments required by A, B and E of this Section, the Pledged Revenues shall be used to pay interest on amounts advanced under any Bond Reserve Insurance Policy or any similar policy, surety, letter of credit or similar instrument deposited in or credited to a reserve account for Additional Bonds.

(H) PAYMENT FOR SUBORDINATE OBLIGATIONS: After the payments required by paragraphs A, B, E and F of this Section, the Pledged Revenues shall be used by the Enterprise for the payment of interest on and principal of any obligations secured by Pledged Revenues subordinate to the lien of the Bonds, hereafter authorized to be issued, including reasonable reserves therefor.

(I) USE OF REMAINING REVENUES: After making the payments required to be made by this Section, any remaining Pledged Revenues may be used for any lawful purpose.

Section 14. General Administration of Accounts. The accounts designated in Section 14 hereof shall be administered as follows subject to the limitations stated in Section 18L hereof:

(A) BUDGET AND APPROPRIATION OF ACCOUNTS: The sums provided to make the payments specified in Section 14 hereof are hereby appropriated for said purposes, and said amounts for each year shall be included in the biennial budget and the appropriation ordinance or measures to be adopted or passed by the City Council in each year respectively while any of the Bonds, either as to principal or interest, are Outstanding and unpaid. No provision of any constitution, statute, charter, ordinance, resolution, or other order or measure enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the Enterprise to keep and perform the covenants contained in this Ordinance so long as any of the Bonds remain Outstanding and unpaid. Nothing herein shall prohibit the City Council, at its sole option, from appropriating and applying other funds of the Enterprise legally available for such purpose to the Bond Account or Reserve Account for the purpose of providing for the payment of the principal of, interest on or any premiums due with respect to the Bonds.

(B) PLACES AND TIMES OF DEPOSITS: Each of the special accounts described in Section 14 hereof shall be maintained as a book account kept separate and apart from all other accounts or funds of the Enterprise as trust accounts solely for the purposes herein designated therefor. For purposes of investment of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such book accounts pertaining to the Pledged Revenues or to such accounts and any other funds of the Enterprise to be continued under this Ordinance. Moneys in any such book account shall be continuously secured to the fullest extent required by the laws of the State for the securing of public accounts. Each periodic payment shall be credited to the proper book account not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.

(C) INVESTMENT OF ACCOUNTS: Any moneys in any account described in Section 14 of this Ordinance may be invested or reinvested in any Permitted Investment. Securities or obligations purchased as such an investment shall either be subject to redemption at any time at face value by the holder thereof at the option of such holder, or shall mature at such time or times as shall most nearly coincide with the expected need for moneys from the account in question. Securities or obligations so purchased as an investment of moneys in any such account shall be deemed at all times to be a part of the applicable account. The Enterprise shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given account whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such account.

(D) NO LIABILITY FOR LOSSES INCURRED IN PERFORMING TERMS OF ORDINANCE: Neither the Enterprise nor any officer of the Enterprise shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

(E) CHARACTER OF FUNDS: The moneys in any fund or account herein authorized shall consist of lawful money of the United States or investments permitted by Section 15C hereof or both such money and such investments. Moneys deposited in a demand or time deposit account in or evidenced by a certificate of deposit of a Commercial Bank pursuant to Section 15C hereof, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.

Section 16. Additional Bonds.

(A) LIMITATIONS UPON ISSUANCE OF ADDITIONAL BONDS: Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the Enterprise of Additional Bonds

payable from and constituting a lien upon the Pledged Revenues on a parity with the lien of the Bonds. Such Additional Bonds may be payable solely from Pledged Revenues or they may be payable from Pledged Revenues and another revenue or fund of the Enterprise (“Additional Pledged Revenues”). Regardless of whether payable solely from Pledged Revenues or from Pledged Revenues and Additional Pledged Revenues, such bonds or other obligations may be issued only if for the Fiscal Year immediately preceding the issuance of any Additional Bonds, the amount of Pledged Revenues in such Fiscal Year equaled or exceeded 125% of the Parity Maximum Annual Debt Service Requirement. In addition, if the Enterprise has drawn on the Bond Reserve Insurance Policy, the policy costs due and owing to the issuer of the Bond Reserve Insurance Policy shall be added to Parity Maximum Annual Debt Service for purposes of determining if the test in the preceding sentence has been met. For the purpose of satisfying the aforementioned 125% test, any Additional Pledged Revenues which are pledged to payment of the Bonds prior to or concurrently with the issuance of Additional Bonds, any rate, fee, toll or charge, now existing or hereafter imposed, which legally becomes a part of the Pledged Revenues prior to the issuance of Additional Bonds, and which increase is imposed prior to the issuance of Additional Bonds can be considered for its estimated effect on the amount of the Pledged Revenues as if increase had been in effect for the Fiscal Year immediately preceding the issuance of such Additional Bonds.

(B) **CERTIFICATE OF REVENUES:** A written certification by an officer or employee of the Enterprise that the requirements of paragraph A of this Section have been met shall be conclusively presumed to be accurate in determining the right of the Enterprise to authorize, issue, sell and deliver said Additional Bonds on a parity with the Bonds.

(C) **SUBORDINATE OBLIGATIONS PERMITTED:** Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the Enterprise of additional obligations payable from and constituting a lien upon the Pledged Revenues subordinate or junior to the lien of the Bonds.

(D) **SUPERIOR OBLIGATIONS PROHIBITED:** Nothing in this Ordinance shall be construed so as to permit the Enterprise to hereafter issue obligations payable from the Pledged Revenues having a lien thereon prior or superior to the Bonds.

Section 17. Refunding Obligations.

(A) **GENERALLY.** If at any time after the Bonds, or any part thereof, shall have been issued and remain Outstanding, the Enterprise shall find it desirable to refund any Outstanding obligations payable from the Pledged Revenues, said obligations, or any part thereof, may be refunded, subject to the provisions of paragraph B of this Section, if (1) the obligations to be refunded, at the time of their required surrender for payment, shall then mature or shall then be callable for prior redemption at the Enterprise’s option upon proper call, or (2) the owners of the obligations to be refunded consent to such surrender and payment.

(B) **PROTECTION OF OBLIGATIONS NOT REFUNDED:** Any refunding obligations payable from the Pledged Revenues shall be issued with such details as the City Council may provide, so long as there is no impairment of any contractual obligation imposed upon the Enterprise by any proceedings authorizing the issuance of any unrefunded portion of obligations payable from the Pledged Revenues; but so long as any Bonds are Outstanding, refunding obligations payable from the Pledged Revenues may be issued on a parity with the unrefunded Bonds only if:

(1) Prior Consent. The Enterprise first receives the consent of the Owner or Owners of the unrefunded Bonds; or

(2) Requirements Not Increased. The refunding obligations do not increase for any Fiscal Year prior to and including the last maturity date of any unrefunded Bonds, the aggregate principal and interest requirements evidenced by such refunding obligations and by any Outstanding Bonds and Outstanding Additional Bonds not refunded, and the lien of any refunding parity obligations on the Pledged Revenues is not raised to a higher priority than the lien thereon of any obligations thereby refunded; or

(3) Earnings Test. The refunding obligations are issued in compliance with paragraphs A and B of Section 16 hereof.

Section 18. Protective Covenants. The Enterprise hereby additionally covenants and agrees with each and every owner of the Bonds that:

(A) USE OF BOND PROCEEDS: The Enterprise will proceed with the Project without delay and with due diligence.

(B) PAYMENT OF BONDS: The Enterprise will promptly pay the principal of and interest on every Bond issued hereunder and secured hereby on the dates and in the manner specified herein and in said Bonds according to the true intent and meaning hereof. Such principal and interest is payable solely from the Pledged Revenues.

(C) RATE MAINTENANCE COVENANT: The City shall prescribe, revise and collect rates, fees, tolls and charges for the use of the Stormwater Facilities that shall produce Stormwater Revenues sufficient to pay in each Fiscal Year an amount at least equal to one hundred twenty-five percent (125%) of the Parity Maximum Annual Debt Service Requirement plus any amounts required to meet then existing deficiencies pertaining to any fund or account relating to the Pledged Revenues or any securities payable therefrom plus one hundred percent (100%) of all amounts then due and owing to any provider of a bond insurance policy or reserve fund insurance policy, if hereafter obtained. In the event that the rates, fees, tolls and charges for the use of the Stormwater Facilities at any time should not be sufficient to make all of the payments and accumulations required by this Ordinance, the Enterprise shall increase its rates, fees, tolls and charges for the use of the Stormwater Facilities to such extent as to insure the payments and accumulations required by the provisions of this Ordinance.

(D) COLLECTION OF CHARGES: The City shall cause rates, fees, tolls and charges for the use of the Stormwater Facilities to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Pledged Revenues shall be adequate to meet the requirements of this Ordinance, including without limitation Section 18C of this Ordinance, and any other ordinance or instrument supplemental thereto. The rates, fees, tolls and charges for the use of the Stormwater Facilities shall be collected in any lawful manner.

(E) DEFENSE OF LEGALITY OF PLEDGED REVENUES: The City shall, to the extent permitted by law, defend the validity and legality of this Ordinance and rates, fees, tolls and charges for the use of the Stormwater Facilities against all claims, suits and proceedings which would diminish or impair the Pledged Revenues. Furthermore, the City shall amend from time to time the provisions of any ordinance or resolution of the City, as necessary to prevent impairment of the Pledged Revenues as required to meet the principal of, interest on, and prior redemption premium, if any, of the Bonds when due.

(F) FURTHER ASSURANCES: At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be

necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds and accounts hereby pledged or assigned, or intended so to be, or which the City or the Enterprise may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Ordinance. The City, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of said Pledged Revenues and other funds and accounts pledged hereunder and all the rights of every owner of any of the Bonds against all claims and demands of all Persons whomsoever.

(G) **CONDITIONS PRECEDENT:** Upon the issuance of any of the Bonds, all conditions, acts and things required by the Constitution or laws of the United States, the Constitution or laws of the State, the Charter, the Enterprise Ordinance or this Ordinance, to exist, to have happened, and to have been performed precedent to or in the issuance of the Bonds shall exist, have happened and have been performed, and the Bonds, together with all other obligations of the Enterprise, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States, the Constitution or laws of the State or the Charter, or the Enterprise Ordinance.

(H) **RECORDS:** So long as any of the Bonds remain Outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues and the accounts created or continued by this Ordinance.

(I) **AUDITS:** The City further agrees that it will, within 210 days following the close of each Fiscal Year, cause an audit of such books and accounts to be made by a certified public accountant, who is not an employee of the City, showing the Pledged Revenues. The City agrees to allow the owner of any of the Bonds to review and copy such audits and reports, at the City's offices, at his request. Copies of such audits and reports will be furnished to the Purchaser.

(J) **PERFORMING DUTIES:** The City will faithfully and punctually perform or cause to be performed all duties with respect to the Pledged Revenues required by the Charter, the Enterprise Ordinance, and the Constitution and laws of the State and the ordinances and resolutions of the Enterprise, including but not limited to the proper collection and enforcement of rates, fees, tolls and charges for the use of the Stormwater Facilities and the segregation of the Pledged Revenues and their application to the respective accounts herein designated.

(K) **OTHER LIENS:** As of the date of issuance of the Bonds, there are no liens or encumbrances of any nature whatsoever on or against any of the Pledged Revenues.

(L) **TAX COVENANT:** The Enterprise and the City covenant for the benefit of the registered owners of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the Enterprise or any facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the Enterprise in fulfilling the above covenant under the Tax Code and Colorado law have been met.

(M) ENTERPRISE'S EXISTENCE: The Enterprise will maintain its corporate identity and existence so long as any of the Bonds remain Outstanding, unless another political subdivision by operation of law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the Enterprise and is obligated by law to receive and distribute the Pledged Revenues in place of the Enterprise, without materially adversely affecting the privileges and rights of any owner of any Outstanding Bonds.

(N) SURETY BONDS: Each official or employee of the City having custody of the Pledged Revenues, or responsible for their handling, shall be fully bonded at all times, which bond shall be conditioned upon the proper application of such money. In lieu of such bond, the City may purchase one or more insurance policies deemed by the City to be sufficient to protect the City against any loss with regard to the Pledged Revenues arising from the malfeasance or misfeasance by any official or employee of the City having custody of the Pledged Revenues.

(O) PREJUDICIAL CONTRACTS AND ACTION PROHIBITED: No contract will be entered into, nor will any action be taken, by the Enterprise by which the rights and privileges of any Owner are impaired or diminished.

Section 19. Defeasance. When the Bonds have been fully paid both as to principal and interest, all obligations hereunder shall be discharged and the Bonds shall no longer be deemed to be Outstanding for any purpose of this Ordinance, except as set forth in Section 18L hereof. Payment of any Bonds shall be deemed made when the Enterprise has placed in escrow with a Trust Bank an amount sufficient (including the known minimum yield from Governmental Obligations) to meet all requirements of principal, interest, and any prior redemption premiums on such Bonds as the same become due to maturity or a designated prior redemption date; and, if Bonds are to be redeemed prior to maturity pursuant to Section 6A hereof, when the Enterprise has given to the Registrar irrevocable written instructions to give notice of prior redemption in accordance with Section 6D hereof. The Governmental Obligations shall become due at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule agreed upon between the Enterprise and such Trust Bank at the time of creation of the escrow and shall not be callable prior to their scheduled maturities by the issuer thereof.

In the event that there is a defeasance of only part of the Bonds of any maturity, the Registrar shall, if requested by the Enterprise, institute a system to preserve the identity of the individual Bonds or portions thereof so defeased, regardless of changes in bond numbers attributable to transfers and exchanges of Bonds; and the Registrar shall be entitled to reasonable compensation and reimbursement of expenses from the Enterprise in connection with such system.

Section 20. Delegated Powers. The officers of the Enterprise are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing; the printing of the Bonds; and the execution of such certificates as may be required by the Purchaser, including, but not necessarily limited to, the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The President and Secretary are hereby authorized and directed to execute and deliver such documents as required hereby.

Section 21. Events of Default. Each of the following events is hereby declared an "event of default:"

- (A) **NONPAYMENT OF PRINCIPAL:** If payment of the principal of any of the Bonds shall not be made when the same shall become due and payable at maturity or by proceedings for prior redemption;
- (B) **NONPAYMENT OF INTEREST:** If payment of any installment of interest on the Bonds shall not be made when the same becomes due and payable;
- (C) **INCAPABLE TO PERFORM:** If the Enterprise shall for any reason be rendered incapable of fulfilling its obligations hereunder;
- (D) **DEFAULT OF ANY PROVISION:** If the Enterprise shall default in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Ordinance on its part to be performed, other than those delineated in paragraphs A and B of this Section, and if such default shall continue for 60 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Enterprise by the owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding; or
- (E) **BANKRUPTCY OR INSOLVENCY:** A petition in bankruptcy or similar proceedings shall, pursuant to the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law, be filed against the Enterprise or the City and not dismissed within 60 days, or shall be filed by the Enterprise.

Section 22. Remedies. Upon the happening and continuance of any event of default as provided in Section 21 hereof, the owner or owners of not less than 25% in aggregate principal amount of the Outstanding Bonds, or a trustee therefor, may protect and enforce their rights hereunder by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent of such appointment being hereby granted), injunctive relief, or requiring the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all owners. The failure of any owner to proceed does not relieve the Enterprise or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right available to the owners of Bonds and the exercise of any right by any owner shall not be deemed a waiver of any other right.

Section 23. Duties Upon Default. Upon the happening of any of the events of default as provided in Section 21 of this Ordinance, the Enterprise and the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on said Bonds promptly as the same become due. Proceeds derived from the Pledged Revenues, so long as any of the Bonds herein authorized, either as to principal or interest, are Outstanding and unpaid, shall be paid into the Bond Account and the Reserve Account, pursuant to the terms hereof and to the extent provided herein, and used for the purposes herein provided. In the event the Enterprise or City fails or refuses to proceed as in this Section provided, the owner or owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of such owners as hereinabove provided.

Section 24. Replacement of Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign, or if the Enterprise shall determine that it wishes to replace said Registrar or Paying Agent, the Enterprise may, upon notice mailed to each owner of any Bond at his address last shown on the registration records, appoint a successor Registrar or Paying Agent, or both. No resignation or dismissal of the Registrar or Paying Agent may take effect until a successor is appointed. Every such successor Registrar or Paying Agent shall be a bank or trust company having a

shareowner's equity (e.g., capital, surplus, and undivided profits), however denominated, of not less than \$10,000,000 or be the Enterprise. It shall not be required that the same institution serves as both Registrar and Paying Agent hereunder, but the Enterprise shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

Section 25. Severability. If any one or more sections, sentences, clauses or parts of this Ordinance shall for any reason be held invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, but shall be confined in its operation to the specific sections, sentences, clauses or parts of this Ordinance so held unconstitutional or invalid, and the inapplicability and invalidity of any section, sentence, clause or part of this Ordinance in any one or more instances shall not affect or prejudice in any way the applicability and validity of this Ordinance in any other instances.

Section 26. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed. All rules of the City Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the City Council be, and the same hereby are, suspended.

Section 27. Amendment.

(A) The Enterprise may, without the consent of, or notice to the owners of the Bonds, adopt such ordinances supplemental hereto (which supplemental amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

(1) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Ordinance, or to make any provisions with respect to matters arising under this Ordinance or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the owners of the Bonds;

(2) to subject to the lien of this Ordinance additional revenues, properties or collateral;

(3) to grant or confer upon the Registrar for the benefit of the registered owners of the Bonds any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the registered owners of the Bonds; or

(4) to qualify this Ordinance under the Trust Indenture Act of 1939.

(B) Exclusive of the amendatory ordinances permitted by paragraph A of this Section, this Ordinance may be amended or supplemented by ordinance adopted by the City Council in accordance with the law, without receipt by the Enterprise of any additional consideration but with the written consent of the owners of at least 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that, without the written consent of the owners of all of the Bonds adversely affected thereby, no such Ordinance shall have the effect of permitting:

(1) An extension of the maturity of any Bond authorized by this Ordinance; or

(2) A reduction in the principal amount of any Bond, the rate of interest thereon, or the prior redemption premium thereon; or

(3) The creation of a lien upon or pledge of Pledged Revenues ranking prior to the lien or pledge created by this Ordinance; or

(4) A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental ordinance; or

(5) The establishment of priorities as between Bonds issued and Outstanding under the provisions of this Ordinance; or

(6) The modification of or otherwise affecting the rights of the owners of less than all of the Bonds then Outstanding.

Copies of any waiver, modification or amendment to this Ordinance shall be delivered to any entity then maintaining a rating on the Bonds.

Section 28. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Bonds, as received by or otherwise credited to the Enterprise, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Bonds and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the Enterprise. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Enterprise irrespective of whether such persons have notice of such liens.

Section 29. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bonds. Such recourse shall not be available either directly or indirectly through the Council or the Enterprise, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Section 30. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bonds shall contain a recital that they are issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

Section 31. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the Enterprise in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after authorization of the Bonds.

Section 32. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 33. Ordinance Irrepealable. After any of the Bonds herein authorized are issued, this Ordinance shall constitute a contract between the Enterprise and the owners of the Bonds, and shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, cancelled and discharged as herein provided.

Section 34. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 35. Declaration of Emergency. In order to effect the Project while favorable market conditions exist, it is hereby declared that an emergency exists and that this ordinance is immediately necessary for the preservation of the public peace, health, safety and financial well-being of the City. This ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

Section 36. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect immediately upon enactment following final passage. This ordinance shall be recorded in "The Ordinance Book" of the City kept for that purpose, and shall be authenticated by the signatures of the Mayor and City Clerk, and published in accordance with law.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY
ORDINANCE on January 26, 2015.

CITY OF WESTMINSTER, COLORADO,
ACTING BY AND THROUGH ITS
WATER AND WASTEWATER UTILITY
ENTERPRISE

President

(SEAL)

ATTEST:

Secretary

APPROVED AS TO LEGAL FORM:

City Attorney

Date

STATE OF COLORADO)
)
 COUNTIES OF ADAMS) SS.
 AND JEFFERSON)
)
 CITY OF WESTMINSTER)

I, Linda Yeager, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the “City”), acting in my capacity as Secretary of the City of Westminster, Colorado, Water and Wastewater Utility Enterprise (the “Enterprise”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council of the City, acting in its capacity as the governing body of the Enterprise (the “Council”) at a regular meeting of the Council held at the City Hall on January 26, 2015.

2. The passage of the Ordinance on first reading as an emergency on January 26, 2015 was duly moved and seconded and the Ordinance was approved by vote of a ___ of ___ of the members of the Council as follows:

| Name | “Yes” | “No” | Absent | Abstain |
|----------------|-------|------|--------|---------|
| Herb Atchison | | | | |
| Bruce Baker | | | | |
| Bob Briggs | | | | |
| Alberto Garcia | | | | |
| Emma Pinter | | | | |
| Anita Seitz | | | | |

3. The members of the Council were present at such meeting and voted on the passage of the Ordinance as set forth above.

4. The Ordinance has been signed by the President, sealed with the corporate seal of the City, attested by me as Secretary, and duly recorded in the books of the City; and that the same remains of record in the book of records of the City.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance.

6. Notices of the meeting of January 26, 2015, in the forms attached hereto as Exhibit A, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

7. The ordinance was published in full after adoption in the Westminster Window, a newspaper of general circulation within the City on January __, 2015. The affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this 26th day of January, 2015.

(SEAL)

Secretary

EXHIBIT A

(Attach Notices of Meetings)

EXHIBIT B

(Attach Affidavit of Publication)

24009376 v1

**A BILL FOR AN EMERGENCY ORDINANCE
AMENDING THE 2015 BUDGET OF THE STORM DRAINAGE FUND AND AUTHORIZING
A SUPPLEMENTAL APPROPRIATION FROM THE 2015 ESTIMATED REVENUES IN THE
FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2015 appropriation for the Storm Drainage Fund initially appropriated by Ordinance No. 3737 is hereby increased in aggregate by \$4,650,000. This appropriation is due to the receipt of funds from bond proceeds.

Section 2. The \$4,650,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 K-L dated January 26, 2015 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

| | |
|---------------------|--------------------|
| Storm Drainage Fund | <u>\$4,650,000</u> |
| Total | <u>\$4,650,000</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 – Emergency. Timely closing on the bonds is deemed critical to mitigate interest rate risk inherent in the financial markets. The current projected rate provides an interest cost allowing the Enterprise to pay off the rate within a five-year time horizon versus a longer term. If the ordinance went through a two reading approval, the Enterprise is exposed to interest rate uncertainty over an approximate two-month period from the time the ordinance is approved on a first reading until the time of closing on the bonds. This time horizon potentially jeopardizes the ability to secure financing if interest rates were to increase significantly over this time period due to financial market conditions. As such, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on January 26, 2015, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL, AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 26th day of January, 2015.

ATTEST:

Mayor

City Clerk



Agenda Item 10 M

Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Resolution No. 3 re Spring 2015 Adams County Grant Applications

Prepared By: Heather Cronenberg, Open Space Coordinator
Jacob Kasza, Open Space Technician

Recommended City Council Action

Adopt Resolution No. 3 authorizing the Parks, Recreation, and Libraries Department to pursue two grants from the Adams County Open Space grant program during the 2015 spring cycle in the amount of \$400,000 for the Metzger Farm South Trail which is an extension of a trail from the Ranch Creek trail along the north side of 120th Avenue to Lowell Boulevard and for \$75,000 for engineering work to refine improvements, obtain engineering drawings, and provide up to date cost estimates for the Little Dry Creek Habitat Improvement Project.

Summary Statement

- Staff is recommending that a grant be pursued from the Adams County Open Space grant program for funding assistance with the construction of the Metzger Farm South Trail that will begin where the Ranch Creek trail intersects the Big Dry Creek Trail on the Metzger Farm property and continues to the west along 120th Avenue to Lowell Boulevard. Staff recommends requesting up to \$400,000 for this project using funds already allocated to the Ranch Creek project in the amount of \$625,000 as the required local match, which represents a 36% request.
- Staff would also like to pursue a second grant from the Adams County Open Space program in the amount of \$75,000 for engineering work associated with the Little Dry Creek Habitat Improvement Project at Della Villa Park located on the north side of 72nd Avenue at Raleigh Street. The City will use funds in the amount of \$75,000 as match from Community Development Block Grants. This represents a 50% grant request.

Expenditure Required: Grant request for the Metzger Farm South Trail- \$400,000
Matching funds: \$625,000 (already allocated)
Grant request for Little Dry Creek Habitat Improvement Project- Design and Engineering Work: \$75,000
Matching funds: \$75,000

Source of Funds: General Capital Improvement Fund – Ranch Creek Project (\$625,000)
Community Development Block Grant (\$75,000)

Policy Issue

Should the City attempt to seek assistance with the construction of a trail extension on the north side of 120th Avenue along Metzger Farm and for engineering work associated with the Little Dry Creek Habitat Improvement Project from the Adams County Open space Grant Program?

Alternative

Council could choose not to pursue additional funding for the trail and design and engineering project. This is not recommended because the City does not have the funds to complete the trail extension along the south side of Metzger Farm and engineering work for the Little Dry Creek Habitat Improvement Project without funding assistance from the Adams County Open Space program.

Background Information

The City has been successful in applying for and receiving grants from a variety of sources in the past for parks, open space and trail related projects. In recent years, the City has received grant money from the Adams County Open Space grant program 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.

The Parks, Recreation, and Libraries Department would like to pursue a grant from the Adams County Open Space grant program in the amount of \$400,000 for the construction of the Metzger Farm South Trail, which will begin at the intersection of the Ranch Creek Trail and the Big Dry Creek trail and extend west on the Metzger Farm Open Space property to Lowell Boulevard. This 8-foot wide concrete sidewalk will provide a more direct, all weather route for commuters to get from Federal Parkway to Lowell Boulevard as an alternative to utilizing the trail system within Metzger Farm. The City applied for and received a grant from Adams County in the amount of \$585,000 to complete the Ranch Creek Trail and Underpass Project. This project will construct an underpass under 120th Avenue east of Federal Parkway, make improvements to the existing box culvert under Federal Parkway, construct a trail along Ranch Creek, and construct trail connections to the Big Dry Creek trail, Country Club Village retail center, Longsview Apartments, Country Club Highlands, and the Ranch Country Club golf course. The City proposed using funds in the amount of \$390,000 that were already allocated to construct the underpass at 120th Avenue as matching funds. To construct the entire Ranch Creek project as detailed above will cost approximately \$1,600,000. Staff proposes using the difference between the actual cost of the Ranch Creek Trail project and the amount that was previously used as match for the original grant plus the amount already received from Adams County as match for the grant request to construct the sidewalk on the north side of 120th Avenue. The amount available to use as match after subtracting the previous grant and matching funds is \$625,000.

The trail along the south side of Metzger Farm was included in the Metzger Farm Master Plan. The Broomfield-Westminster Open Space Foundation recently voted to support the submittal of this grant application by the City of Westminster. As the trail extends to the west, it will intersect with the sidewalk on the east side of Lowell Boulevard north of 120th Avenue that will be constructed as part of the Lowell Boulevard improvement project by the City and County of Broomfield. This sidewalk will lead to a new trail underpass under Lowell Boulevard at about 121st Avenue being built in 2015 as part of the Lowell Boulevard improvement project.

The Parks, Recreation, and Libraries staff wish to pursue a second grant from the Adams County Open Space grant program for funding assistance to obtain engineering drawings and updated construction costs for the Little Dry Creek Habitat Improvement Project. This project seeks to make improvements to Little Dry Creek in the City's undeveloped Della Villa Park located on the north side of 72nd Avenue at Raleigh Street. This property was purchased by the City in 2001 and is home to one of the City's

community gardens. Little Dry Creek flows across the site within a concrete channel with steeply sloping concrete sides. The Little Dry Creek Trail lies in the bottom and is part of the concrete channel. The creek is only about 2 feet below the level of the trail. As a result, the trail is subject to frequent flooding. There is no direct access to the trail from the surrounding neighborhoods because the channel slopes are too steep. The City will soon be replacing the 72nd Avenue Bridge over Little Dry Creek which will raise the elevation of 72nd Avenue by about 4 feet. This will cut off the road access to the community garden.

Staff prepared a plan to address these various issues and improve the site for the surrounding communities. The engineering drawings will include the following improvements per the design plan:

- Removal of the concrete channel between 72nd Avenue and the bridge over Little Dry Creek just east of Tennyson Street
- Regrading of the site to create a natural looking creek that would swing south near 72nd Avenue
- Relocate and re-construct the Little Dry Creek Trail to a higher elevation to eliminate flooding
- Preserve the existing grove of white poplar trees
- Construct a sidewalk from the north side of 72nd Avenue to the Little Dry Creek Trail to connect to the US36 Trail
- Seed the entire area with native grasses
- Construct a new gravel access road to the community garden from Bradburn Boulevard
- Construct a 28 space gravel parking lot by the community garden

The City applied for a grant from Adams County in the spring of 2014 to make these improvements. The grant was not approved due to a lack of funds from the County. Staff would like to request funds to assist with obtaining engineering construction drawings and up to date cost estimates for this project at this time. Staff hopes to come back to Adams County with a request to fund the construction of the project during a future grant cycle. Staff is recommending the use of \$75,000 in CDBG funds as match for this project.

These grant requests support the “Dynamic, Diverse Economy” and “Beautiful, Desirable Environmentally Responsible City” by providing more recreational opportunities and increased open space and trails and increasing revenues that support defined City projects.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Site Map for the Metzger Farm South Trail
- Site Map for Little Dry Creek Habitat Improvement Project

RESOLUTION

RESOLUTION NO. 3

INTRODUCED BY COUNCILLORS

SERIES OF 2015

A RESOLUTION

**TO PURSUE TWO GRANT REQUESTS FROM THE
SPRING 2015 ADAMS COUNTY OPEN SPACE GRANT PROGRAM
FOR THE CONSTRUCTION OF THE METZGER FARM SOUTH TRAIL AND FOR
ENGINEERING DRAWINGS AND COST ESTIMATES FOR IMPROVEMENTS TO LITTLE
DRY CREEK AND DELLA VILLA PARK**

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 acquisitions; and

WHEREAS, the City of Westminster considers the construction of the Metzger Farm South Trail a high priority and has secured matching funds; and

WHEREAS, the City of Westminster considers securing funds to provide engineering drawings and updated cost estimates, to the Little Dry Creek and trail north of 72nd Avenue, a high priority and has secured matching funds; and

WHEREAS, grant money received from Adams County will assist the City in constructing the Metzger Farm South Trail and securing construction drawings and cost estimates around Little Dry Creek.

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 2015, requesting funding not to exceed \$400,000 towards the construction of the Metzger Farm South Trail. Staff will also submit a second grant application to the Adams County Open Space Grant program for the same funding cycle, requesting funding not to exceed \$75,000 to obtain engineering drawings and up-to-date cost estimates to remove the concrete channel along Little Dry Creek and for trail improvements north of 72nd Avenue.

PASSED AND ADOPTED this 26th day of January, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: *Jan H. Greenfield*
Office of the City Attorney

Metzger Farm South Trail

Metzger Farm Open Space

Big Dry Creek Open Space

Metzger Farm Ponds

Big Dry Creek Trail

Federal Pkwy

Lowell Boulevard Underpass (Under Construction)

Nissen Channel

Metzger Farm Open Space

Federal Parkway Underpass

Ranch Creek Open Space

Ranch Creek

Big Dry Creek

20th Ave

Federal Blvd

Federal Blvd

Federal Blvd

Exact Spillway Crossing To Be Determined

Big Dry Creek

120th Avenue Underpass (Under Construction)

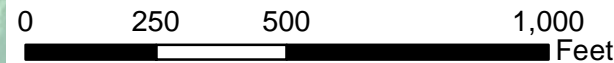
Ranch Creek Villas

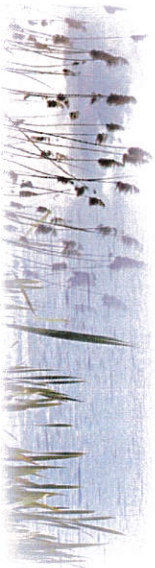
119th Ave

Federal Blvd

Decatur St

- Metzger Farm Open Space South Trail
- Lowell Boulevard Sidewalk (Under Construction)
- CDOT Sidewalk and Trail Connections (Under Construction)
- Ranch Creek Trail (Under Construction)
- Existing Trails
- Streams
- Open Space





LITTLE DRY CREEK CHANNEL RECONSTRUCTION

Phase One - Preliminary Plan





Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Acting City Manager Appointment

Prepared By: Debbie Mitchell, General Services Director

Recommended City Council Action

1. By motion, remove Agenda Item 11 C from the Table.
2. Appoint Deputy City Manager Stephen Smithers to serve as Acting City Manager to have and exercise the duties and responsibilities of City Manager under the City Charter until such time as a new City Manager is appointed by Council.

Summary Statement

- Brent McFall has been the City Manager for the City of Westminster for nearly 14 years.
- Mr. McFall will be retiring on January 25, 2015, and the position will then become vacant.
- Mr. Smithers has agreed to serve as Acting City Manager at an interim annual salary of \$200,000 until such time as a new City Manager is appointed by Council.
- City Council is currently in the process of recruiting a new City Manager. The selection and appointment of the new City Manager will likely be after Mr. McFall's retirement date.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Deputy City Manager Stephen Smithers be appointed to serve as acting City Manager until such time as a new City Manager is appointed by Council?

Alternative

Council could elect not to appoint the Deputy City Manager as acting City Manager and appoint another employee. Staff does not recommend this alternative. This position plays a critical role in the daily operations of the City. Also, this appointment will provide continuity in representation of current issues residing in the City Manager's Office.

Background Information

The City Manager's Office is responsible for the daily operations of the City of Westminster. This office is dedicated to upholding the mission: Our team supports and is responsive to the citizens, City Council and overall City organization. Through leadership by example, we progressively manage the City organization where customer service and empowerment are governing principles and effectively communicate with internal and external audiences. We are ambassadors of the City and strive to be the best at what we do.

Mr. McFall joined the City in May 2001 as the City Manager. His previous experience included holding city manager or city administrator positions in four cities in Kansas and Washington prior to becoming Westminster's City Manager. Mr. McFall is retiring from his position effective January 25, 2015.

Mr. Smithers joined the City in 1983 as a Management Intern. In 1984, he advanced to the position of Management Assistant and then to Assistant to the City manager in 1986. Mr. Smithers left the City in 1990 taking a position with the Colorado Municipal League where he served as a lobbyist representing the interest of cities and towns across the State of Colorado for eleven State Legislative Sessions. He rejoined the City in 2000 as Assistant City Manager. In 2010, Mr. Smithers' title changed to Deputy City Manager. Mr. Smithers currently serves as Deputy City Manager and has agreed to take on the City Manager responsibilities in the interim vacancy period. A wage of \$200,000 is recommended as the acting wage with a January 26, 2015, start date. No additional funding is required as the position of City Manager is already funded.

The City is currently screening applications for the position of City Manager. Final interviews of candidates for the new City Manager took place in early January 2015. The Acting City Manager appointment will extend until the start date of the new City Manager. City Council's action on this item addresses all eight Strategic Planning Goals.

Respectfully submitted,

Barbara C. Opie
Assistant City Manager



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: City Council Selection of New Councillor

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Select a person to fill the vacancy in the office of City Councillor that was created by the January 7, 2015 swearing in of Faith Winter to the office of Colorado State Representative, to which she was elected at the November 4, 2014 election conducted by the Adams County Clerk.

Summary Statement

- In accordance with the Council's Rules and Regulations and as directed by City Council, the City Clerk solicited applications to fill a vacancy in the office of City Councillor. Applications were received from November 12, 2014 through December 3, 2014 at 6 p.m. Thirteen individuals submitted applications; one applicant withdrew on December 17, 2014.
- City Council interviewed eight applicants on January 14, 2015 and three applicants on January 15, 2015.
- To satisfy provisions of the Westminster Municipal Code and the Westminster City Charter, City Council needs to appoint a qualified registered elector of the City to fill this vacancy within thirty (30) days of the vacancy by a majority vote of the remaining members of City Council. The cutoff date for this appointment is February 6, 2015. Said appointee is to hold the office for the balance of the unexpired term, which will end in November 2015 following the next regular biennial municipal election.
- To comply with the aforementioned thirty (30) day time frame, Council asked that selection of a new City Councillor be placed on this agenda. The procedures to select an applicant to fill a vacancy are set forth in Part VII, Section 24 of Council's Rules and Regulations, and are listed in the background section of this agenda memorandum.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council fill a vacancy on City Council using the adopted procedure in the Council's Rules and Regulations?

Alternative

By unanimous vote, City Council could decide to suspend the written ballot method of selecting a new City Councillor; however, a majority vote (four Council members) is necessary to make an appointment.

Background Information

The procedure in Part VII, Section 24 of the Rules and Regulations states:

Vacant positions on the City Council shall be appointed by Council from applicants who have completed the appropriate application form and interview process. Appointments shall be by written ballot unless this method is suspended by unanimous Council vote. A majority vote is necessary to make an appointment. If no single applicant obtains a majority vote after the first ballot, all persons receiving no votes, and the person receiving the smallest number of votes will be removed from nomination. This process will be repeated after each ballot until a majority vote is received by one applicant. After seven (7) ballots with no one person appointed, the Council will consider all candidates again and begin the process of elimination of candidate names after every seven ballots. (Res. 39, 1984, 42, 1995, 84, 1997, 16, 1999)

To accommodate selection by written ballot, preprinted ballots with the names of all qualified applicants will be distributed at the meeting for Council's use.

Municipal Court Judge John Stipech will be in attendance to swear in the person who receives a majority of Council's votes for the office of City Councillor.

The successful appointment of an interested applicant to fill the vacant position on City Council supports City Council's Strategic Goal of "Visionary Leadership and Effective Governance" by seating the seventh member of City Council in a timely manner so that the business of the City can be conducted with a full complement of the governing body's membership while avoiding the cost and delay of a special election.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 26, 2015



SUBJECT: Election of Mayor Pro Tem

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Elect a City Councillor to the office of Mayor Pro Tem to complete Faith Winter's unexpired term.

Summary Statement

- Faith Winter was elected to serve a two-year term as Mayor Pro Tem on November 11, 2013.
- Ms. Winter sought the office of Colorado State Representative in 2014 and was elected. On January 7, 2015, she was sworn into office, creating a vacancy on City Council and in the office of Mayor Pro Tem.
- Pursuant to Part IV, Section 2, election of the Mayor Pro Tem shall be the first order of business after the new Councillors are sworn into office and it shall be by secret ballot without nomination. In case of a tie vote, the Mayor will disclose the names of the tied candidates and another ballot shall be taken, until one person has received a majority, successive ballots will be taken. The Mayor Pro Tem shall serve as Mayor during the absence or disability of the Mayor, and, in case of vacancy in the office of Mayor.
- The City Clerk has provided ballots to City Council members for purposes of electing a Mayor Pro Tem to fill Faith Winter's unexpired term through November 9, 2015.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified.

Alternative

None Identified.

Background Information

The Westminster City Charter, Westminster Municipal Code, and City Council's Rules and Regulations require that a City Councillor be elected to serve as Mayor Pro Tem in the absence or disability of the Mayor. The term of office of Mayor Pro Tem is two years and the election is normally conducted after new members of City Council are sworn into office following the City's biennial municipal election in odd numbered years.

On January 7, 2015, a vacancy in the office of Mayor Pro Tem was created when Faith Winter, the seated Mayor Pro Tem, was sworn into office as a Colorado State Representative. Accordingly, City Council needs to fill the office of Mayor Pro Tem for the balance of Ms. Winter's unexpired term through November 9, 2015.

Ballots have been prepared and distributed to each member of Council. The election shall be by secret ballot without nomination. In case of a tie vote, the Mayor will disclose the names of the tied candidates and another ballot shall be taken, until one person has received a majority, successive ballots will be taken.

The election of Mayor Pro Tem supports City Council's Strategic Goal of "Visionary Leadership and Effective Governance" so the business of the City can be conducted in a timely manner should the Mayor be absent, disabled, or in the case of a vacancy in the office of Mayor.

Respectfully submitted,

J. Brent McFall
City Manager

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, January 26, 2014

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (December 22, 2014)
- 3. Public Hearings and New Business**
 - A. Resolution No. 60 re SWAG Cooperation Agreement and Lease of Rodeo Market Property
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, DECEMBER 22, 2014, AT 8:30 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Faith Winter, and Board Members Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were J. Brent McFall, Executive Director, Hilary Graham, Acting Attorney, and Carla Koeltzow, Acting Administrative Secretary.

MINUTES OF PRECEDING MEETING

Board Member Briggs moved, seconded by Baker, to approve the minutes of the meeting of November 24, 2014, as written and distributed. The motion carried unanimously.

SALE OF PROPERTIES – 7287 LOWELL BLVD AND 3630 W 73RD AVENUE

Board Member Briggs moved, seconded by Pinter, to approve the sale of the properties at 7287 Lowell Boulevard and 3630 West 73rd Avenue to the City of Westminster. The motion carried unanimously.

ADJOURNMENT

There being no further business to conduct, the meeting adjourned at 8:32 p.m.

Chairperson

ATTEST:

Acting Administrative Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
January 26, 2015



SUBJECT: Resolution No. 60 re South Westminster Arts Group Cooperation Agreement and Lease of Rodeo Market Property

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Adopt Resolution No. 60 authorizing the Executive Director to execute a Cooperation Agreement and Lease Agreement, in substantially the same form as attached, with the South Westminster Arts Group (SWAG) for use of Westminster Housing Authority owned property at 3915 West 73rd Avenue, commonly known as the Rodeo Market building.

Summary Statement

- The Westminster Housing Authority (WHA) Board owns property at 3915 W. 73rd Avenue, commonly known as the Rodeo Market building, which has been leased to the South Westminster Arts Group (SWAG) over the last several years to serve as an arts based community center and gallery.
- SWAG is proposing to enter into a Cooperation Agreement (Attachment B) with the City of Westminster and the WHA relative to promoting and conducting arts and cultural activities of benefit to South Westminster residents and businesses. The Cooperation Agreement would permit SWAG to enter into a Lease Agreement (Attachment C) with the WHA to lease the premises at 3915 W. 73rd Avenue (known as the Rodeo Market Community Arts Center) through December 31, 2015.
- Under the Lease Agreement, SWAG would pay \$10.00 per year and assume responsibility for paying water, sewer, electric and gas utility costs in full for the period of the lease. The WHA would provide financial assistance to SWAG with an \$8,000 cash grant to be distributed on a quarterly basis. This arrangement is proposed as it will assist SWAG in its pursuit of grant funds requiring evidence of a local government contribution in support of the organization, such as the Scientific and Cultural Facilities District (SCFD) grant program.
- The WHA would be responsible for paying costs associated with repairs to the facility, while SWAG will be responsible for general maintenance and upkeep of the building and adjacent plaza areas.
- In return for the nominal lease rate and financial consideration, SWAG will work closely with City of Westminster staff to develop and implement arts and cultural activities for the local residents and businesses.

Expenditure Required: \$8,000

Source of Funds: 2015 WHA Budget

Policy Issue

Should the Westminster Housing Authority continue to lease the Rodeo Market property to the non-profit South Westminster Arts Group (SWAG) for \$10.00 per year and provide an \$8,000 financial contribution to assist in paying for utility costs?

Alternatives

1. Do not lease the premises to SWAG. This alternative is not recommended given the tremendous strides SWAG has made in attracting artistic talent, raising community goodwill, and promoting arts related activities. A failure to lease the premises to SWAG could result in the demise of the organization and potentially have a negative impact on the positive strides made to date.
2. Lease the premises with a required higher financial contribution from SWAG. This alternative is not recommended as SWAG does not currently have the financial capability to incur high operational costs given its current limited access to other resources, particularly funding from the Denver Metro Scientific and Cultural Facilities District.
3. Make the premises available to other prospective tenants at a higher rent. This option may have the potential to generate additional revenue to the WHA; however, pursuit of this option would require SWAG to vacate the premises, which could lead to the organizations demise.
4. Do not lease the premises at this time. This option is not recommended as a vacant space could be viewed as contributing to blight and be more prone to vandalism. Further, the WHA may need to continue to incur utility costs so as to preserve the structural integrity of the premises for future use.

Background Information:

The City of Westminster initiated the South Westminster revitalization efforts in 1997 with the redevelopment of the Westminster Plaza Shopping Center. The South Westminster Strategic Revitalization Plan was thereafter prepared and approved by City Council on January 22, 2001. Significant revitalization success has been made with implementation of the plan having led to the construction of 72 new townhouses and a 12,000 square foot commercial building, several street enhancement projects, and park and library improvements.

As another implementation effort, the City saw an opportunity in pursuing and developing arts and cultural programming as a means of attracting new residents and businesses, while also providing activities and events for the existing neighborhood population. In pursuit of this goal, an effort was made to increase the non-profit capacity in the South Westminster neighborhood to support the City promoting the arts and creating arts business incubator opportunities. The result of this effort was the creation of the South Westminster Arts Group (SWAG), which works with local Westminster artists to create and sustain a community-based arts network.

Concurrent with the creation of SWAG in 2007, the WHA made two properties it owns, the Vehicle Service Center (VSC) building at 7287 Lowell Boulevard and the Rodeo Market property at 3915 West 73rd Avenue, available for creating a 50-seat community theater and community arts and cultural center. Accordingly, the VSC was converted into the theater and the interior of the Rodeo Market building was remodeled, and the historic exterior front façade restored, to accommodate a gallery and class space. Upon completion of the improvements, SWAG opened and operated the gallery and conducted classes in the space. SWAG has been operating out of the Rodeo Market building for the past 5 years. SWAG remains instrumental in operating the community arts center and finding theater companies to provide

performances. SWAG's endeavors have also helped to attract artists and art galleries that have opened nearby, which participate in an organized monthly art walk and other arts related programs throughout the year. SWAG also has the responsibility for planning and hosting the annual Fall Orchard Festival and participates in the Spring Jazz Festival, both of which have continued to grow in vendor and attendee participation. SWAG also coordinates and implements the sculpture exhibit in the adjacent park.

Since 2008, SWAG has entered into a lease agreement with the WHA to operate the Rodeo Market facility as a gallery and arts center, and to facilitate utilization of the VSC as a community theater. Since its inception, SWAG has operated as a volunteer-based organization with limited financial capacity, which impedes its ability to incur significant operational costs, including rent and utilities. This limitation was primarily a product of delays in receiving official status as a 501(c) 3 non-profit organization, which is essential to pursuing substantial funding grants. With this known financial limitation, and in an effort to assist SWAG in continuing and growing its successful arts endeavors in the South Westminster neighborhood, the WHA has leased the premises to SWAG annually for a nominal annual fee of \$10.00. In addition, the WHA has assumed responsibility for major maintenance and repair of the facilities, and has provided financial assistance to pay for the cost of water, sewer, electric, and gas utilities.

SWAG continues to work diligently on enhancing its financial capacity. The organization officially obtained its official status as a 501(c) 3 non-profit in 2011, thereby allowing it to pursue more substantial grants from larger organizations, particularly the Denver Metro Area Scientific and Cultural Facilities District (SCFD). SWAG, having complied with the SCFD's required eligibility "waiting period" in 2013, applied for funding eligibility in 2014. SWAG was recently approved by the SCFD as an eligible funding entity, which will allow SWAG to apply for funding in early 2015. SWAG's success in obtaining SCFD funds in 2015 will be premised, in a substantial part, on the City of Westminster and/or WHA's cash financial support provided. While the WHA's contributions through the nominal lease provided to SWAG and payment of the utility costs are significant, the SCFD does not recognize this "in-kind" assistance as part of a local government cash match. Funding from the SCFD would come in October, 2015 should SWAG be successful in receiving an award.

The City has provided limited cash contributions to SWAG, such as honorarium awards for the sculpture show. The WHA, however, has provided a more significant cash grant in past years to cover the cost of utilities which provided an opportunity to address this particular funding dilemma. Providing the utility funding assistance, as mentioned previously, in the form of a grant allows SWAG to show compliance with the local government match requirement of the SCFD. While serving as a cash contribution, the funds remain dedicated and applied towards utility costs. Staff is proposing a grant of \$8,000 to be applied towards utility costs in 2015 that would be distributed to SWAG in four quarterly payments. This approach would provide several benefits to WHA and SWAG including:

- SWAG would receive a cash contribution that could be critical to being successful in leveraging funding from other grant sources, including the SCFD;
- Putting the utilities in SWAG's name would increase its credit worthiness as a non-profit organization;
- The City would be removed from the responsibility of managing and paying the bills; and,
- SWAG would have more of an incentive to keep utility costs in check.

The WHA Board approved the 2015 budget on November 24, 2014, that included funds to provide the \$8,000 grant subject to Board approval of the proposed Cooperation Agreement as proposed.

Staff proposes that the WHA again enter into a lease agreement with SWAG for the year 2015 that includes the following terms and conditions:

- The lease would terminate December 31, 2015;
- SWAG would pay a lease rate of \$10.00 for utilization of the Rodeo Market building and adjacent grounds for the lease period;
- The WHA would be responsible for major maintenance and repairs;
- SWAG would be responsible for paying bills related to water, sanitary, electric, gas, phone and cable;
- SWAG would be responsible for maintaining the adjacent plaza areas on both the east and west side of the building; and,
- SWAG would be required to carry its own liability insurance in addition to the coverage obtained by the WHA through CIRSA

In addition to the lease, Staff is proposing to enter into an Agreement with SWAG relative to utilization of the space and working collectively to strengthen the operational and funding capacity of the organization. Significant provisions in that agreement include:

- Authorizes execution of a lease to SWAG for the Rodeo Market building;
- Provides a position on the SWAG board for a representative from City staff;
- Requires SWAG to prepare and submit a budget and year-ending report to the City;
- Provides for an \$8,000 cash grant from WHA to SWAG to assist in paying for utility costs;
- Permits SWAG to utilize the community theater on the VSC property, at 7287 Lowell Boulevard and 3630 W. 73rd Avenue, under separate agreement;
- Requires SWAG to conduct community activities, events and classes in the Rodeo Market building;
- Assigns the responsibility of planning and hosting the annual Orchard Festival to SWAG; and,
- Assigns responsibility to SWAG to coordinate and implement the Sculptures in the Park art competition and installation.

The approval of the proposed lease to SWAG meets the City's Strategic Plan Goal of creating "*Vibrant and Inclusive Neighborhoods.*"

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments: Resolution
Cooperation Agreement
Lease Agreement

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **60**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2015

**A RESOLUTION
APPROVING A LEASE BETWEEN THE WESTMINSTER HOUSING AUTHORITY
AND THE SOUTH WESTMINSTER ARTS GROUP FOR
3915 WEST 73RD AVENUE**

WHEREAS, the Westminster Housing Authority owns property located at 3915 West 73rd Avenue (“the Premises”); and

WHEREAS, the South Westminster Arts Group is a non-profit organization dedicated to promoting community arts activities and providing an incubator for artists’ businesses; and

WHEREAS, the South Westminster Arts Group proposes to use the Premises to promote community arts activities, including operation of a community theater, art shows, meetings, classes and programming that support the growth of non-profit cultural activity and artists’ businesses; and

WHEREAS, the attached Agreement and Lease would allow the South Westminster Arts Group to operate out of the Premises.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Westminster Housing Authority that the Executive Director is hereby authorized to execute and the Authority Clerk to attest the attached Agreement and Lease, or a substantially similar form of Agreement and Lease as approved by the Authority Attorney.

PASSED AND ADOPTED this 26th day of January, 2015.

Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

Authority Attorney

A COOPERATION AGREEMENT

Between the

CITY OF WESTMINSTER, THE WESTMINSTER HOUSING AUTHORITY

And the

SOUTH WESTMINSTER ARTS GROUP

This Agreement is made and entered into this ____ day of February, 2015, by and between the CITY OF WESTMINSTER (“City”), the WESTMINSTER HOUSING AUTHORITY (“WHA”) and the South Westminster Arts Group (“SWAG”).

WHEREAS, the City believes that arts and cultural programming and activities can be a viable and valuable component of facilitating South Westminster revitalization; and

WHEREAS, the City, has supported the creation of SWAG to promote the arts and culture as a means of facilitating revitalization of the South Westminster community and has a vested interest in the continued success of SWAG; and

WHEREAS, SWAG has been successful in promoting and attracting arts-related activities and businesses into the South Westminster community; and

WHEREAS, the Westminster Housing Authority owns property at 3915 W. 73rd Avenue, known as the Rodeo Market Community Arts Center (Exhibit 1), and the City owns property at 7287 Lowell Boulevard that serves as a community theater (Exhibit 2), that can serve to support arts and culture-related programming; and

WHEREAS, the City, WHA and SWAG desire to continue working in partnership to further promote the arts as a means of facilitating revitalization of the South Westminster community.

NOW, THEREFORE, in consideration of the above premises and the covenants, promises, and agreements set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

A. GOVERNANCE AND OPERATION.

1. SWAG shall invite a City representative to serve on the SWAG board, and the City shall appoint a City staff person to sit and participate as a board member.

2. The City and SWAG shall work collectively to amend the SWAG bylaws to restructure the SWAG board so as to strengthen its capacity and effectiveness for the purpose of fulfilling its basic mission of promoting the arts and culture as a means of facilitating revitalization of the South Westminster community.
3. SWAG shall prepare and adopt a five year Strategic Action Plan for the years 2016 through 2020 by October 31, 2015.

B. FINANCE AND REPORTING.

1. SWAG shall prepare and submit a 2015 budget to the City by March 30, 2015.
2. As and when board meetings occur, SWAG shall provide the City with a copy of the Board meeting minutes within 15 days after SWAG Board approval or acceptance;
3. SWAG shall prepare and submit an annual report to the City by October 31 of each year detailing the following, at a minimum:
 - a. Board member information including names, roles, and operational responsibilities;
 - b. Membership and volunteer numbers and information pertaining to total volunteer hours served by members, functions served, and residency;
 - c. Existing year budget and adopted upcoming year budget;
 - d. Grant pursuit details including the number of grant applications submitted and to what funding agencies, amount of request and what the grant would fund (i.e. operational expenses, specific projects), and the results of said applications;
 - e. Profit and loss statement for a period beginning November 1 of prior budget year through October 31st of active budget year with detailed explanation of income and expenses;
 - f. Performance assessment and accomplishments relative to the SWAG Strategic Action Plan;
 - g. A detailed synopsis of classes, events and programs offered during the year along with attendance and revenue/cost details;
 - h. Community outreach and organizational collaboration;
 - i. General information on persons or groups participating in SWAG sponsored activities and events, such as participation numbers, participants domicile, age cohorts, and ethnicity, through the distribution of voluntary information cards, so as to assist in identifying recruitment and marketing needs to increase participation and diversity.
4. SWAG shall diligently pursue funding from the Denver-metro Scientific and Cultural Facilities District, by preparing and filing a copy of the application in a timely manner

relative to an eligibility determination and/or funding. The City shall support SWAG in its pursuit of such funding by providing staff assistance, as determined necessary and reasonable by the City, and based upon staff availability.

C. FACILITIES AND OPERATIONS.

1. The Westminster Housing Authority (WHA) shall lease the premises at 3915 W. 73rd Avenue, hereby referred to as the Rodeo Market Community Arts Center, to SWAG, on the following general conditions, which shall be more fully set forth in the Lease document:
 - a. The premises shall be leased to SWAG for a period not to exceed one year ending December 31, 2015, for the use of arts and cultural-related activities and programming.
 - b. SWAG shall pay a nominal lease rate of \$10.00 per year;
 - c. WHA shall contribute \$8,000.00 as a grant to SWAG that shall be used to assist SWAG in paying for the cost of water, gas and electric utilities for the duration of the lease. Such contribution shall be disbursed in four (4) equal quarterly payments with first payment to be processed by the WHA with thirty (30 days) of execution of this Agreement, and thereafter on March 30, June 30, and September 30 of the year 2015.
 - d. SWAG shall make utility payments in timely manner and remain in good standing with all utility providers. At the end of each quarter, SWAG shall provide the WHA with evidence of utility payments for the preceding quarterly period. Disbursement of remaining grant funds, beginning March 30, 2015, shall not be provide to SWAG until such documentation showing payments has been provided.
 - e. Failure of SWAG to abide by this Agreement may result in immediate termination of such lease.
2. The City shall make the property at 7287 Lowell Boulevard available to SWAG for use as a community theater on a negotiated basis and under a separate lease agreement with prospective users.
3. SWAG shall conduct or host classes and programming in the Rodeo Market Community Arts Center as it pertains to the total mission of the organization.
4. SWAG shall be able to utilize the adjacent park area on an as needed basis in consultation with and subject to terms and conditions established by the Department of Parks, Recreation and Libraries.

5. SWAG shall plan for, coordinate and run the annual Orchard Festival on the grounds of the Rodeo Market Community Arts Center and in the general vicinity of 73rd Avenue and Osceola Street in the fall, as follows:
 - a. SWAG and the City shall coordinate and agree on an appropriate date for the festival.
 - b. SWAG shall apply for and obtain all required permits from the City and other regulating agencies;
 - c. The City shall waive any permit and plan review fees required by the City, as applicable and permissible;
 - d. The City shall coordinate with SWAG in providing logistical and equipment related support.

6. SWAG shall plan for, recruit artist submissions, and arrange for installation of art sculptures in the park area immediately east and north of the Rodeo Market Community Arts Center.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CITY OF WESTMINSTER

SOUTH WESTMINSTER ARTS GROUP

 Debbie Teter
 Board Chair

ATTEST:

ATTEST:

 City Clerk

 SWAG Secretary

WESTMINSTER HOUSING AUTHORITY

ATTEST:

 Secretary to the Authority

APPROVED AS TO FORM:

By: _____
 City Attorney's Office

EXHIBIT 1

WHA-Owned Rodeo Market Community Arts Center



EXHIBIT 2

City-Owned Community Theater Property



LEASE AGREEMENT

This **Lease** is made between the **WESTMINSTER HOUSING AUTHORITY**, a Colorado public housing authority (hereinafter called “Lessor” or “Authority”), and **SOUTH WESTMINSTER ARTS GROUP**, a Colorado nonprofit corporation (hereinafter called “Lessee” or “SWAG”).

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the Premises described in Paragraph 1 below, subject to the terms, conditions, and agreements set forth herein below:

- 1. Premises.** The Premises consist of the building and property located at 3915 West 73rd Avenue, Westminster, CO, and as depicted in Exhibit 1 attached hereto and incorporated herein by reference.
- 2. Term and Rent.** Lessor demises the above Premises for a term of one year, commencing 12:00 a.m. on January 1, 2015, terminating 12:00 a.m. on January 1, 2016, or sooner as provided herein (hereinafter, the “Term”), for a nominal rent payment for the Term in the sum of Ten Dollars (\$10.00) per annum, and for other good and valuable consideration, including but not limited to the terms and conditions contained in that certain Cooperative Agreement between the Authority and SWAG, dated January 1, 2015.
- 3. Use.** Lessee shall use and occupy the Premises for activities and functions specifically related to the purpose and mission of the South Westminster Arts Group, as follows:

Allowable uses of the property under this lease agreement include:

- Cultural, educational, and arts-related programming including art shows, art walks, exhibitions, demonstrations, classes, seminars, workshops, special events and festivals offered or sponsored directly by SWAG.
- 3rd party short-term rental [less than 24 hours at a time] of facilities for private events, classes, meetings, seminars and workshops, subject to 3rd Party rental agreement to be established and administered by SWAG. Rentals which extend greater than a 24 hour rental period require prior approval from the Westminster Housing Authority.
- Community use and neighborhood access.

The Premises shall not be used for other purposes unless approved in writing by the Lessor.

SWAG will maintain records of all programming including both SWAG sponsored programming and all 3rd Party rentals of the property and the Westminster Housing Authority shall retain the right to inspect such records at any time.

4. Utilities, Care and Maintenance of Premises.

a. Lessee’s responsibilities: Lessee acknowledges and accepts the Premises in their as-is condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. In addition, Lessee shall be responsible for:

- Trash removal.
- paying the cost of utilities as defined in item 8.
- the routine care and maintenance of the interior of the Premises of a housekeeping nature, including custodial and janitorial services, normal and reasonable cleaning, and the replacement of all

consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the Premises by the Lessee.

- keeping the exterior of that portion of the Premises constituting the lot at 3915 West 73rd Avenue clean and free of weeds, including the plaza area to the west of the building as shown in Exhibit 1, attached hereto.

b. Lessor's responsibilities: The Lessor shall be responsible for all general repairs relative to the principal structure of the Premises, including roofing, plumbing, mechanical and electrical equipment. Minor interior repairs, which do not exceed \$500 in cost, can be submitted to the City of Westminster Building Operations and Maintenance Department and will be handled subject to the availability of City staff. Minor interior repairs exceeding \$500 in cost shall be made by Lessor only upon approval of the Executive Director of the Authority.

5. Alterations.

a. Interior. Lessee shall not, without first obtaining the prior written consent of Authority staff, make any interior alterations, additions, or improvements to the principal structure of the Premises. Any such alterations, additions, or improvements approved by, or installed by, the Authority becomes fixtures appurtenant to the Premises.

b. Exterior. Lessee shall not make any changes to the exterior of the Premises. In particular, the south elevation is a historic restoration funded in 2009 by the State Historical Fund. As a result of this funding and the local historic landmark designation, no alterations, including signage, may be made to any part of the exterior of the building without permission from both the Westminster Historic Landmark Board and the State Historical Fund.

6. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.

7. Assignment, Subletting, and unauthorized Use. Lessee shall not assign this Lease, sublet, or allow utilization for purposes other than arts, educational, or cultural programming or activities, any portion of the Premises without prior written consent of the Lessor, which shall be granted or refused in Lessor's sole discretion. Any such assignment, subletting or impermissible utilization without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's immediate termination of this Lease.

8. Utilities. The Lessee shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer for the 2014 year. All applications and connections for other services desired by Lessee for the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services. Pursuant to that certain Cooperative Agreement between the Authority and SWAG, dated February ___, 2014, Lessor may provide grant funding to offset some of Lessee's utility charges, but this in no way relieves Lessee of its obligations hereunder.

9. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

10. Possession. If Lessor is unable to deliver possession of the Premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby.

11. Indemnification of Lessor. Lessor shall not be liable for any damage or injury to any person or property occurring on the Premises during the Term of this Lease. Lessee agrees to indemnify and save and hold Lessor harmless from any claims for such damage or injury, no matter how caused, except to the extent such damage or injury was the direct and proximate result of Lessor's negligent act or omission, provided, however, that nothing herein shall be deemed or construed as a waiver by Lessor of any of the protections or limitations against liability to which Lessor may be entitled under the Colorado Governmental Immunity Act. Lessee may satisfy its obligations pursuant to this paragraph by assuming the defense of and liability, if any, for any such claim brought against the Lessor, and retaining for such defense qualified legal counsel reasonably acceptable to the Authority.

12. Insurance.

a. Lessee, at its expense, shall maintain comprehensive commercial liability insurance, including coverage for bodily injury and property damage, insuring Lessee and naming Lessor as an additional insured with minimum coverage as follows: \$1,000,000 per occurrence. The insurance shall include coverage for contractual liability. Additional insurance shall be obtained in the event any aggregate limitations result in per occurrence coverage of less than \$1,000,000.

b. Prior to taking possession of the Premises pursuant to this Lease, Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies that may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation that might otherwise exist.

13. Eminent Domain. If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking.

14. Destruction of Premises. In the event that the Premises or any part of the building in which the Premises may be situated is damaged or destroyed by any cause to an extent that renders the Premises unsafe or unusable for Lessee's purposes, either Lessee or Lessor may terminate this Lease forthwith. In no event shall the Lessor have any obligation to repair or replace the Premises in the event of any such damage or destruction and Lessee's sole and exclusive remedy in the event of such damage to or destruction of the Premises or the building in which it is located is the termination of this Lease.

15. Lessor's Remedies on Default. If Lessee defaults in the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within ten (10) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such ten (10) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than twenty (20) days' notice to Lessee. On the date specified in such notice, the Term of this Lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessor, without extinguishing Lessee's liability. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any Term shall be deemed a waiver.

16. Taxes. Lessee shall be solely responsible for the payment of any property or other taxes that may arise as a result of Lessee's use of the Premises. The Lessee covenants and warrants to Lessor that Lessee is exempt from all federal, state and local taxes and further, that Lessee shall take no action to cause the

loss of its exemption from said taxes. Lessee further covenants and agrees with the Lessor that in the event Lessee shall lose its exemption from taxes for any reason, Lessee shall timely pay all and any taxes accruing as a result thereof. Lessee further covenants and agrees to indemnify and hold Lessor harmless against any claims or judgments for unpaid taxes resulting from Lessee's use of the Premises.

17. Attorneys' Fees. In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees. For any controversy or claim arising out of or relating to this Lease, or the breach thereof, the parties agree to attempt to mediate any such disputes in good faith prior to filing any action against the other.

18. Waiver. No failure of Lessor to enforce any Term hereof shall be deemed to be a waiver.

19. Heirs, Assigns, Successors. This Lease is binding upon and shall inure to the benefit of the heirs, assigns and successors in interest to the parties.

20. Subordination. This Lease is and shall be subordinated to all existing and future liens and encumbrances against the Premises.

22. Entire Agreement. Except as provided in Paragraph 2 above, this Lease constitutes the entire agreement between the parties concerning the Premises and may be modified only by a written amendment signed by both parties.

23. Survival. Paragraphs 8, 11, and 15 through 20 inclusive shall survive any termination of this Lease by either Lessee or Lessor.

Signed as of this 1st day of January, 2015.

WESTMINSTER HOUSING AUTHORITY

By: _____

Attest: _____
 Authority Clerk

SOUTH WESTMINSTER ARTS GROUP

By: _____
 Debbie Teter, Chair

Attest: _____

APPROVED AS TO LEGAL FORM:

Authority Attorney

EXHIBIT 1

Location Map -- 3915 W. 73rd Avenue

