



WESTMINSTER
COLORADO

January 27, 2003
7:00 P.M.

CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 5) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Presentations
 - A. Proclamation re 45th Anniversary of City Charter
5. Citizen Communication (5 minutes or less)
6. Report of City Officials
 - A. City Manager's Report
7. City Council Comments

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 citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.

8. Consent Agenda
 - A. Open Space Acquisition of 1.53 Acres at Wadsworth Parkway and Independence
 - B. Water Treatment Chemicals Purchase
 - C. Water Meter Purchases for 2003
 - D. Special Legal Services Contract re Pension Tax Issue
 - E. Swim and Fitness Center Weight Room Equipment Bid Award
 - F. Councillor's Bill No. 1 re Ball Corporation BAP (Kauffman-Dixon)
 - G. Councillor's Bill No. 2 re Safeway Business Assistance Agreement Amendment (Dittman-Atchison)
 - H. Councillor's Bill No. 3 re Summit Square Shopping Center BAP (Dixon-Atchison)
 - I. Councillor's Bill No. 4 re Vacation of Stuart Street ROW (McNally-Atchison)
 - J. Councillor's Bill No. 5 Supplemental Appropriation 136th/I-25 S&U Tax (Atchison-Dittman)
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing re Lombardi and Farmers' High Line Canal properties Located 92nd/Niver Canal
 - B. Resolution No. 2 re findings of fact for annexation of Open Space Parcels 92nd/Niver Canal
 - C. Councillor's Bill No. 6 re Annexation of Lombardi and Farmers' High Line Canal properties
 - D. Councillor's Bill No. 7 re Zoning of Lombardi and Farmers' High Line Canal properties
 - E. McKay Lake Outfall Drainage Project New Capital Improvement Program Project
 - F. Resolution No. 3 re Recovery Contract Interest Rate
 - G. Buy-Back Agreement for Circle Point Land
 - H. Resolution No. 4 re Adams County Open Space Grant Applications
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business
 - A. City Council
 - B. Executive Session
13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JANUARY 27, 2003 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, Kauffman, and McNally were present at roll call. Brent McFall, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk, were also present. Absent none.

CONSIDERATION OF MINUTES

Mayor Pro Tem Atchison moved, seconded by McNally to approve the minutes of the meeting of January 13, 2003 with no corrections or additions. The motion carried unanimously.

PRESENTATIONS

Mayor Moss recognized Jim Hague, member of the original charter convention committee. Mr. Hague addressed the Council and audience reminiscing about how the Charter Convention idea came about and some of the discussions pertaining to the City Charter.

Mayor Moss read a proclamation from the International and County Management Association commemorating the City's Charter 45th Anniversary.

The meeting was recessed at 7:20 p.m. and reconvened at 7:30 p.m.

CITY MANAGER COMMENTS

Brent McFall, City Manager, congratulated the Charter Convention Committee for having the foresight and dedication to create the City we have today.

CITY COUNCIL COMMENTS

Councillor Dixon commented on the vision of the Charter Commission. She will be attended the Historic Preservation meeting for Rocky Flats in Washington D.C.

Councillor McNally stated that the Deisel Multiple Unit will be on display in Westminster on February 8th and the location will be announced at a later time. This train would travel the existing rail lines between Boulder and Denver. She also commented on Jim Hague being interviewed by the City to be included in the History Video and other historical documents pertaining to the Charter Convention Committee.

Councillor Dittman commented on the Progressive Home Owners Association meeting on Saturday that he and other members of Council attended and their concerns about water.

Councillor Hicks congratulated Metro North Newspapers on their 25th Anniversary and he had attended their celebration last Friday.

CONSENT AGENDA

The following items were considered as part of the Consent Agenda: Open Space Acquisition of 1.53 acres at Wadsworth Pkwy and Independence for \$176,611; authorized purchase of Water Treatment Chemicals for \$295,500; authorized purchase of Water Meters for an amount not to exceed \$134,000; Special Legal Services Contract with McNally & Bowers PC for an amount not to exceed \$2,500; awarded bid for Swim and Fitness Center Weight Room Equipment to KOS Fitness Products for \$100,331.20; CB No. 1 re Ball

Corporation BAP; CB No. 2 re Amendments to Safeway BAP; CB No. 3 re Summit Square Shopping Center BAP; CB No. 4 re Vacation of Stuart Street ROW; CB No. 5 re Supplemental Appropriation for 136th Ave/I-25 Sales and Use Tax Revenue Bonds.

The Mayor asked if there was any member of Council or anyone from the audience who would like to have any of the consent agenda items removed for discussion purposes or separate vote. There was no request.

Councillor Dittman moved, seconded by Atchison to adopt the consent agenda items as presented. The motion carried unanimously.

PUBLIC HEARING RE ANNEXATION/ZONING OF LOMBARDI/FARMERS CANAL PROPERTIES

At 7:40 P.M. the public hearing was opened on the annexation and zoning of two open space parcels located on the north side of 92nd Avenue and south of Niver Canal, former Lombardi and Farmer's High Line Canal properties. Dave Falconieri, Planner III, gave a power point presentation. The following information was entered into the record: a copy of the Agenda Memorandum, Planning Commission recommendation, and other related items. No one spoke in opposition. The public hearing was declared closed at 7:43 P.M.

RESOLUTION NO. 2 RE FINDINGS OF FACT OF LOMBARDI/FARMERS CANAL PROPERTIES

Mayor Pro-Tem Atchison moved, seconded by Dixon to adopt Resolution No. 2 making certain findings of fact as required under Section 31-12-110 C.R.S. regarding the annexation of the former Lombardi property and Farmers' High Line Canal property. Upon roll call vote, the motion carried with a dissenting vote from Dixon.

COUNCILLOR'S BILL NO. 6 RE ANNEXATION OF LOMBARDI/FARMERS CANAL PROPERTIES

Mayor Pro-Tem Atchison moved, seconded by Dixon to pass Councillor's Bill No. 6 on first reading annexing the former Lombardi and Farmers' High Lane Canal properties to the City of Westminster. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 7 RE ZONING OF LOMBARDI/FARMERS CANAL PROPERTIES

Mayor Pro-Tem Atchison moved, seconded by Dixon to pass Councillor's Bill No. 7 on first reading zoning the annexed properties O-1, making the finding that the provisions of Section 11-5-3 of the Westminster Municipal Code have been met. Upon roll call vote, the motion carried unanimously.

CREATION OF NEW CIP PROJECT – MCKAY LAKE OUTFALL DRAINAGE PROJECT

Councillor Dittman moved, seconded by Atchison to approve the creation of the new Capital Improvement Program (CIP) project "McKay Lake Outfall Drainage Project," utilizing the remaining moneys from the nine projects closed at year-end 2002 to provide initial budget of \$694,496 for this new project in the General Capital Improvement Fund. The motion carried unanimously.

RESOLUTION NO. 3 RE RECOVERY CONTRACT INTEREST RATE

Councillor Dixon moved, seconded by Hicks to adopt Resolution No. 3 establishing the 2003 calendar year interest rate for non-City-funded public improvement recovery contracts at 6.25 percent and an interest rate of 4.84 percent for City-funded public improvements. Upon roll call vote, the motion carried unanimously.

BUY-BACK AGREEMENT FOR CIRCLE POINT LAND

Councillor Kauffman moved, seconded by Dittman to authorize the City Manager to enter into a Buy-Back Agreement for the re-purchase of Circle Point land in substantially the same form as the attached Agreement. The motion carried unanimously.

RESOLUTION NO. 4 RE 2003 ADAMS COUNTY OPEN SPACE GRANT APPLICATIONS

Councillor McNally moved, seconded by Hicks to adopt Resolution No. 4 authorizing the Department of Parks, Recreation and Libraries and Community Development to pursue two Adams County Open Space Grants for 2003. Upon roll vote, the motion carried unanimously.

ADJOURNMENT:

The meeting was adjourned at 7:50 P.M.

ATTEST:

City Clerk

Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2002



SUBJECT: Proclamation re 45th Anniversary of City Charter

Prepared By: Katie Harberg, Public Information Officer

Recommended City Council Action:

Read the proclamation from the International and County Management Association commemorating the City's Charter 45th Anniversary and recognize Jim Hague, member of the original charter commission.

Summary Statement:

- The charter, which was approved by the citizens of Westminster in 1958, is a Home Rule charter, which gives Westminster residents the authority to decide how local problems should be addressed. The charter also called for a council/manager form of governance, combining the leadership of elected council members with the professional experience of a city manager.
- Of the 21 member charter convention, only three members are still living today – Carl Jacobson, Jim Hague and Don Hereford. Jim Hague will be present at the City Council meeting to be recognized by City Council.
- The International City and County Management Association is also recognizing Westminster for its 45 years of Council/Manager government with a proclamation.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues

None identified at this time.

Alternatives

None identified at this time.

Background Information

The City of Westminster was incorporated in 1911 by a vote of 29 to 9. Forty-six years later, in 1957, the post World War II population had swelled to 10,000 and growth pressures were an issue for this small community. Because Westminster was operating as a statutory city, its government structure was framed according to state statutes. More progressive practices of local government management were desired, and thus a 21 member group of citizens convened to draft and adopt a City Charter to present to voters. On January 7, 1958 – 45 years ago – a special election was held and the charter was voter approved, ushering in a new era of local government for Westminster.

The work of the 21 citizens in 1957 provided the framework for a municipality that grew from around 10,000 to residents to a City of over 104,000 today. Other facts about Westminster since it has operated under a charter:

- The charter has been amended 84 times since its adoption
- Only four proposed charter amendments have ever failed to pass
- 48 individuals have served as City Council members, including the Council that is now seated; eight of those have been women
- There have been six City Managers since 1958, including our current manager Brent McFall
- There have been 11 mayors since the adoption of the Charter
- Of the 48 citizens who have served on City Council, 32 are still living; of the 11 mayors, 5 are still living

As part of the recent preparation of a manuscript for a City history, some of the key players in the early formation of the home rule era for the City of Westminster were captured on videotape. An excerpt from that history video, which is now airing on Cable Channel 8, pertaining to the charter and its adoption and its effect on Westminster's history will be played at the City Council meeting.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Open Space Acquisition of 1.53 Acres at Wadsworth Parkway and Independence along Big Dry Creek Open Space and Trail Corridor

Prepared By: Lynn Wodell, Open Space Coordinator

Recommended City Council Action

Authorize the City Manager to execute the necessary Purchase and Sale Agreement for the property, execute and accept easements to and across the acquired property, execute the necessary closing documents required for the acquisition of this parcel, and authorize that funds from the City's Open Space Land Purchases Account be used for the purchase.

Summary Statement

- City Staff has negotiated for the purchase of approximately 1.53 acres.
- The property is located along Big Dry Creek Open Space on Wadsworth Parkway at Independence Street.
- Acquisition of this site is recommended to expand the Big Dry Creek Open Space and Trail Corridor, provide access and a trail head for the Big Dry Creek Trail and to preserve the views of the mountains from northbound Wadsworth Parkway.

Expenditure Required: \$ 186,611

Source of Funds: City Open Space Land Purchases Account

Policy Issue

Should Open Space funds be used for the preservation of this property and should the City grant and receive easements for the improvement of the site?

Alternatives

1. Authorize the acquisition of this property.
2. Decide not to acquire this property at this time. Staff does not recommend this alternative because this is the last opportunity to preserve additional Big Dry Creek Open Space in this location and preserve the views.
3. Ask staff to continue to negotiate the terms and conditions of this acquisition. Staff does not recommend this alternative because the price of \$2.80 per square foot on Wadsworth Parkway is reasonable given the additional obligations being taken on by the seller.
4. Authorize the acquisition of the property without the easements. Staff does not recommend this alternative because the easements are a benefit to the City and eliminate or reduce the costs of maintenance and management in the future.

Background Information

City staff has attempted to negotiate the purchase of a 3.6-acre parcel located on the west side of Wadsworth Parkway at Independence Street for the past few years. This property has been a desirable open space acquisition objective in order to broaden out the Big Dry Creek open space and trail corridor abutting Wadsworth Parkway. Unfortunately, the original asking price was \$3.25 per square foot for a total of \$509,652. At the same time, ReMax Alliance was looking for a piece of property on which to build a new office building in order to combine their two Westminster offices into one building.

Because ReMax Alliance does not require the entire 3.6 acres for their facility, they are willing to sell 1.53 acres to the City as Open Space; grant access easements across their parking lot to reach the open space parcel; clean-up, grade, and seed the acquisition parcel with native seed; grade and gravel a trailhead parking area; improve the existing pond to serve storm detention purposes; and maintain the parcel as well, a responsibility that will run with the land. In exchange, the City would pay \$2.80 per square foot or \$186,611 for the site and grant the necessary easements for the grading, drainage and maintenance.

The acquisition of this property is a high priority of the Open Space Advisory Board. It is a valuable addition to the Big Dry Creek Open Space and will help preserve the views of the mountains and the Big Dry Creek valley from this location. The parcel is currently barren with little vegetation, so it is a benefit to the City to be able to have the site graded, re-vegetated and maintained without having to use the City's limited resources.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Purchase of Water Treatment Chemicals

Prepared By: Carl F. Pickett, Purchasing Specialist

Recommended City Council Action:

Award the bid for Ferric Chloride to Kemiron. Award the bid for Caustic Soda and Sodium Hypochlorite to DPC. Award the bid for Polyaluminum Chloride to General Chemical at the unit prices indicated on the bid tabulation on an as-needed basis up to a maximum of \$295,500, and charge the expense to the appropriate 2003 Water Resources Division Budget.

Summary Statement

- City Council approved the 2003 Water Resources Division budget, which included funds to purchase water treatment chemicals.
- Four chemicals will be purchased in large quantities in 2003. They include: Ferric Chloride, Caustic Soda, Sodium Hypochlorite, and Polyaluminum Chloride.
- In November 2002, the City's Purchasing Specialist received the results of MAPO's (Multiple Assembly of Procurement Officials) bid for water treatment chemicals for 2003. The low bid is being recommended for the purchase of Ferric Chloride, Caustic Soda, and Sodium Hypochlorite.
- Polyaluminum Chloride was not included in MAPO's bid, so the City solicited bids from three vendors. The only response meeting specifications is being recommended for purchase.

Expenditure Required: \$ 295,500

Source of Funds: Public Works and Utilities Department, Water Resources Division Budget

Policy Issue

Should the City accept the MAPO bid for Water Treatment Chemicals or seek bids separately for the City of Westminster?

Alternative

Reject the MAPO bid and rebid the chemicals.

Background Information

As part of the 2003 budget, City Council approved the purchase of water treatment chemicals for the City’s water supply. Information regarding each chemical and its approximate annual usage and low bid price follows:

CHEMICAL	APPROXIMATE QUANTITY	PRICE	EXTENDED PRICE	VENDOR
Ferric Chloride	300 tons	\$285 ton	\$85,500	Kemiron Companies
Caustic Soda	100 tons	\$320 ton	\$32,000	DPC Industries
Sodium Hypochlorite	100 tons	\$980 ton	\$98,000	DPC Industries
Polyaluminum Chloride	120 tons	\$670 ton	\$80,400	General Chemical

Ferric Chloride is used for coagulation/clarification in the treatment process at the Semper Water Treatment Facility. Caustic Soda is used for pH control and chlorine is used for disinfection. These chemicals are used at the Semper Water Treatment Facility and the Northwest Water Treatment Facility. The usage numbers are approximate since this is for the whole year’s usage, and factors such as weather and demand are unpredictable. The approximate usage figures are based on last year’s actual usage.

This bid was put out on behalf of MAPO, a cooperative of state, municipal, county, special district, school district or other local government agencies. This is a competitive bid and offers greater volume and lower prices to the City than the City can obtain on its own. Westminster City Code 15-1-4-A1 specifically states that this is an acceptable form of purchasing for the City.

Twenty-nine chemicals were put out on the MAPO bid. Thirty-two water chemical vendors responded to the bid notification. They were American Pride; Aqua Ben Corp.; Aqueous Solution; Basic Chemical Solutions; BHS Marketing; Calgon Carbon; Carbon USA; Carus Corp; CPL Carbon Link; DPC Industries; General Chemical; General Technologies; Good Pasture; Harcros Chemical; Industrial Chemicals; Interstate Chemical; LCI Lucier Chemical Industry; Kemiron North America; Marina Pool Corp.; MeadWestvaco; Mississippi Lime; Norit Americas; Ondeo Nalco; Peak Polymer; Polydine; PVS Tech; Solvay Minerals; Thatcher Company; Treatment Tech.; U.S. Welding; and Univar.

The low bids for the three chemicals, Ferric Chloride to Kemiron in the annual approximate amount of \$85,500, Caustic Soda to DPC Industries in the annual approximate amount of \$32,000, and Sodium Hypochlorite to DPC Industries in the annual approximate amount of \$98,000 meets all specifications and requirements set by the City.

Poyaluminum chloride is used for coagulation/clarification in the treatment process at the Northwest Water Treatment Facility. The sole responsive bid put out by the City for Poyaluminum Chloride was received from General Chemical and was not bid by MAPO. Two other bids were received from Kemiron and Summit Research but they did not meet specifications. Their products each contained less aluminum and required higher volumes of chemical use to offset the difference, thus increasing their net cost. The added volumes also increased the cost of pH adjustment and man-hours for handling the

SUBJECT: Water Treatment Chemicals Purchase

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additional chemical shipments. The bid from General Chemical in the annual approximate amount of \$80,400 meets all specifications and requirements set by the City, at the lowest net cost.

The annual estimated cost of the chemicals is within the amount previously approved by City Council for this expense.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: 2003 Water Meter Purchases

Prepared By: Richard A. Clark, Utilities Operations Manager
Andy Mead, Utilities Operations Coordinator

Recommended City Council Action

Authorize the purchase of new water meters and meter transponders for 2003, not to exceed the approved 2003 budgeted amount of \$134,000.

Summary Statement

- Funds have been approved and allocated in the 2003 Utilities Division operating budget for the purchase of water meters and transponders during this year.
- Purchase 400 meters with transponders and an additional 275 replacement transponders.
- Funding for the water meter program is in the Utilities Division operating account in the amounts of \$84,000 for new meter sets and \$50,000 for transponder replacements.
- The Badger TRACE meter system is a proprietary item and meters are only available from Badger Meter Company through the local distributor, Mountain States Pipe and Supply.

Expenditure Required: not to exceed \$ 134,000

Source of Funds: Utility Fund; 2003 Utilities Division operating budget

Policy Issue

Should the Utilities Division utilize budgeted funds to purchase new water meter sets and replacement transponders through the year?

Alternative

Only purchase the meters and transponders for new housing starts and delay the purchase of replacement transponders to later in the year.

Background Information

In 1996, the City of Westminster undertook a water meter retrofit program for the entire City. All water meters were to be retrofitted with radio frequency transponders, which enabled the meter to be read remotely. This program has been fully implemented and the City is now purchasing meters for new construction and replacement transponders. Badger Meter's TRACE system was selected and Badger meters have been established as the City's standard water meter. The meters and transponders furnished by Mountain States Pipe & Supply met all required specifications set by the City.

During 2003, 400 new residential meter sets are projected to be required and 275 transponder replacements will be needed, as they are not all covered under warranties. The unit price per meter this year will not change from the price paid in 2002. The unit cost for each meter unit is \$216. The replacement transponders' unit cost is \$180 each.

Staff is requesting authority to purchase all of the needed meters and transponders for 2003 to have on-hand and utilize as needed throughout the year.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Special Legal Services Contract

Prepared By: Leslie Annand, Assistant City Attorney

Recommended City Council Action

Authorize the City Manager to sign a contract for legal services with McNally & Bowers, P.C., for special legal services in connection with advice pertaining to and preparation of a legal opinion concerning the income tax exclusion of pension plan offsets for FPPA Disability Benefits in an amount not to exceed \$2,500.

Summary Statement

- A City firefighter is being laid off due to disability and is eligible for a duty-related disability benefit from FPPA on a tax-free basis. Colorado statute provides for an offset of these disability payments for the disabled participant's money purchase pension plan. The issue for the City is whether these offset payments are taxable or tax-exempt.
- Staff recommends that the City hire John McNally of McNally & Bowers, P.C., as special legal counsel to provide legal consultation and prepare a legal opinion concerning the income tax exclusion of the pension plan offsets. Mr. McNally has extensive legal expertise and experience concerning the income tax exclusion of pension plan offsets for FPPA on-job disability benefits. Mr. McNally has agreed to a fee of \$1,000 for his legal opinion with the remainder to be used for hourly consultation.

Expenditure Required: Not to exceed \$2,500

Source of Funds: City Pension Fund

Policy Issues

Should the City hire McNally and Bowers, P.C., for special legal services in connection with the preparation of a legal opinion concerning the income tax exclusion of pension plan offsets for FPPA on-duty disability benefits?

Alternatives

1. Not hire outside counsel and proceed without the benefit of a legal opinion concerning possible tax consequences of pension plan offsets. This is not recommended as it does not protect the City in the same fashion as having a bona fide legal opinion. In addition, Staff research has resulted in information about a standard procedure used by pension plans in dealing with the IRS tax issues, and this procedure of hiring legal counsel and having an opinion is standard practice.
2. Seek private letter ruling from the IRS in lieu of legal opinion from John McNally. This is not recommended because there is some concern, as reiterated by the IRS and legal counsel, that the private letter ruling currently in effect will take 18 months to 24 months (minimum) to be reviewed, and in the end might be overturned. This would prospectively reverse several other rulings currently in effect in the State of Colorado. Staff does not believe it is necessary to go to these lengths to achieve the goal of having a definitive ruling on this issue.

Background Information

Generally, IRC § 104(a) allows employees to exclude from taxable income disability payments received as a result of job-related accidents or injury under workers compensation or similar statutes. However, the Treasury Regulations interpreting this statutory exclusion state that pension plan benefits, even if paid as a result of a participant's on-job disability, are generally still taxable. In 1996, the Colorado Legislature adopted C.R.S. § 31-31-806.5 to provide for separate on-job disability benefits for firefighters and police officers who were totally or occupationally disabled on-job, for the specific purpose of creating a workmen's comp or similar statute that would meet the requirements for income exclusion under Code § 104(a)(1). FPPA received a favorable IRS ruling that benefits paid under the new statute would be tax-free under Code § 104(a)(1). Because of the IRS ruling, there is no question that the on-job disability payments made under C.R.S. § 31-31-806.5 are tax-free. However, C.R.S. § 31-31-804(2) creates a statutorily required offset of these disability payments for the actuarial equivalent of such disabled participant's money purchase pension plan (the City's pension plan). This offset raises the tax question as to whether all or any of the pension plan benefit could also be excluded from the disabled participant's income for tax purposes. The issue facing the City is whether to report the payments as taxable or tax-exempt. On September 25, 1998 and April 19, 2000, the IRS issued favorable private letter rulings ("PLR") regarding the City of Grand Junction's and the City of Aurora's police and fire new hire money purchase plans, finding that benefits paid under § 806.5 of the Statute, as offset by the benefits funded under the pension plans pursuant to § 804(2) of the Statute, are excludable from the member's gross income under § 104(a)(1) of the Code.

Based upon Mr. McNally's conversations with the IRS National Office pension attorneys who were reviewing the PLR request for Aurora, it is possible (but not likely) that authorities in the IRS National Office Employee Plan Division could overrule the favorable rulings of the Colorado PLRs if these ruling requests were pursued to the highest levels of the IRS. It is, therefore, the advice of Mr. McNally's firm that additional ruling requests on the issues presented in the Colorado PLRs by other Colorado money purchase pension plans could very well jeopardize the existing favorable rulings. Therefore, such action is not advised. Even though PLRs technically are only directed to the taxpayer requesting the PLR and technically may not be used or cited as precedent for other taxpayers, as a practical matter the IRS rarely uses these technical rules to deny the reliance of another taxpayer on an existing PLR, where such taxpayer's issues, facts, statutes and laws are similar or identical to those of the taxpayer who has obtained the PLR. Mr. McNally advises that there is little risk to Westminster in its reliance upon the existing favorable Colorado PLRs, and is willing to issue an opinion to this effect. Additionally, the legal costs and IRS filing fees for PLR requests involves significantly greater cost than the recommended action.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this ____ day of _____, 2003, by and between **MCNALLY & BOWERS, P.C.** (the "Firm") and the **CITY OF WESTMINSTER** (the "City").

RECITALS

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

AGREEMENT

1. The Firm shall furnish special legal services in connection with providing legal consultation and preparing a legal opinion concerning the income tax exclusion of pension plan offsets.
2. John McNally of the Firm shall be principally responsible for the Services.
3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.
4. This Contract may be terminated by the City with or without cause.
5. The Westminster City Council authorized this contract on January 27, 2003.
6. Payments for legal services pursuant to this Contract shall not exceed \$2,500.00 without further written authorization by the City.

MCNALLY & BOWERS PC

By _____
John McNally

CITY OF WESTMINSTER

By _____
J. Brent McFall, City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Swim and Fitness Center Weight Room Equipment Bid Award

Prepared By: Brad Chronowski, Landscape Architect II

Recommended City Council Action:

Authorize the City Manager to award the bid for the Swim and Fitness Center weight room equipment to Advanced Exercise Equipment in the amount of \$52,736.00 and to KOS Fitness Products in the amount of \$47,595.20 for the purchase of exercise equipment as outlined in the accompanying agenda memorandum.

Summary Statement:

- The Swim & Fitness Center is currently undergoing the 2002 Weight Room Expansion Project.
- The expansion plans include furnishing the weight room with commercial-grade weight and cardiovascular equipment.
- The City received 14 bids for this equipment. Several of the bids were rejected due to lack of local representation, inferior products or incomplete bids. The bids have been broken into two major categories: **Strength** (Free Weights and Selectorized Machines) and **Cardiovascular** (Bikes, Treadmills and Ellipticals). The acceptable bid tabulation follows:

KOS Fitness Products	\$38,378.20	(Strength)
	\$54,095.00	(Cardiovascular)
Star Trac	\$55,075.00	(Cardiovascular)
Advanced Exercise Equipment	\$42,414.12	(Strength)
	\$55,944.00	(Cardiovascular)
Commercial Fitness Solutions	\$46,743.00	(Strength)
	\$57,989.50	(Cardiovascular)

- The City intends on using funds from the 2002 Swim & Fitness Center Weight Room Expansion and 2003 Swim & Fitness Center Roof Replacement Projects to purchase the equipment. (authorization was given per previous discussions with City Council.)
- Staff thoroughly evaluated the bids considering value, quality, service and past experiences with durability of equipment.
- This bid was written with the intention to choose equipment on quality, price, and service. Therefore, based on that criteria, Staff recommends awarding two separate contracts.
- On December 16, 2002, City Council authorized Parks, Recreation and Libraries to allocate \$65,000 of the 2003 Swim & Fitness Center Roof Replacement budget toward the purchase of weight room equipment and furnishings for the new weight room. There is an additional \$46,250 available for equipment purchases in the original weight room expansion budget.

Expenditure Required: \$100,331.20

Source of Funds: 2002 and 2003 General Capital Improvement Program Fund

Policy Issues

1. Does City Council wish to furnish the newly expanded weight room at the Swim & Fitness Center in a manner that is consistent with other like facilities in the City?

Alternatives

1. City Council could reject the bids and re-bid the equipment. Staff would not recommend this alternate as the competitive nature of this bid produced several components having lower prices than anticipated.
2. City Council could request that Staff reduce the amount of equipment purchased for this facility. Staff would prefer to fully furnish this weight room to meet the high standards expected from our citizens and increase use and revenues at this facility.
3. City Council could direct Staff to revisit other bidders.

Background Information

In working with in-house fitness experts and exercise equipment vendors, Staff developed a layout of weight room exercise equipment and furnishings. This layout was used to generate a bid list of equipment that was mailed to vendors whose products are of superior quality and whose local service is acceptable to Staff. While creating this list, it became apparent to Staff that no one vendor could supply the City with equipment of the expected quality and meet our budget. Therefore, bids were solicited and bidders were made aware that the City could choose to split the bid between two or more bidders.

Staff researched equipment with their users, other local municipalities and private gyms. The comments received, favoring Life Fitness, were incorporated into bid evaluation and selection. The importance of a reliable, local vendor lies in their service commitment to the City. Recreation center Staff strives to keep its equipment up and running as much as possible. The relationships established with the selected vendors favor the City and allow Staff to minimize equipment downtime and obtain good maintenance.

Currently the Swim and Fitness Center features Life Fitness cardiovascular equipment from Advanced Exercise Equipment. If possible, Staff would like to present the same line of equipment to its customers. The user interface on all cardiovascular equipment is somewhat complex and center users become accustomed to the operation of their favorite machines. Providing additional Life Fitness equipment in the new weight room will allow for a smooth transition and a welcomed addition the center.

Staff considers the selected LifeFitness cardiovascular equipment (treadmills, stationary bicycles, etc.) from Advanced Exercise Equipment as superior equipment compared to its competitors. The bids received from this vendor were lower than expected and within budget. Their advancements in motor construction, mechanics, ergonomics and included lifetime warranties on critical components make them superior to equipment offered by Star Trac and Precor (offered by KOS), which was only slightly less costly. Staff has experienced some maintenance problems with Star Trac equipment at the City Park Fitness Center in regards to motors and premature internal computer hardware failure. While the Life Fitness equipment was slightly more expensive than its competitors, Staff believes that this initial investment will more than pay for itself in the long term with savings in repairs, replacement parts and staff time.

Magnum, provided by KOS Fitness Equipment, was selected to furnish selectorized and free weight equipment. It is considered by Staff to be of superior quality and meets our budget. Our Staff is experienced and comfortable working with this equipment and vendor. Also, this vendor offered the City a desirable incentive valued at \$3,795 for a free piece of cardiovascular equipment by purchasing their strength equipment. Staff wishes to exercise this incentive. The apparent low bidder for selectorized equipment, Commercial Fitness Solutions, downgraded their top line to compete with Magnum. The

SUBJECT: Swim and Fitness Center Weight Room Equipment Bid Award

Page 3

bidding documents required the vendor to bid their highest quality line of equipment. Staff considers Magnum to be superior to this line of Cybex selectorized equipment.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Councillor's Bill No. 1 re Ball Corporation Business Assistance Package

Prepared By: Becky Johnson, Economic Development Program Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 1 on second reading authorizing the City Manager to execute the business assistance agreement with Ball Corporation, in the amount of \$50,000, which includes \$10,400 in permit fee rebates, \$26,250 in construction use tax rebates, \$7,500 in equipment use tax rebates at move-in and \$5,850 in equipment use tax rebates over the first two years of operation.

Summary Statement

- City Council action is requested to pass the attached Councilors Bill on second reading that authorizes the execution of the attached business assistance agreement with Ball Corporation.
- This assistance package is based upon the City's goal to retain quality companies within the community and validate the City's commitment to job creation through expansion.
- The primary purpose of this assistance package is to encourage the expansion of Ball Corporation at their Westminster campus at 108th and Wadsworth Parkway.
- Staff has worked with Jefferson Economic Council and the State of Colorado proposing additional assistance from Jefferson County and the State based upon new job creation in the City of Westminster and Jefferson County.
- This Councillor's Bill was passed on first reading on January 13, 2003.

Expenditure Required: \$50,000 (Rebates)

Source of Funds: The business assistance package to Ball Corporation will be funded through permit fees, construction use tax, and equipment use tax directly generated from Ball Corporation expansion of the current R&D facility on their Westminster campus at 108th Avenue and Wadsworth Parkway.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **1**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT
WITH BALL CORPORATION FOR THE CONSTRUCTION OF BUILDING ADDITION ON
THE R&D FACILITY ON THE WESTMINSTER CAMPUS**

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

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

WHEREAS, Ball Corporation plans to construct a 28,000 square foot building addition to the research and development building on the Ball Campus, off of 108th and Wadsworth Parkway in Westminster, and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Ball Corporation 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 13th day of January 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Second Reading of Councillor's Bill No. 2 re Amendment to Safeway Business Assistance Agreement

Prepared By: Becky Johnson, Economic Development Coordinator
Vicky Bunsen, Assistant City Attorney
Barb Dolan, Sales Tax Manager

Recommended City Council Action:

Pass Councillor's Bill No. 2 on second reading authorizing the City Manager to execute an amendment to the Westminster Plaza Safeway Business Assistance Agreement.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill on second reading that amends the current Business Assistance Package for the Westminster Plaza Safeway.
- The amendment removes the 84th Avenue and Federal Boulevard store (Summit Square) from the calculation of the rebate.
- The City and Safeway agree that the Agreement should be amended because the 84th Avenue and Federal Boulevard store was adversely affected by Safeway's decision to construct a new store at 104th Avenue and Federal Boulevard in Federal Heights.
- This Councillor's Bill was passed on first reading on January 13, 2003.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **2**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE ASSISTANCE AGREEMENT WITH
SAFEWAY STORES 45, INC.

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

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

WHEREAS, the city entered into a Business Assistance Agreement with Safeway Stores 45, Inc. to assist them in the construction of a store in the Westminster Plaza redevelopment area;

WHEREAS, in May of 2000 Safeway opened a new store at 104th Ave. and Federal and this store had not been anticipated at the time the Agreement was drafted; and

WHEREAS, Safeway and the City agree that it is appropriate to amend the existing agreement to remove the 84th Ave. and Federal store from the calculation of the sales tax rebate.

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 members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

Section 1: The City Manager of the City of Westminster is hereby authorized to enter into an Amendment to the Business Assistance Agreement with Safeway Stores 45, 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. 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 13th day of January, 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January, 2003.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Councillor's Bill No. 3 re Summit Square Shopping Center Business Assistance Package

Prepared By: Becky Johnson, Economic Development Program Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 3 on second reading authorizing the City Manager to execute and implement the business assistance agreement with Summit Square Investments LP, a Colorado limited partnership of Starr Realty, which totals \$214,800, and includes \$6,450 in permit fee rebates, \$15,000 in construction use tax rebates, \$18,000 in equipment use tax at move-in, and \$175,350 in incremental sales tax rebates over the first five years of operation for Summit Square Shopping Center.

Summary Statement

- City Council action is requested to pass the attached Councillors Bill on second reading which authorizes the execution of the attached business assistance agreement with Summit Square Investment LP to aid in the upgrading and renovation of the Summit Square Shopping Center at the northeast corner 84th Avenue and Federal Boulevard.
- This assistance package is based upon the City's goal to generate additional sales tax revenue and retain existing retail centers.
- This Councillor's Bill was passed on first reading on January 13, 2003.

Expenditure Required: \$214,800 (Rebates)

Source of Funds: The business assistance package with Summit Square Investments LP will be funded through revenue received from permit fees, construction use tax, equipment use tax, and incremental sales tax directly generated from the interior and exterior remodel of Safeway at Summit Square Shopping Center, as well as the improvements to the in-line space of the remainder of the shopping center.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **3**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT
WITH SUMMIT SQUARE INVESTMENTS LP
FOR THE OCCUPANCY OF THE SAFEWAY GROCERY STORE RENOVATION
AND UPGRADING OF IN LINE SPACE AT SUMMIT SQUARE SHOPPING CENTER**

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

WHEREAS, it is important for the City of Westminster to generate additional sales tax revenue and remain competitive with other local governments in creating assistance for occupancy of existing retail space in the City; and

WHEREAS, Summit Square Investments LP plans to partner with Safeway grocery to complete an interior and exterior remodel upgrade and improve the building façade, as well as remodel the interior and exterior at the existing Safeway grocery store at Summit Square Shopping Center at 84th Avenue and Federal Boulevard, and

WHEREAS, a proposed Assistance Agreement between the City and Summit Square Investments LP is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Summit Square Investments LP 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 13th day of January 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Second Reading of Councillor's Bill No. 4 re Vacation of a portion of the Stuart Street Right-of-Way within the Maple Place Subdivision, Filing No. 2

Prepared By: David R. Downing, City Engineer

Recommended City Council Action:

Pass Councillor's Bill No. 4 on second reading to accomplish the vacation of the unnecessary portion of the Stuart Street public right-of-way located within the boundaries of the Maple Place Subdivision, Filing No. 2.

Summary Statement:

- City Council action is requested to pass the attached Councilor's Bill on first reading to accomplish the vacation of a portion of the Stuart Street public right-of-way within the boundaries of Maple Place Subdivision, Filing No. 2, which is located east of the Burlington Northern/Santa Fe Railroad right-of-way and south of west 75th Avenue.
- The Maple Place Subdivision, which was originally platted in 1948, dedicated the Stuart Street right-of-way from west 75th Avenue, along the Burlington Northern Santa Fe Railroad, and connecting with west 74th Avenue. Premier Community Homes, Ltd. has replatted the remaining undeveloped lots along the south side of the site and is requesting the vacation of a portion of Stuart Street.
- City Staff has verified that the subject portion of the Stuart Street right-of-way is no longer of use to the City and recommends that City Council proceed with the requested vacation.
- This Councillor's Bill was passed on first reading on January 13, 2003.

Expenditure Required: \$0

Source of Funds: Not Applicable

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 4

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE VACATING PUBLIC RIGHTS-OF-WAY WITHIN THE MAPLE PLACE SUBDIVISION, FILING NO. 2

WHEREAS, certain rights-of-way were dedicated to the City of Westminster by the plat of the Maple Place Subdivision, recorded with Adams County at File 9, Map 30; and

WHEREAS, the right-of-way is no longer needed to serve the public access purpose for which it was originally intended; and

WHEREAS, the vacation of the right-of-way is necessary to permit the completion of the Maple Place Subdivision, Filing No. 2 development.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds and determines that the public convenience and welfare require the vacation of the right-of-way described in Section 2 hereof.

Section 2. Legal Description of Right-of-Way:

A PARCEL OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 68 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, ADAMS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 31; THENCE S00°17'02"E ALONG THE EASTLINE OF SAID SOUTHWEST ONE-QUARTER A DISTANCE OF 1338.67 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S00°17'02"E ALONG THE LAST DESCRIBED COURSE A DISTANCE OF 16.28 FEET TO A POINT LYING ON THE SOUTHERLY R.O.W. LINE OF WEST 74TH AVENUE; THENCE S89°42'59" W ALONG SAID SOUTHERLY R.O.W. LINE A DISTANCE OF 114.54 FEET TO A POINT LYING NON-TANGENT ON A CURVE ON SAID NORTHEASTERLY R.O.W. LINE; THENCE ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS N37°46'58"W A DISTANCE OF 201.61 FEET AND ALONG SAID NORTHEASTERLY R.O.W. LINE, SAID CURVE HAVING A CENTRAL ANGLE OF 04°04'42", A RADIUS OF 2832.91 FEET, AN ARC LENGTH OF 201.65 FEET; THENCE N89°01'49" E NON-TANGENT TO THE LAST DESCRIBED CURVE A DISTANCE OF 48.87 FEET TO A POINT LYING NON-TANGENT ON A CURVE AT THE NORTHWESTERLY CORNER OF LOT 9, BLOCK 3, MAPLE PLACE, AS RECORDED IN PLAT BOOK 9, MAP 9, OF THE ADAMS COUNTY, COLORADO RECORDS; THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS S37°36'36"E A DISTANCE OF 126.71 FEET ALONG THE WESTERLY LINE OF LOT 89 AND LOT 9 OF SAID BLOCK 3, SAID CURVE HAVING A CENTRAL ANGLE OF 02°35'19", A RADIUS OF 2792.91 FEET, AN ARC LENGTH OF 126.18 FEET TO THE SOUTHWESTERLY CORNER OF LOT 8 OF SAID BLOCK 3; THENCE N89°42'59"E ALONG THE SOUTHERLY LINE OF LOT 8 OF SAID BLOCK 3 A DISTANCE OF 81.90 FEET TO THE SOUTHEASTERLY CORNER OF LOT 8 OF SAID BLOCK 3; THENCE S00°17'02"E ALONG THE EASTERLY LINE EXTENDED SOUTHERLY OF LOT 8 OF SAID

BLOCK 3 A DISTANCE OF 9.89 FEET; THENCE S41°40'40"E A DISTANCE OF 45.37 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.2885 ACRES (12,568 SQUARE FEET), MORE OR LESS

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 13th day of January 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Second Reading of Councillor's Bill No. 5 re Supplemental Appropriation for Series 2002 136th Ave and I-25 Interchange Sales and Use Tax Revenue Bonds

Prepared By: Karen Creager, Internal Auditor

Recommended City Council Action:

Pass Councillor's Bill No. 5 on second reading appropriating \$12,913,231 in proceeds from the sale of Sales and Use Tax Revenue Bonds, Series 2002 for the construction of the interchange and associated road improvements for 136th Avenue at I-25.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill on second reading which authorizes a supplemental appropriation for the 2002 Sales and Use Tax Revenue Bonds in the General Capital Improvement Fund for the construction of the interchange and associated road improvements for 136th Avenue and I-25.
- This Councillor's Bill was passed on first reading on January 13, 2003.

Expenditure Required: \$ 12,913,231

Source of Funds: Bond proceeds

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **5**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THIS FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2002 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2913 in the amount of \$10,305,000 is hereby increased by \$12,913,231 which, when added to the fund balance as of the City Council action on January 13, 2003 will equal \$31,309,166. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of bond proceeds for the 136th Ave Interchange project.

Section 2. The \$12,913,231 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Carryover 7500.40020.0000	\$2,587,552	\$(2,600,000)	* \$(12,448)
Bond Proceeds 7500.46020.0058	\$0	<u>\$15,513,231</u>	\$15,513,231
Total Change to Revenues		<u>\$12,913,231</u>	
*Carryover will, from time to time, show a negative balance. This is not a problem as overall fund revenues maintain a positive balance.			
EXPENSES			
136 th Ave Interchange 80175030058.80400.8888	\$3,130,000	<u>\$12,913,231</u>	\$16,043,231
Total Change to Expenditures		<u>\$12,913,231</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 AND PUBLISHED this 13 day of January 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Public Hearing and Action on the Annexation and Zoning of Two Open Space Parcels Located on the North Side of 92nd Avenue and South of the Niver Canal

Prepared By: David Falconieri, Planner III

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 annexation of the former Lombardi property and Farmers' High Line Canal property.
3. Pass Councillor's Bill No. 6 on first reading annexing the former Lombardi and Farmers' High Line Canal properties to the City of Westminster.
4. Pass Councillor's Bill No. 7 on first reading zoning the annexed properties O-1, making the finding that the provisions of Section 11-5-3 of the Westminster Municipal Code have been met.

Summary Statement:

- Two parcels of land have been purchased by the City with open space funds in order to preserve their unique character. The first is a .72-acre parcel located on the north side of 92nd Avenue where the Farmers' High Line Canal crosses under the street, formally owned by the Farmers' High Line Canal Company. Other than the canal, there are no improvements on this site. The second parcel is the former Lombardi property consisting of 1.2 acres and located west of the first parcel where the Niver Canal crosses 92nd Avenue. (Please refer to attached vicinity map for exact locations.) There are two houses on this parcel that will be removed by the City.
- The Farmers' High Line Canal trail is anticipated to be continued through these properties and a connection made to the future Maulis Park on the south side of 92nd Avenue.
- The properties are governed by the terms of the Northeast Comprehensive Development plan that permits the proposed use. No amendment to the City's Comprehensive Land Use Plan is required.
- Staff has followed the annexation procedures as specified in Section 31-12-106(3) C.R.S., for annexation of municipally owned lands. This section of the Code waives most notification requirements of typical annexations. However, Jefferson County was notified of the annexation as a courtesy.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

This issue was reviewed by the Planning Commission on January 14, 2003. No one spoke in favor or opposition to the proposed annexation. The Planning Commission voted unanimously (7-0) to recommend to the City Council that the properties in questions be annexed to the City and that they be zoned O-1.

Policy Issue

In 1996, the City signed an intergovernmental agreement with Jefferson County that adopts the policy that it is beneficial to the City to annex properties within the enclave area. Should the City continue to adhere to this policy?

Alternative

Make a finding that it is not in the best interests of the City to annex these parcels at this time and take no further action. If this course of action is adopted, the City owned parcels will continue to be governed by the provisions of the Jefferson County zoning ordinance and policies.

Background Information

Applicant/Property Owner

The City of Westminster.

Surrounding Land Use and Comprehensive Land Use Plan Designations

North: The Niver Canal Open Space, Zoned O-1.

South: 92nd Avenue

East: Parcel 1, City Open Space, O-1; Parcel 2, Single-Family Residence, A-2 in the County.

West: Parcel 1, Niver Canal Open Space Zoned O-1; Parcel 2, Single-Family Residence, A-2.

Site Plan Information

Both properties will be used for open space purposes. The Farmers' High Line Canal trail will be constructed through the area.

Service Commitment Category

None required.

Referral Agency Responses

None received.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. 2

INTRODUCED BY COUNCILLORS

SERIES OF 2003

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 23, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO.

WHEREAS, pursuant to the laws of the State of Colorado, the City of Westminster is the sole owner of the property described below; and

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

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

1. The City Council finds:
 - a. Not less than 1/6 of the perimeter of the area proposed to be annexed is contiguous with the City of Westminster;
 - b. A community of interest exists between the area proposed to be annexed and the City;
 - c. The area is urban or will be urbanized in the near future; and
 - d. The area is integrated with or is capable of being integrated with the City.
2. The City Council further finds:
 - a. With respect to the boundaries of the territory proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowners thereof, except to the extent such tracts or parcels are separated by dedicated street, road, or other public way; and
 - b. With regard to the boundaries of the area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty (20) acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the previous year), has been included in the area being proposed for annexation without the written consent of the owners thereof, except to the extent such tract of land is situated entirely within the outer boundaries of the City immediately prior to the annexation of said property.
3. The City Council further finds:
 - a. That no annexation proceedings concerning the property proposed to be annexed by the City has been commenced by another municipality;
 - b. That the annexation will not result in the attachment of area from a school district;
 - c. That the annexation will not result in the extension of the City's boundary more than three (3) miles in any direction;

d. That the City of Westminster has in place a plan for the area proposed to be annexed; and

e. That in establishing the boundaries of the area to be annexed, the entire width of any street or alley is included within the area annexed.

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

5. The City Council concludes that the City may proceed to annex the area proposed to be annexed by ordinance pursuant to section 31-12-106(3), C.R.S.

PASSED AND ADOPTED this 27th day of January, 2003.

ATTEST:

Mayor

City Clerk

Lombardi Annexation

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2003

COUNCILOR'S BILL NO. **6**
INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTIONS 23, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

WHEREAS, pursuant to the laws of the State of Colorado, the City of Westminster is the sole owner of the hereinafter-described contiguous, unincorporated territory situate, lying and being in the County of Jefferson, State of Colorado; and

WHEREAS, the area proposed to be annexed is not solely a public Street or right-of-way; and

WHEREAS, City Council has heretofore adopted Resolution No. 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 may be annexed by ordinance at this time; and

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

NOW, THEREFORE, the City of Westminster ordains:

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

PARCEL 1

Commencing at the east quarter corner of said Section 23 from whence the center quarter corner of said Section bears S89°00'29"W, 2671.44 feet, as shown on the City of Westminster's GIS survey plats, and on which all bearings hereon are based; thence along the east line of the northeast quarter of said Section N00°18'23"W, 30.00 feet to a point on the north line of that parcel of land annexed into the City of Westminster and recorded at Reception Number 84083557 of the records of the Jefferson County Clerk and Recorder, the true point of beginning;

Thence along said north line S89°00'29"W, 420.06 feet; thence N12°48'10"E, 88.08 feet to a point on a non-tangent curve to the left, a point on the south line of that parcel of land annexed into the City of Westminster and recorded at Reception Number 93037860 of said records; thence along said south line and along said curve having a radius of 2908.63 feet and an arc length of 134.42 feet, long chord bears S87°53'05"E, 134.41 feet; thence continuing along said south line S89°12'31"E, 265.82 feet to a point on the west line of that parcel of land annexed into the City of Westminster and recorded in Book 33 at Page 33 of said records; thence S00°18'23"E, 69.99 feet to the true point of beginning;

Contains 31484 square feet or 0.7228 acres more or less.

PARCEL 2

Commencing at the east quarter corner of said Section 23 from whence the center quarter corner of said Section bears S89°00'29"W, 2671.44 feet, as shown on the City of Westminster's GIS survey plats, and on which all bearings hereon are based; thence along the east line of the northeast quarter of said Section N00°18'23"W, 30.00 to a point on the north line of west 92nd Avenue; thence along said north line S89°00'29"W, 450.89 feet to a point on the line of that parcel of land annexed into the City of Westminster and recorded at Reception Number 93037860 of said records; thence continuing along said line S89°00'29"W, 217.02 feet to the true point of beginning;

Thence S89°00'29"W, 539.58 feet, along said north line to the southerly line of Niver Canal as recorded at Reception Number 93037860 of said records; thence along said line the following 5 courses; 1) N55°47'29"E, 12.77 feet to a point of curve to the right; 2) along said curve having a central angle of 13°00'00", a radius of 613.27 feet, an arc length of 139.15 feet and a long chord that bears N62°17'29"E, 138.85 feet; 3) N68°47'29"E, 65.00 feet to a point of curve to the right; 4) along said curve having a central angle of 26°00'00", a radius of 539.75 feet, an arc length of 244.93 feet and a long chord that bears N81°47'29"E, 242.83 feet and 5) S85°12'31"E, 105.50 feet; thence S00°02'01"W, 111.77 feet to the true point of beginning;

Contains 50292 square feet or 1.1545 acres more or less.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of January, 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of February, 2003.

ATTEST:

Mayor

City Clerk

Lombardi Annexation

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2003

COUNCILOR'S BILL NO. **7**
INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN TWO PARCELS OF LAND LOCATED IN SECTION 23, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from Jefferson County A-2 to City of Westminster O-1 zoning has been submitted to the City for its approval pursuant to Westminster Municipal Code Section 11-5-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from Jefferson County A-2 to City of Westminster O-1. Two parcels of land located in Section 23, Township 2 South, Range 69 West, 6th P.M., County of Jefferson, State of Colorado, more particularly described as follows:

PARCEL 1

Commencing at the east quarter corner of said Section 23 from whence the center quarter corner of said Section bears S89°00'29"W, 2671.44 feet, as shown on the City of Westminster's GIS survey plats, and on which all bearings hereon are based; thence along the east line of the northeast quarter of said Section N00°18'23"W, 30.00 feet to a point on the north line of that parcel of land annexed into the City of Westminster and recorded at Reception Number 84083557 of the records of the Jefferson County Clerk and Recorder, the true point of beginning;

Thence along said north line S89°00'29"W, 420.06 feet; thence N12°48'10"E, 88.08 feet to a point on a non-tangent curve to the left, a point on the south line of that parcel of land annexed into the City of Westminster and recorded at Reception Number 93037860 of said records; thence along said south line and along said curve having a radius of 2908.63 feet and an arc length of 134.42 feet, long chord bears S87°53'05"E, 134.41 feet; thence continuing along said south line S89°12'31"E, 265.82 feet to a point on the west line of that parcel of land annexed into the City of Westminster and recorded in Book 33 at Page 33 of said records; thence S00°18'23"E, 69.99 feet to the true point of beginning;

Contains 31484 square feet or 0.7228 acres more or less.

PARCEL 2

Commencing at the east quarter corner of said Section 23 from whence the center quarter corner of said Section bears S89°00'29"W, 2671.44 feet, as shown on the City of Westminster's GIS survey plats, and on which all bearings hereon are based; thence along the east line of the northeast quarter of said Section N00°18'23"W, 30.00 to a point on the north line of west 92nd Avenue; thence along said north line S89°00'29"W, 450.89 feet to a point on the line of that parcel of land annexed into the City of Westminster and recorded at Reception Number 93037860 of said records; thence continuing along said line S89°00'29"W, 217.02 feet to the true point of beginning;

Thence S89°00'29"W, 539.58 feet, along said north line to the southerly line of Niver Canal as recorded at Reception Number 93037860 of said records; thence along said line the following 5 courses; 1) N55°47'29"E, 12.77 feet to a point of curve to the right; 2) along said curve having a central angle of 13°00'00", a radius of 613.27 feet, an arc length of 139.15 feet and a long chord that bears N62°17'29"E, 138.85 feet; 3) N68°47'29"E, 65.00 feet to a point of curve to the right; 4) along said curve having a central angle of 26°00'00", a radius of 539.75 feet, an arc length of 244.93 feet and a long chord that bears N81°47'29"E, 242.83 feet and 5) S85°12'31"E, 105.50 feet; thence S00°02'01"W, 111.77 feet to the true point of beginning;

Contains 50292 square feet or 1.1545 acres more or less.

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 27th day of January, 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of February, 2003.

ATTEST:

Mayor

City Clerk

Lombardi Zoning



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Creation of a New Capital Improvement Program (CIP) Project – McKay Lake Outfall Drainage Project

Prepared By: Barbara Gadecki, Assistant to the City Manager

Recommended City Council Action:

Approve the creation of the new Capital Improvement Program (CIP) project “McKay Lake Outfall Drainage Project,” utilizing the remaining moneys from the nine projects closed at year-end 2002 to provide initial budget of \$694,496 for this new project in the General Capital Improvement Fund.

Summary Statement:

- Staff has identified 14 existing CIP projects to close out year-end 2002. Nine of these 14 projects have remaining funds available (\$694,496) that otherwise will be returned to the General Capital Improvement Fund (GCIF) balance and potentially appropriated by City Council in the fall of 2003.
- The McKay Lake Outfall Drainage Project will be a joint project between the Cities of Thornton and Westminster. It includes the planning, cost apportionment, design and construction of improvements to reduce the significant floodplain between Huron Street and Washington Street, north of 136th Avenue.
- No funds are currently budgeted for this significant floodplain mitigation project in 2003 or 2004, as the project was originally not anticipated as necessary until a future year. Staff is recommending that project savings from nine General Capital Improvement Fund (GCIF) projects be utilized to initiate the funding for this important floodplain mitigation project for the north I-25 corridor.

Expenditure Required: None at this time; Move \$694,496 to new CIP Project

Source of Funds: General Capital Improvement Fund

Policy Issues

Does City Council wish to proceed with the necessary drainage improvements along the north I-25 corridor utilizing the funding source outlined within this Staff Report?

Alternatives

- Direct Staff to identify existing CIP projects within the 2003 Adopted Budget to cancel and utilize the funds from those projects to pay for this important infrastructure project. Using funds from closed out CIP Projects is a better approach than canceling projects that Staff and Council have identified as high priorities.
- Direct Staff to include this CIP project in the 2005 proposed budget and not proceed with any drainage improvements to this corridor prior to then. The timing of proceeding with the proposed drainage improvements is critical; therefore, Staff believes that allocating funding now is a very high priority.

Background Information

At the end of each year, the City Manager's Office, Finance Department and the various project managers review capital improvement projects, identifying those ready to officially close out in the financial management system as well as for the City's annual audit. Typically, any funding released as a result of closing out the projects simply goes into fund balance and is brought back to City Council in the late summer/early fall of the following year to review along with any carryover funds available for appropriation. Traditionally, Staff has reviewed this information in late summer/early fall with City Council, coinciding with City Council's review of the upcoming year's proposed Capital Improvement Program budget.

Staff is requesting at this time that City Council consider appropriating the remaining moneys from nine projects to be closed with year-end 2002 procedures into a new project. A key drainage project has been identified that currently does not have funding in the 2003 or 2004 adopted budgets that will need to be addressed over the next couple of years. This project was not budgeted in 2003 or 2004, as this project was not originally anticipated as necessary until a future year. However, as development prospects have emerged along the north I-25 corridor, this project is critical to maximize land available for future development.

As a result, Staff is recommending that the funds made available by the annual year-end closure of Capital Improvement Program (CIP) projects in the General Capital Improvement Fund (GCIF) be utilized to create this new project and initiate funding for it. The McKay Lake Outfall Drainage Project is anticipated to cost the City of Westminster approximately \$3.9 million; the total project (including Thornton's portion) is anticipated to cost approximately \$6 million. The project will be a joint project between the Cities of Thornton and Westminster and includes the planning, cost apportionment, design and construction of improvements to reduce the significant floodplain between Huron Street and Washington Street, north of 136th Avenue. Addressing the significant floodplain issues in this area is critical to the future development potential in this area. This initial funding will allow the City to do preparatory work to start resolving issues that might hinder development and thus prevent the City from implementing improvements in a timely fashion.

Fourteen projects in the GCIF are being closed with the year-end procedures for 2002; nine of which have sufficient funds remaining and are appropriate to move into this proposed project. Many of these projects have been on the City’s financial books for several years due to the length of warranty periods, anticipated use of savings for components of the original project that were delayed until the substantial portion of the project was complete (i.e., those enhancement components included in the original project budget but due to the high construction costs experienced in the late 1990’s/early 2000’s were put on hold to ensure the main components of the project was completed within budget). Additionally, some projects were merged with other projects during the bidding process and/or paid for with other funding sources (such as the 104th Median project that was ultimately paid for via the Community Enhancement Fund budget instead of this separate project).

The nine projects being closed at year-end and recommended to transfer balances into the new CIP project are as follows:

Project	Budget	Expended	Balance
104 th Median: Sheridan Blvd to Wadsworth	\$100,000	\$0	\$100,000
Amherst School Waterline	\$315,881	\$94,998	\$220,883
Capital Facilities	\$204,000	\$0	\$204,000
College Hill Library	\$241,280	\$189,641	\$51,639
Fireplace Equipment Property Purchase	\$228,000	\$225,610	\$2,390
Kings Mill Library Improvements	\$35,000	\$0	\$35,000
Lakeview Pavilion	\$1,600,000	\$1,585,714	\$14,286
Leyden Reservoir	\$1,125,833	\$1,083,888	\$41,945
Promenade East	\$10,929,998	\$10,905,645	\$24,353
		Remaining Balance	\$694,496

Staff is recommending that this remaining balance of \$694,496 be moved into this proposed new CIP project to help initiate design work necessary.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



Subject: Resolution No. 3 re Recovery Contract Interest Rate

Prepared By: Frances A. Velasquez, Secretary

Recommended City Council Action

Adopt Resolution No. 3 establishing the 2003 calendar year interest rate for non-City-funded public improvement recovery contracts at 6.25 percent and an interest rate of 4.84 percent for City-funded public improvements.

Summary Statement

- In accordance with Section 8(A) of Title XI, Chapter 6, of the City Code, Staff requests that City Council establish interest rates on recovery agreements for 2003. For more than 15 years, it has been City practice to add two percent to the Prime Rate for non-City funded recovery contracts. The Prime Rate on January 1, 2003, was 4.25 percent. It is proposed that the recovery interest rate for 2003 on non-City-funded public improvements be the Prime Rate plus two percent, or 6.25 percent.
- The recovery interest rate on City-funded projects is based on the Municipal Bond Index. This index is obtained by referencing the Municipal Bond Buyer's 20 Bond Weekly Index. This index for 2003 is 4.84 percent. The proposed recovery interest rate on City-funded projects is 4.84 percent for 2003.

Expenditure Required: n/a

Source of Funds: n/a

Policy Issues

Does the City Council wish to continue this method of assessing interest on recoveries associated with new private developments in the City?

Alternatives

Council is free to establish any interest rate for recovery agreements that it deems appropriate.

Background Information

Several years ago, City Council established a recovery system which enables developers to recover a portion of certain costs associated with public improvements installed with their developments that also benefit adjacent, undeveloped properties. Recovery contracts are executed between the City and the developer. When subsequent development occurs in those areas benefited by the improvements installed by the original developer, the new development is assessed its proportionate share plus interest, which is then returned to the original developer. The recovery system has also allowed the City to be reimbursed for public improvements installed by the City when subsequent private development occurred abutting the improvements.

Prior to 1993, the interest rate used in calculations for recoveries owed on City-funded public improvements was equal to that used on privately funded improvements (i.e., prime rate plus two percent). However, the actual cost of money used to fund City Capital Improvement Projects is usually much less than that charged to private developers. Since the philosophy behind the City's recovery system is one of cost reimbursement, not profit making, it is more equitable to select an interest rate for City-funded projects that more closely approximates the actual cost of money to the City. Therefore, beginning in 1993, Council determined that the Municipal Bond Index in effect at the first of each calendar year would be selected as the recovery interest rate for City projects. Thus, the recovery interest rate for such projects during 2003 is proposed to be 4.84 percent.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. 3

INTRODUCED BY COUNCILLORS

SERIES OF 2003

WHEREAS, Section 11-6-9.75(A) of the Westminster City Code provides the City Council shall establish the interest rates to be utilized for the assessment of interest costs relating to recovery costs for public improvements; and

WHEREAS, the Westminster City Code provides that such interest rates are to be established from time to time; and

WHEREAS, these interest rates have traditionally been calculated at the beginning of each calendar year; and

NOW, THEREFORE, be it resolved that the City Council of the City of Westminster hereby establish the 2003 calendar year interest rate for any non-City funded public improvement recovery contract to be 6.25 percent and the 2003 calendar year interest rate for City-funded public improvements to be 4.84 percent.

Passed and adopted this 27th day of January 2003.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Buy-Back Agreement for Circle Point Land

Prepared By: Steve Smithers, Assistant City Manager

Recommended City Council Action:

Authorize the City Manager to enter into a Buy-Back Agreement for the re-purchase of Circle Point land in substantially the same form as the attached Agreement.

Summary Statement:

- The City was approached earlier this year by Catellus Development Corporation with a request to delay a payment owed to the City in 2002 for the Circle Point Purchase and Sale Agreement entered into between the City and Catellus in 1999.
- The request for an extension by Catellus is due to the financial difficulties being experienced by the Circle Point office building development associated with the significant rise in office vacancy rates along the US 36 corridor and the Denver Metropolitan area generally.
- As an alternative to delaying the payment, the City has approached Catellus with a proposal to turn the land back over to the City to allow for a retail opportunity to move forward on the southern most parcel of the Circle Point development.
- After somewhat extended negotiations, the City and Catellus have arrived at agreed upon terms that will allow the City to take back the land necessary to accomplish the retail deal that offsets most of the current payment, \$1,883,185, owed by Catellus to the City. (A copy of the proposed agreement is attached)

Expenditure Required: \$ 0

Source of Funds: n/a

Policy Issues

Should the City enter into the Buy-Back agreement for the re-purchase of land at Circle Point?

Alternatives

City Council could choose to not enter into the agreement at this time. Staff does not recommend this alternative as the City is currently pursuing a retail prospect at the southern end of the Circle Point development and the land included in this agreement is necessary to allow this deal to continue moving forward.

Background Information

The Circle Point Land Purchase and Sale Agreement was entered into by the City and Catellus Development Corporation in June of 1999 for the sale of approximately 70 acres of land for the development of an office building complex. This development is located in the area of 112th avenue and Westminster Boulevard. The original plans called for eight buildings to be constructed as shown on the attached site drawing. The first two buildings have been constructed along with parking, access roads and the circle drive at the center of the buildings, the circle garden park, and landscaping and sidewalk improvements along Westminster Boulevard. Both office buildings are currently fully leased.

Over the last eighteen months the US 36 corridor, and the Denver Metropolitan Region as a whole, have experienced significant increases in office building vacancy rates. Current vacancy rates along the US 36 corridor range between 30 and 40 percent and many existing office space leases are being put back on the market for sub-leasing as companies downsize. Circle Point has been successful in getting the two existing buildings leased out; however, this has only been accomplished by offering lease rates well below average market rates for Class A office space. In addition, plans for construction of additional buildings at this site have been put on hold by Catellus until vacancy rates drop considerably, which is anticipated to take several years. Catellus is continuing to market the site aggressively.

The Circle Point Land Purchase and Sale Agreement between the City and Catellus was structured with payments that were projected by Catellus to roughly coincide with the timing of the development of additional office buildings on the site. The payment structure includes four payments, in addition to the initial payment of \$2,500,000 made at the time of closing, which range between \$2,500,000 and \$4,000,00. The price of the land was set on an escalating basis starting at \$3.80 per square foot and topping out six years later with the final payment at \$7.82 per square foot. The total sale price of the land is \$16,500,000. Catellus made an early payment of \$616,815 in 2001, reducing their current payment from \$2,500,000 to \$1,883,185.

The City approached Catellus early in 2002 to combine efforts to put together a land deal that would create greater opportunity for development of the southern most parcel in the Circle Point Development. A retail site is being proposed that can be established by combining the City's property north of Van's Skate Park (known as the Ryan parcel) and the southern most parcel of Circle Point owned by Catellus. This arrangement allows Catellus to provide land back to the City in lieu of making the full \$1.88 million dollar payment that came due in late 2002.

Staff is recommending that the Circle Point Purchase and Sale Agreement include the following modifications to allow this transaction to take place:

- Convey approximately 7.4 acres of land to the City, for which Catellus will be credited \$5.24 per square foot (the contractual price of the land in the Purchase and Sale Agreement) against their current payment obligation of \$1.88 million. Catellus will pay the City the difference to the City, or approximately \$190,000.
- Catellus agrees that the NBC Metro District, established to construct infrastructure improvements needed by the Circle Point Project, will construct or pay for infrastructure improvements, and their maintenance, needed to service the retail project. Catellus negotiated with Staff to place a top set cost on these improvements of \$1,000,000, which Staff believes can be made to work.
- The retail site will be included in the NBC Metro District.
- Catellus has negotiated for a reduction of their next \$3,500,000 payment obligation in October of 2003 from \$5.62 to \$5.00 per square foot (reducing their obligation to \$3,114,540). Staff believes that this is necessary in order to maintain the viability of the Circle Point project. The marketplace for office land has dropped off significantly and is very doubtful that the City could find a willing buyer at these prices.
- The City agrees to delay the payment of SID and Recovery payments owed by Catellus until a building permit is issued for the third office building at Circle Point.
- Catellus has requested that the City agree to examine the possibility of conveying back to the City the parcels of land on the west side of the train tracks. Staff agrees that this downsizing of the Catellus project should be examined in order to determine whether the project can remain financially viable with this land in the deal. This negotiation would take place later this year and would be brought back to City Council for further discussion and a final determination as to whether this proposal should be pursued.

The timing of moving forward with this deal is important to assuring that the land necessary to move the retail deal along is available.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BUY-BACK AGREEMENT

This Agreement is made and entered into as of this ___ day of _____, 2003 (the "Effective Date"), by and between **THE CITY OF WESTMINSTER**, a Colorado home-rule municipality ("City" or "Buyer"), **CATELLUS WESTMINSTER COMPANY, LLC**, a Delaware Corporation ("Catellus" or "Seller"), and the **NBC METROPOLITAN DISTRICT**, a Colorado Special District pursuant to Title 32 of the Colorado Revised Statutes ("District").

RECITALS:

A. The City and Catellus previously entered into that certain Purchase and Sale Agreement dated June 23, 1999 for the Purchase by Catellus from the City of certain real property as described in said agreement which is located in the general vicinity of the northeast corner of the intersection of US Highway 36 and Church Ranch Boulevard (the "1999 Agreement").

B. The 1999 Agreement provided, among other things, for the conveyance of approximately 65.50 acres of property from the City to Catellus pursuant to a schedule set forth in said 1999 Agreement, together with a note and deed of trust (the "1999 Note and Deed of Trust").

C. The 1999 Note and Deed of Trust was replaced by an Amended and Restated Note and Deed of Trust dated March 14, 2001 and recorded March 22, 2001 at Reception No. F1204549 in the county records of Jefferson County, Colorado.

D. In connection with Catellus's development of the property conveyed to it pursuant to the 1999 Agreement, the NBC Metropolitan District was organized and formed pursuant to Colorado state law for the purpose of constructing and financing certain public improvements related to said development.

E. The parties hereto now wish to set forth their respective agreements pursuant to which the City shall buy back from Catellus approximately 7.4 acres of the original property conveyed to Catellus pursuant to the 1999 Agreement, in accordance with the terms, conditions, and various considerations set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, Catellus, and the District hereby agree as follows:

AGREEMENT:

1. PURCHASE AND SALE. Buyer agrees to buy and the undersigned Seller agrees to sell the Property defined below on the terms and conditions set forth in this contract.

2. DEFINED TERMS.

a. Buyer. Buyer, City of Westminster, Colorado will take title to the real property described below in fee simple as sole and exclusive grantee.

b. Property. The Property is the following legally described real estate in the County of Jefferson, Colorado: Parcel 5 and Parcel 7 as shown on the attached **Exhibit "1"** Parcel Map dated January 14, 2003 as prepared by Martin/Martin Consulting Engineers (the "Parcel Map") incorporated herein by this reference, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in any vacated streets and alleys adjacent thereto, except as herein excluded.

3. EVIDENCE OF TITLE.

a. Evidence of Title; Survey. Within 10 days following the Effective Date (the "Title Deadline"), Seller shall cause to be furnished to Buyer, at Seller's expense, (1) a current commitment

for owner's title insurance policy in an amount equal to the Purchase Credit, and (2) an ALTA improvement location survey and plat (the "Survey Plat").

The title commitment shall commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters,
- (4) any unrecorded mechanics' liens,
- (5) gap period (effective date of commitment to date deed is recorded), and
- (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Seller shall cause the title insurance policy to be delivered to Buyer as soon as practicable at or after Closing. Any additional premium expense to obtain any additional coverages or endorsements shall be paid by Buyer.

The cost of the Survey Plat shall be paid by Seller.

b. Copies of Exceptions. On or before the Title Deadline, Seller, at Seller's expense, shall also furnish to Buyer, (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions set forth in the title commitment. (Exceptions). The title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this Section, constitute the title documents (the "Title Documents").

4. TITLE.

a. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller within 10 days following the Title Deadline, or within five (5) calendar days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title (the "Title Objection Deadline"). If Seller does not receive Buyer's notice by the Title Objection Deadline, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

b. Matters not Shown by the Public Records. Seller shall deliver to Buyer, on or before the Title Deadline true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline. If Seller does not receive Buyer's notice by the Title Deadline, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

c. SPECIAL TAXING DISTRICTS. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

BUYER ACCEPTS THE EFFECT OF THE PROPERTY'S INCLUSION IN THE NBC METROPOLITAN DISTRICT.

d. Right to Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided above, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition(s) are not corrected on or before Closing, this contract shall then

terminate; provided, however, Buyer may, by written notice received by Seller, on or before Closing, waive objection to such items.

5. PROPERTY DISCLOSURE AND INSPECTION. On or before the Title Deadline, Seller further agrees to provide Buyer with a written disclosure of any adverse matters regarding the Property to the best of Seller's current actual knowledge.

a. Inspection Objection Deadline. Commencing on the Effective Date, Buyer and Buyer's authorized agents shall have right to enter the Property to inspect the physical condition of the Property, at Buyer's expense, including but not limited to environmental inspections and testing, surveying, and soil borings. If the physical condition of the Property is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before 45 days following the Effective Date (the "Inspection Objection Deadline"):

- (1) notify Seller in writing that this contract is terminated, or
- (2) provide Seller with a written description of any unsatisfactory physical condition which Buyer requires Seller to correct ("Notice to Correct").

If Seller does not receive a Notice to Correct on or before Inspection Objection Deadline, the physical condition of the Property shall be deemed to be satisfactory to Buyer.

b. Resolution Deadline. If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before 10 days following Inspection Objection Deadline, this contract shall terminate one calendar day thereafter, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

c. Damage; Liens; Indemnity. Except as otherwise provided herein, Buyer is responsible for payment for all inspections, surveys, engineering reports or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, or engineering reports or for any other work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney fees. The provisions of this subsection shall survive the termination of this contract.

6. CLOSING. Delivery of deed from Seller to Buyer shall be at Closing ("Closing"). Closing shall be not later than 60 days following the Effective Date ("Closing Deadline") or by mutual agreement at an earlier date. The hour and place of Closing shall be designated by mutual agreement.

7. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Seller shall provide or cause to be provided a certificate of taxes due for the current year from the Jefferson County Treasurer's Office (the "Tax Certificate"). Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

- a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted or deemed accepted by Buyer pursuant to this contract.
- b. distribution utility easements,
- c. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer or deemed accepted by Buyer pursuant to this contract and
- d. inclusion of the Property within any special taxing district.

8. CLOSING COSTS; DOCUMENTS AND SERVICES. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate Closing services shall be paid at Closing one-half by Buyer and one-half by Seller.

Seller shall pay any state or local transfer taxes at Closing. Any sales and use tax or any other fees or taxes that may accrue because of this transaction shall be paid when due by Seller.

9. TAXES. Seller agrees to indemnify and hold Buyer harmless from any obligations for personal property taxes and general real estate taxes against the Property, to the extent such taxes accrued prior to Seller's conveyance of the Property to the Buyer. Seller represents and warrants to the Buyer that there are currently no delinquent tax assessments or other assessments against the Property.

10. NOT ASSIGNABLE. This contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

11. CONDITION OF, AND DAMAGE TO PROPERTY. Except as otherwise provided in this contract, the Property shall be delivered in the condition existing as of the date of this contract, ordinary wear and tear excepted.

a. Casualty; Insurance. In the event the Property shall be damaged by fire or other casualty prior to Closing, in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same before the Closing Deadline. In the event such damage is not repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of Buyer by delivering to Seller written notice of termination. Should Buyer elect to carry out this contract despite such damage, Buyer shall be entitled to a credit, at Closing, for all the insurance proceeds resulting from such damage to the Property payable to Seller, plus the amount of any deductible provided for in such insurance policy, such credit not to exceed the total Purchase Credit.

b. Walk-Through; Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property complies with this contract.

12. TIME OF ESSENCE AND REMEDIES. Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, there shall, subject to the provisions of section 13 below, be the following remedies:

a. If Buyer is in default Seller may elect to treat this contract as being in full force and effect and Seller shall have the right to specific performance but not damages of any kind.

b. If Seller is in default Buyer may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

c. Costs and Expenses. In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

13. MEDIATION. If a dispute arises relating to this contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved 30 calendar days from the date written notice requesting mediation is sent by one party to the other(s). This Section shall not alter any date in this contract, unless otherwise agreed.

14. SUBSEQUENT MODIFICATION; SURVIVAL. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this contract which, by its terms, is intended to be performed after termination or Closing shall survive the same.

15. ADDITIONAL PROVISIONS.

a. Establishment of the Parcels. Prior to Closing, City shall administratively approve an amendment to the PDP for the Northwest Business Park establishing the parcels comprising the Property as described on **Exhibit "1"** (the "Amended PDP").

b. Consideration for the Property. In addition to all other consideration in this Agreement for the Property conveyance, Catellus shall receive a credit to its payment due on September 30, 2002 pursuant to the 1999 Agreement (the "Purchase Credit"), and a corresponding release of the Amended and Restated Deed of Trust encumbering the balance of the property shall be executed and recorded at Closing. The Purchase Credit shall be in the amount calculated by multiplying the gross square footage of the Property to be conveyed times Five Dollars and twenty-four cents (\$5.24). The difference between the credit and the amount due under the 1999 Agreement shall be paid in cash by Catellus at closing, e.g., \$1,883,185 – (7.4 x 43,560 x \$5.24) = \$194,102, which final amount shall be calculated based on the gross square footage set out on the Survey Plat. If for any reason there is a surplus, the amount of such surplus shall be credited against Catellus's next payment due on September 30, 2003 under the 1999 Agreement.

c. 104th Avenue SID payments. Notwithstanding anything in the 1999 Agreement to the contrary, Catellus shall also pay, at such time as a building permit is issued for a third office building in Circle Point Corporate Center, any outstanding amounts owing on the 104th Avenue SID payments, the Westminster Boulevard recoveries related to the Property, and any other outstanding obligations to the City, including those related to any outstanding public or private improvement agreements. The City agrees to waive

Catellus' existing \$100,000 obligation to the City for landscape improvements to the detention pond currently located on Tract B First Replat Northwest Business Park, Subdivision Filing No. 1.

d. Brokerage Fees and Commissions. Catellus agrees that the City shall not be responsible for paying any brokerage fees or commissions on the closing of the property. Catellus shall indemnify the City to that effect. The City represents that it has not entered into any commission agreements pertaining to the Property.

e. Public Improvements.

(1) The Public Improvements described hereinbelow shall be constructed by Catellus within ninety (90) days (or as otherwise determined by mutual agreement of the parties) of the issuance of a building permit for the commencement of construction of a retail development as may be approved by the City on the Property (hereafter "Retail Project"). Said Public Improvements may be constructed by the District on Catellus' behalf. Said Public Improvements, shall be consistent with the Retail Project development plan, and shall, to the extent that they depart from the plans already included in the NBC Metro District Service Plan, be included in an amendment to said Service Plan, indicating the responsibility of the NBC Metro District to complete same. The Service Plan shall also be amended to provide that all water main and sewer main lines shall only be constructed in parcels shown on the Parcel Map as "retained or acquired by NBC Metro District" (the "District Parcels").

(2) The Public Improvements include: a) the spine road and all other interior street improvements to be located adjacent to the Property on the north, west and south sides of the Property as well as the associated utilities, curb and gutter, walkways, landscaping, irrigation, and lighting, b) any required street improvements to Westminster Boulevard including streetscape, medians and traffic signal c) potable water improvements, d) sanitary sewer improvements and e) storm sewer improvements.

(3) The NBC Metro District shall maintain all such Public Improvements as well as pay its pro rata share of maintenance costs of the Property's relocated drainage facilities and detention pond based on the acreage of the property compared to all the properties draining to such facility, as contemplated in the Retail Project development plan or other development plan which relocates the existing pond on the current Tract B First Replat Northwest Business Park, Subdivision Filing No. 1. City and its successors shall have the right to relocate the current detention pond at any time, provided that the cost for such relocation shall be borne by the City or its successor(s) and that adequate detention is provided for those drainage areas that use the current pond. Catellus shall be given a temporary easement for drainage into the current pond, until the pond is relocated, at which time the City shall grant Catellus a permanent drainage easement for discharges into the relocated pond.

(4) Any of the above-mentioned streets or other improvements that are intended to extend from and into the remainder of the Circle Point Corporate Center to and from the Property shall be constructed such that the Property has continuous unobstructed access to and from Circle Point Corporate Center to Westminster Boulevard and ultimately to 112th Avenue, however, the street, curb and gutter, walkway, street lighting, irrigation and landscaping improvements that lie northerly of Parcel 1 on Parcel Map may be delayed until a building permit is issued for construction of a third office building in Circle Point Corporate Center. All other improvements shall be constructed within the aforementioned 90 day period.

(5) To the extent that the cost of the Public Improvements which lie within any District Parcel exceeds One Million Dollars (\$1,000,000.00), the City will be responsible for any such excess costs. Catellus agrees to competitively bid the Public Improvement work and the City's obligations pertaining to any excess costs shall be subject to independent audit at the City's sole cost.

(6) That portion of any water or service lines running from the main line as part of the service line system shall not be included in the Public Improvements and the construction, installation, repair and maintenance of such lines from the mains to the proposed building shall be the responsibility of the owners of such building, except that the District shall be responsible for maintaining and repairing any portion of the service lines within a District Parcel.

(7) Catellus will allow the City and any successor owners of the Property, including, without limitation, the Retail Project, to extend gas, electric, cable, telephone and fibre optic facilities from any such existing points in the Circle Point Corporate Center, provided that any property that is so disturbed shall be substantially restored to its original condition.

f. Inclusion Into the NBC Metro District: The Property will remain in the NBC Metro District. The District shall immediately take all steps necessary to amend its Service Plan to include the Public Improvements, and to limit its maximum mill level authority to 50 mills unless otherwise approved by the City. The District will retain or acquire the District Parcels. Construction related to the District Parcels shall be completed by the NBC Metro District on behalf of Catellus, in accordance with the provisions of "Public Improvements," described above.

BUY-BACK AGREEMENT

This Agreement is made and entered into as of this ____ day of _____, 2003 (the "Effective Date"), by and between **THE CITY OF WESTMINSTER**, a Colorado home-rule municipality ("City" or "Buyer"), **CATELLUS WESTMINSTER COMPANY, LLC**, a Delaware Corporation ("Catellus" or "Seller"), and the **NBC METROPOLITAN DISTRICT**, a Colorado Special District pursuant to Title 32 of the Colorado Revised Statutes ("District").

RECITALS:

A. The City and Catellus previously entered into that certain Purchase and Sale Agreement dated June 23, 1999 for the Purchase by Catellus from the City of certain real property as described in said agreement which is located in the general vicinity of the northeast corner of the intersection of US Highway 36 and Church Ranch Boulevard (the "1999 Agreement").

B. The 1999 Agreement provided, among other things, for the conveyance of approximately 65.50 acres of property from the City to Catellus pursuant to a schedule set forth in said 1999 Agreement, together with a note and deed of trust (the "1999 Note and Deed of Trust").

C. The 1999 Note and Deed of Trust was replaced by an Amended and Restated Note and Deed of Trust dated March 14, 2001 and recorded March 22, 2001 at Reception No. F1204549 in the county records of Jefferson County, Colorado.

D. In connection with Catellus's development of the property conveyed to it pursuant to the 1999 Agreement, the NBC Metropolitan District was organized and formed pursuant to Colorado state law for the purpose of constructing and financing certain public improvements related to said development.

E. The parties hereto now wish to set forth their respective agreements pursuant to which the City shall buy back from Catellus approximately 7.4 acres of the original property conveyed to Catellus pursuant to the 1999 Agreement, in accordance with the terms, conditions, and various considerations set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, Catellus, and the District hereby agree as follows:

AGREEMENT:

1. PURCHASE AND SALE. Buyer agrees to buy and the undersigned Seller agrees to sell the Property defined below on the terms and conditions set forth in this contract.

2. DEFINED TERMS.

a. Buyer. Buyer, City of Westminster, Colorado will take title to the real property described below in fee simple as sole and exclusive grantee.

b. Property. The Property is the following legally described real estate in the County of Jefferson, Colorado: Parcel 5 and Parcel 7 as shown on the attached **Exhibit "1"** Parcel Map dated

January 14, 2003 as prepared by Martin/Martin Consulting Engineers (the "Parcel Map") incorporated herein by this reference, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in any vacated streets and alleys adjacent thereto, except as herein excluded.

3. EVIDENCE OF TITLE.

a. Evidence of Title; Survey. Within 10 days following the Effective Date (the "Title Deadline"), Seller shall cause to be furnished to Buyer, at Seller's expense, (1) a current commitment for owner's title insurance policy in an amount equal to the Purchase Credit, and (2) an ALTA improvement location survey and plat (the "Survey Plat").

The title commitment shall commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters,
- (4) any unrecorded mechanics' liens,
- (5) gap period (effective date of commitment to date deed is recorded), and
- (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Seller shall cause the title insurance policy to be delivered to Buyer as soon as practicable at or after Closing. Any additional premium expense to obtain any additional coverages or endorsements shall be paid by Buyer.

The cost of the Survey Plat shall be paid by Seller.

b. Copies of Exceptions. On or before the Title Deadline, Seller, at Seller's expense, shall also furnish to Buyer, (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions set forth in the title commitment. (Exceptions). The title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this Section, constitute the title documents (the "Title Documents").

4. TITLE.

a. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller within 10 days following the Title Deadline, or within five (5) calendar days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title (the "Title Objection Deadline"). If Seller does not receive Buyer's notice by the Title Objection Deadline, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

b. Matters not Shown by the Public Records. Seller shall deliver to Buyer, on or before the Title Deadline true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline. If Seller does not receive Buyer's notice by the Title Deadline, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

c. SPECIAL TAXING DISTRICTS. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

BUYER ACCEPTS THE EFFECT OF THE PROPERTY'S INCLUSION IN THE NBC METROPOLITAN DISTRICT.

d. Right to Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided above, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition(s) are not corrected on or before Closing, this contract shall then terminate; provided, however, Buyer may, by written notice received by Seller, on or before Closing, waive objection to such items.

5. PROPERTY DISCLOSURE AND INSPECTION. On or before the Title Deadline, Seller further agrees to provide Buyer with a written disclosure of any adverse matters regarding the Property to the best of Seller's current actual knowledge.

a. Inspection Objection Deadline. Commencing on the Effective Date, Buyer and Buyer's authorized agents shall have right to enter the Property to inspect the physical condition of the Property, at Buyer's expense, including but not limited to environmental inspections and testing, surveying, and soil borings. If the physical condition of the Property is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before 45 days following the Effective Date (the "Inspection Objection Deadline"):

- (1) notify Seller in writing that this contract is terminated, or
- (2) provide Seller with a written description of any unsatisfactory physical condition which Buyer requires Seller to correct ("Notice to Correct").

If Seller does not receive a Notice to Correct on or before Inspection Objection Deadline, the physical condition of the Property shall be deemed to be satisfactory to Buyer.

b. Resolution Deadline. If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before 10 days following Inspection Objection Deadline, this contract shall terminate one calendar day thereafter, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

c. Damage; Liens; Indemnity. Except as otherwise provided herein, Buyer is responsible for payment for all inspections, surveys, engineering reports or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, or engineering reports or for any other work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney fees. The provisions of this subsection shall survive the termination of this contract.

6. CLOSING. Delivery of deed from Seller to Buyer shall be at Closing ("Closing"). Closing shall be not later than 60 days following the Effective Date ("Closing Deadline") or by mutual agreement at an earlier date. The hour and place of Closing shall be designated by mutual agreement.

7. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Seller shall provide or cause to be provided a certificate of taxes due for the current year from the Jefferson County Treasurer's Office (the "Tax Certificate"). Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

- a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted or deemed accepted by Buyer pursuant to this contract.
- b. distribution utility easements,
- c. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer or deemed accepted by Buyer pursuant to this contract and
- d. inclusion of the Property within any special taxing district.

8. CLOSING COSTS; DOCUMENTS AND SERVICES. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate Closing services shall be paid at Closing one-half by Buyer and one-half by Seller.

Seller shall pay any state or local transfer taxes at Closing. Any sales and use tax or any other fees or taxes that may accrue because of this transaction shall be paid when due by Seller.

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b. Walk-Through; Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property complies with this contract.

12. TIME OF ESSENCE AND REMEDIES. Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, there shall, subject to the provisions of section 13 below, be the following remedies:

a. If Buyer is in default Seller may elect to treat this contract as being in full force and effect and Seller shall have the right to specific performance but not damages of any kind.

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c. Costs and Expenses. In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

13. MEDIATION. If a dispute arises relating to this contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved 30 calendar days from the date written notice requesting mediation is sent by one party to the other(s). This Section shall not alter any date in this contract, unless otherwise agreed.

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square footage set out on the Survey Plat. If for any reason there is a surplus, the amount of such surplus shall be credited against Catellus's next payment due on September 30, 2003 under the 1999 Agreement.

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d. Brokerage Fees and Commissions. Catellus agrees that the City shall not be responsible for paying any brokerage fees or commissions on the closing of the property. Catellus shall indemnify the City to that effect. The City represents that it has not entered into any commission agreements pertaining to the Property.

e. Public Improvements.

1) The Public Improvements described hereinbelow shall be constructed by Catellus within ninety (90) days (or as otherwise determined by mutual agreement of the parties) of the issuance of a building permit for the commencement of construction of a retail development as may be approved by the City on the Property (hereafter "Retail Project "). Said Public Improvements may be constructed by the District on Catellus' behalf. Said Public Improvements, shall be consistent with the Retail Project development plan, and shall, to the extent that they depart from the plans already included in the NBC Metro District Service Plan, be included in an amendment to said Service Plan, indicating the responsibility of the NBC Metro District to complete same. The Service Plan shall also be amended to provide that all water main and sewer main lines shall only be constructed in parcels shown on the Parcel Map as "retained or acquired by NBC Metro District" (the "District Parcels").

(2) The Public Improvements include: a) the spine road and all other interior street improvements to be located adjacent to the Property on the north, west and south sides of the Property as well as the associated utilities, curb and gutter, walkways, landscaping, irrigation, and lighting, b) any required street improvements to Westminster Boulevard including streetscape, medians and traffic signal c) potable water improvements, d) sanitary sewer improvements and e) storm sewer improvements.

(3) The NBC Metro District shall maintain all such Public Improvements as well as pay its pro rata share of maintenance costs of the Property's relocated drainage facilities and detention pond based on the acreage of the property compared to all the properties draining to such facility, as contemplated in the Retail Project development plan or other development plan which relocates the existing pond on the current Tract B First Replat Northwest Business Park, Subdivision Filing No. 1. City and its successors shall have the right to relocate the current detention pond at any time, provided that the cost for such relocation shall be borne by the City or its successor(s) and that adequate detention is provided for those drainage areas that use the current pond. Catellus shall be given a temporary easement for drainage into the current pond, until the pond is relocated, at which time the City shall grant Catellus a permanent drainage easement for discharges into the relocated pond.

(4) Any of the above-mentioned streets or other improvements that are intended to extend from and into the remainder of the Circle Point Corporate Center to and from the Property shall be constructed such that the Property has continuous unobstructed access to and from Circle Point Corporate Center to Westminster Boulevard and ultimately to 112th Avenue, however, the street, curb and gutter, walkway, street lighting, irrigation and landscaping improvements that lie northerly of Parcel 1 on Parcel Map may be delayed until a building permit is issued for construction of a third office building in Circle Point Corporate Center. All other improvements shall be constructed within the aforementioned 90 day period.

(5) To the extent that the cost of the Public Improvements which lie within any District Parcel exceeds One Million Dollars (\$1,000,000.00), the City will be responsible for any such excess costs. Catellus agrees to competitively bid the Public Improvement work and the City's obligations pertaining to any excess costs shall be subject to independent audit at the City's sole cost.

(6) That portion of any water or service lines running from the main line as part of the service line system shall not be included in the Public Improvements and the construction, installation, repair and maintenance of such lines from the mains to the proposed building shall be the responsibility of

the owners of such building, except that the District shall be responsible for maintaining and repairing any portion of the service lines within a District Parcel.

(7) Catellus will allow the City and any successor owners of the Property, including, without limitation, the Retail Project, to extend gas, electric, cable, telephone and fibre optic facilities from any such existing points in the Circle Point Corporate Center, provided that any property that is so disturbed shall be substantially restored to its original condition.

f. Inclusion Into the NBC Metro District:

The Property w

otherwise approved by the City. The District will retain or acquire the District Parcels. Construction related to the District Parcels shall be completed by the NBC Metro District on behalf of Catellus, in accordance with the provisions of "Public Improvements," described above.

g. Letter of Credit: The District will maintain a letter of credit as surety for repayment of the full amount of the District's outstanding bonded indebtedness as such indebtedness may exist from time to time, in substantially the same form as the letter of credit that currently secures the District's bonded indebtedness as of the Effective Date. In addition, Catellus shall continue to provide a corporate backed guarantee of all such indebtedness in the same form and manner as it does currently, unless otherwise agreed to by the City.

h. Cooperation On Retail Project Development:

(1) Catellus agrees to publicly support the proposed Retail Project and cooperate in executing any further agreements, plans, plats, easements and REAs, and any required amendments to the City's Comprehensive Plan or any Preliminary or Official development Plans, and any other documents as required to obtain City Planning Commission and City Council approval of all such documents by the City and by the Retail Project.

(2) Catellus agrees to cooperate with the City in finalizing the Retail Project transaction, including attending in a reasonable manner, meetings pertaining to planning, design, environmental and engineering matters and title, survey and legal matters.

(3) Catellus and NBC agree to cooperate in moving the primary access for the Retail Project to the immediate south of the proposed building and to adding/moving any planned traffic signals to locations deemed necessary by the Retail Project and the City in their reasonable discretion.

(4) Catellus agrees to enter into a reciprocal easement agreement to provide for ingress/egress, parking (subject to signage restricting office users and retail patrons to their respective areas) and any other easements reasonably required for the Retail Project.

(5) The City agrees to require any building located on the Property to provide visual screening from Circle Point Corporate Center, including berms and other landscape screening, as well as screening of rooftop equipment, trash enclosures and truck docks. The City will in good faith seek, but shall not require Catellus' approval of screening design, which design shall be in accordance with the reasonable discretion of City staff.

(6) The obligations of Catellus under this subparagraph h. shall extend to any r developer of the Retail Project.

i. Revised Payment Schedule. Catellus and the City agree that Exhibit "B" to the June 23, 1999, Purchase and Sale Agreement shall be modified as shown on the attached new Exhibit "B," which is attached hereto as **Exhibit "2."** The price for the next payment due under the 1999 Agreement, i.e., September 2003, shall be based upon a price of Five Dollars (\$5.00) per square foot. The take-down prices for each successive month shall be as shown on said revised Exhibit "B" but all other terms and conditions under the 1999 Agreement concerning Catellus's payment obligations to the City shall remain in full force and effect. Catellus acknowledges that the one-time option to delay note payments in the 1999 Agreement for a period of one (1) year has been used by Catellus and shall no longer apply.

j. Exclusion of "West Parcel " The City will enter into good faith negotiations and cooperate with Catellus and the District to exclude the 21.83 acre "West Parcel" from the District and the District's Service Plan. Said "West Parcel is described on **Exhibit "3"** attached hereto and incorporated herein by this reference. The City also agrees to cooperate with Catellus and the District in revising the letter of credit and Catellus' guarantee of the letter of credit commensurate with the reduction in the cost of district improvements and related maintenance attributable to the exclusion of the West Parcel from the District and its Service Plan.

k. Replat of Northwest Business Park. Catellus agrees to submit and diligently pursue at its expense a replat of the Northwest Business Park Planned Unit Development ("PUD"). Catellus shall cooperate with the City and the other property owners within the PUD to achieve a replat that is consistent

with the Amended PDP, the existing Official Development Plan (“ODP”) for the Circle Point Corporate Center, the ODP for the proposed Retail Project or other user, and any other ODP’s for the Northwest Business Park PUD that may be approved prior to the replatting of the PUD.

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

CITY OF WESTMINSTER,
a Colorado Home-Rule Municipality

By: _____
J. Brent McFall
City Manager

Attest: _____
Michele Kelley
City Clerk

APPROVED AS TO FORM:

Martin R. McCullough
City Attorney

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by J. Brent McFall as City Manager and Michele Kelley as City Clerk for the City of Westminster.

Witness my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public

CATELLUS WESTMINSTER COMPANY, LLC,
a Delaware Corporation

By: _____

Its: _____

Attest: _____

Printed: _____

Title: _____

STATE OF COLORADO)
)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____ as _____ and by _____ as _____ of Catellus Westminster Company, LLC.

Witness my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public

NBC METROPOLITAN DISTRICT,
a Colorado Special District pursuant to
Title 32 of the Colorado Revised Statutes

By: _____
Its: _____

Attest: _____
Printed Name _____
Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2003, by _____ as _____ and
by _____ as _____ of the NBC Metropolitan District.

Witness my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public

BUY-BACK AGREEMENT

This Agreement is made and entered into as of this ____ day of _____, 2003 (the "Effective Date"), by and between **THE CITY OF WESTMINSTER**, a Colorado home-rule municipality ("City" or "Buyer"), **CATELLUS WESTMINSTER COMPANY, LLC**, a Delaware Corporation ("Catellus" or "Seller"), and the **NBC METROPOLITAN DISTRICT**, a Colorado Special District pursuant to Title 32 of the Colorado Revised Statutes ("District").

RECITALS:

A. The City and Catellus previously entered into that certain Purchase and Sale Agreement dated June 23, 1999 for the Purchase by Catellus from the City of certain real property as described in said agreement which is located in the general vicinity of the northeast corner of the intersection of US Highway 36 and Church Ranch Boulevard (the "1999 Agreement").

B. The 1999 Agreement provided, among other things, for the conveyance of approximately 65.50 acres of property from the City to Catellus pursuant to a schedule set forth in said 1999 Agreement, together with a note and deed of trust (the "1999 Note and Deed of Trust").

C. The 1999 Note and Deed of Trust was replaced by an Amended and Restated Note and Deed of Trust dated March 14, 2001 and recorded March 22, 2001 at Reception No. F1204549 in the county records of Jefferson County, Colorado.

D. In connection with Catellus's development of the property conveyed to it pursuant to the 1999 Agreement, the NBC Metropolitan District was organized and formed pursuant to Colorado state law for the purpose of constructing and financing certain public improvements related to said development.

E. The parties hereto now wish to set forth their respective agreements pursuant to which the City shall buy back from Catellus approximately 7.4 acres of the original property conveyed to Catellus pursuant to the 1999 Agreement, in accordance with the terms, conditions, and various considerations set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, Catellus, and the District hereby agree as follows:

AGREEMENT:

1. PURCHASE AND SALE. Buyer agrees to buy and the undersigned Seller agrees to sell the Property defined below on the terms and conditions set forth in this contract.

2. DEFINED TERMS.

a. Buyer. Buyer, City of Westminster, Colorado will take title to the real property described below in fee simple as sole and exclusive grantee.

b. Property. The Property is the following legally described real estate in the County of Jefferson, Colorado: Parcel 5 and Parcel 7 as shown on the attached **Exhibit "1"** Parcel Map dated January 14, 2003 as prepared by Martin/Martin Consulting Engineers (the "Parcel Map") incorporated herein by this reference, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in any vacated streets and alleys adjacent thereto, except as herein excluded.

3. EVIDENCE OF TITLE.

a. Evidence of Title; Survey. Within 10 days following the Effective Date (the "Title Deadline"), Seller shall cause to be furnished to Buyer, at Seller's expense, (1) a current commitment for owner's title insurance policy in an amount equal to the Purchase Credit, and (2) an ALTA improvement location survey and plat (the "Survey Plat").

The title commitment shall commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters,
- (4) any unrecorded mechanics' liens,
- (5) gap period (effective date of commitment to date deed is recorded), and
- (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Seller shall cause the title insurance policy to be delivered to Buyer as soon as practicable at or after Closing. Any additional premium expense to obtain any additional coverages or endorsements shall be paid by Buyer.

The cost of the Survey Plat shall be paid by Seller.

b. Copies of Exceptions. On or before the Title Deadline, Seller, at Seller's expense, shall also furnish to Buyer, (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions set forth in the title commitment. (Exceptions). The title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this Section, constitute the title documents (the "Title Documents").

4. TITLE.

a. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller within 10 days following the Title Deadline, or within five (5) calendar days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title (the "Title Objection Deadline"). If Seller does not receive Buyer's notice by the Title Objection Deadline, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

b. Matters not Shown by the Public Records. Seller shall deliver to Buyer, on or before the Title Deadline true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement,

unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline. If Seller does not receive Buyer's notice by the Title Deadline, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

c. SPECIAL TAXING DISTRICTS. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

BUYER ACCEPTS THE EFFECT OF THE PROPERTY'S INCLUSION IN THE NBC METROPOLITAN DISTRICT.

d. Right to Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided above, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition(s) are not corrected on or before Closing, this contract shall then terminate; provided, however, Buyer may, by written notice received by Seller, on or before Closing, waive objection to such items.

5. PROPERTY DISCLOSURE AND INSPECTION. On or before the Title Deadline, Seller further agrees to provide Buyer with a written disclosure of any adverse matters regarding the Property to the best of Seller's current actual knowledge.

a. Inspection Objection Deadline. Commencing on the Effective Date, Buyer and Buyer's authorized agents shall have right to enter the Property to inspect the physical condition of the Property, at Buyer's expense, including but not limited to environmental inspections and testing, surveying, and soil borings. If the physical condition of the Property is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before 45 days following the Effective Date (the "Inspection Objection Deadline"):

(1) notify Seller in writing that this contract is terminated, or

(2) provide Seller with a written description of any unsatisfactory physical condition which Buyer requires Seller to correct ("Notice to Correct").

If Seller does not receive a Notice to Correct on or before Inspection Objection Deadline, the physical condition of the Property shall be deemed to be satisfactory to Buyer.

b. Resolution Deadline. If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before 10 days following Inspection Objection Deadline, this contract shall terminate one calendar day thereafter, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

c. Damage; Liens; Indemnity. Except as otherwise provided herein, Buyer is responsible for payment for all inspections, surveys, engineering reports or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, or engineering reports or for any other work

performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney fees. The provisions of this subsection shall survive the termination of this contract.

6. CLOSING. Delivery of deed from Seller to Buyer shall be at Closing ("Closing"). Closing shall be not later than 60 days following the Effective Date ("Closing Deadline") or by mutual agreement at an earlier date. The hour and place of Closing shall be designated by mutual agreement.

7. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Seller shall provide or cause to be provided a certificate of taxes due for the current year from the Jefferson County Treasurer's Office (the "Tax Certificate"). Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted or deemed accepted by Buyer pursuant to this contract.

b. distribution utility easements,

c. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer or deemed accepted by Buyer pursuant to this contract and

d. inclusion of the Property within any special taxing district.

8. CLOSING COSTS; DOCUMENTS AND SERVICES. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate Closing services shall be paid at Closing one-half by Buyer and one-half by Seller.

Seller shall pay any state or local transfer taxes at Closing. Any sales and use tax or any other fees or taxes that may accrue because of this transaction shall be paid when due by Seller.

9. TAXES. Seller agrees to indemnify and hold Buyer harmless from any obligations for personal property taxes and general real estate taxes against the Property, to the extent such taxes accrued prior to Seller's conveyance of the Property to the Buyer. Seller represents and warrants to the Buyer that there are currently no delinquent tax assessments or other assessments against the Property.

10. NOT ASSIGNABLE. This contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

11. CONDITION OF, AND DAMAGE TO PROPERTY. Except as otherwise provided in this contract, the Property shall be delivered in the condition existing as of the date of this contract, ordinary wear and tear excepted.

a. Casualty; Insurance. In the event the Property shall be damaged by fire or other casualty prior to Closing, in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same before the Closing Deadline. In the event such damage is not repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of Buyer by delivering to Seller written notice of termination. Should Buyer elect to carry out this contract despite such

damage, Buyer shall be entitled to a credit, at Closing, for all the insurance proceeds resulting from such damage to the Property payable to Seller, plus the amount of any deductible provided for in such insurance policy, such credit not to exceed the total Purchase Credit.

b. Walk-Through; Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property complies with this contract.

12. TIME OF ESSENCE AND REMEDIES. Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, there shall, subject to the provisions of section 13 below, be the following remedies:

a. If Buyer is in default Seller may elect to treat this contract as being in full force and effect and Seller shall have the right to specific performance but not damages of any kind.

b. If Seller is in default Buyer may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

c. Costs and Expenses. In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

13. MEDIATION. If a dispute arises relating to this contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved 30 calendar days from the date written notice requesting mediation is sent by one party to the other(s). This Section shall not alter any date in this contract, unless otherwise agreed.

14. SUBSEQUENT MODIFICATION; SURVIVAL. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this contract which, by its terms, is intended to be performed after termination or Closing shall survive the same.

15. ADDITIONAL PROVISIONS.

a. Establishment of the Parcels. Prior to Closing, City shall administratively approve an amendment to the PDP for the Northwest Business Park establishing the parcels comprising the Property as described on **Exhibit "1"** (the "Amended PDP").

b. Consideration for the Property. In addition to all other consideration in this Agreement for the Property conveyance, Catellus shall receive a credit to its payment due on September 30, 2002 pursuant to the 1999 Agreement (the "Purchase Credit"), and a corresponding release of the Amended and Restated Deed of Trust encumbering the balance of the property shall be executed and recorded at Closing. The Purchase Credit shall be in the amount calculated by multiplying the gross square footage of the Property to be conveyed times Five Dollars and twenty-four cents (\$5.24). The difference between the credit and the amount due under the 1999 Agreement shall be paid in cash by Catellus at closing, e.g., \$1,883,185 – (7.4 x 43,560 x \$5.24) = \$194,102, which final amount shall be calculated based on the gross square footage set out on the Survey Plat. If for any reason there is a surplus, the amount of such surplus shall be credited against Catellus's next payment due on September 30, 2003 under the 1999 Agreement.

c. 104th Avenue SID payments. Notwithstanding anything in the 1999 Agreement to the contrary, Catellus shall also pay, at such time as a building permit is issued for a third office building in Circle Point Corporate Center, any outstanding amounts owing on the 104th Avenue SID payments, the Westminster Boulevard recoveries related to the Property, and any other outstanding obligations to the City, including those related to any outstanding public or private improvement agreements. The City agrees to waive Catellus' existing \$100,000 obligation to the City for landscape improvements to the detention pond currently located on Tract B First Replat Northwest Business Park, Subdivision Filing No. 1.

d. Brokerage Fees and Commissions. Catellus agrees that the City shall not be responsible for paying any brokerage fees or commissions on the closing of the property. Catellus shall indemnify the City to that effect. The City represents that it has not entered into any commission agreements pertaining to the Property.

e. Public Improvements.

(1) The Public Improvements described hereinbelow shall be constructed by Catellus within ninety (90) days (or as otherwise determined by mutual agreement of the parties) of the issuance of a building permit for the commencement of construction of a retail development as may be approved by the City on the Property (hereafter "Retail Project"). Said Public Improvements may be constructed by the District on Catellus' behalf. Said Public Improvements, shall be consistent with the Retail Project development plan, and shall, to the extent that they depart from the plans already included in the NBC Metro District Service Plan, be included in an amendment to said Service Plan, indicating the responsibility of the NBC Metro District to complete same. The Service Plan shall also be amended to provide that all water main and sewer main lines shall only be constructed in parcels shown on the Parcel Map as "retained or acquired by NBC Metro District" (the "District Parcels").

(2) The Public Improvements include: a) the spine road and all other interior street improvements to be located adjacent to the Property on the north, west and south sides of the Property as well as the associated utilities, curb and gutter, walkways, landscaping, irrigation, and lighting, b) any required street improvements to Westminster Boulevard including streetscape, medians and traffic signal c) potable water improvements, d) sanitary sewer improvements and e) storm sewer improvements.

(3) The NBC Metro District shall maintain all such Public Improvements as well as pay its pro rata share of maintenance costs of the Property's relocated drainage facilities and detention pond based on the acreage of the property compared to all the properties draining to such facility, as contemplated in the Retail Project development plan or other development plan which relocates the existing pond on the current Tract B First Replat Northwest Business Park, Subdivision Filing No. 1. City and its successors shall have the right to relocate the current detention pond at any time, provided that the cost for such relocation shall be borne by the City or its successor(s) and that adequate detention is provided for those drainage areas that use the current pond. Catellus shall be given a temporary easement for drainage into the current pond, until the pond is relocated, at which time the City shall grant Catellus a permanent drainage easement for discharges into the relocated pond.

(4) Any of the above-mentioned streets or other improvements that are intended to extend from and into the remainder of the Circle Point Corporate Center to and from the Property shall be constructed such that the Property has continuous unobstructed access to and from Circle Point Corporate Center to Westminster Boulevard and ultimately to 112th Avenue, however, the street, curb and gutter, walkway, street lighting, irrigation and landscaping

improvements that lie northerly of Parcel 1 on Parcel Map may be delayed until a building permit is issued for construction of a third office building in Circle Point Corporate Center. All other improvements shall be constructed within the aforementioned 90 day period.

(5) To the extent that the cost of the Public Improvements which lie within any District Parcel exceeds One Million Dollars (\$1,000,000.00), the City will be responsible for any such excess costs. Catellus agrees to competitively bid the Public Improvement work and the City's obligations pertaining to any excess costs shall be subject to independent audit at the City's sole cost.

(6) That portion of any water or service lines running from the main line as part of the service line system shall not be included in the Public Improvements and the construction, installation, repair and maintenance of such lines from the mains to the proposed building shall be the responsibility of the owners of such building, except that the District shall be responsible for maintaining and repairing any portion of the service lines within a District Parcel.

(7) Catellus will allow the City and any successor owners of the Property, including, without limitation, the Retail Project, to extend gas, electric, cable, telephone and fibre optic facilities from any such existing points in the Circle Point Corporate Center, provided that any property that is so disturbed shall be substantially restored to its original condition.

f. Inclusion Into the NBC Metro District: The Property will remain in the NBC Metro District. The District shall immediately take all steps necessary to amend its Service Plan to include the Public Improvements, and to limit its maximum mill level authority to 50 mills unless otherwise approved by the City. The District will retain or acquire the District Parcels. Construction related to the District Parcels shall be completed by the NBC Metro District on behalf of Catellus, in accordance with the provisions of "Public Improvements," described above.

g. Letter of Credit: The District will maintain a letter of credit as surety for repayment of the full amount of the District's outstanding bonded indebtedness as such indebtedness may exist from time to time, in substantially the same form as the letter of credit that currently secures the District's bonded indebtedness as of the Effective Date. In addition, Catellus shall continue to provide a corporate backed guarantee of all such indebtedness in the same form and manner as it does currently, unless otherwise agreed to by the City.

h. Cooperation On Retail Project Development:

(1) Catellus agrees to publicly support the proposed Retail Project and cooperate in executing any further agreements, plans, plats, easements and REAs, and any required amendments to the City's Comprehensive Plan or any Preliminary or Official development Plans, and any other documents as required to obtain City Planning Commission and City Council approval of all such documents by the City and by the Retail Project.

(2) Catellus agrees to cooperate with the City in finalizing the Retail Project transaction, including attending in a reasonable manner, meetings pertaining to planning, design, environmental and engineering matters and title, survey and legal matters.

(3) Catellus and NBC agree to cooperate in moving the primary access for the Retail Project to the immediate south of the proposed building and to adding/moving any planned traffic signals to locations deemed necessary by the Retail Project and the City in their reasonable discretion.

(4) Catellus agrees to enter into a reciprocal easement agreement to provide for ingress/egress, parking (subject to signage restricting office users and retail patrons to their respective areas) and any other easements reasonably required for the Retail Project.

(5) The City agrees to require any building located on the Property to provide visual screening from Circle Point Corporate Center, including berms and other landscape screening, as well as screening of rooftop equipment, trash enclosures and truck docks. The City will in good faith seek, but shall not require Catellus' approval of screening design, which design shall be in accordance with the reasonable discretion of City staff.

(6) The obligations of Catellus under this subparagraph h. shall extend to any r developer of the Retail Project.

i. Revised Payment Schedule. Catellus and the City agree that Exhibit "B" to the June 23, 1999, Purchase and Sale Agreement shall be modified as shown on the attached new Exhibit "B," which is attached hereto as **Exhibit "2."** The price for the next payment due under the 1999 Agreement, i.e., September 2003, shall be based upon a price of Five Dollars (\$5.00) per square foot. The take-down prices for each successive month shall be as shown on said revised Exhibit "B" but all other terms and conditions under the 1999 Agreement concerning Catellus' payment obligations to the City shall remain in full force and effect. Catellus acknowledges that the one-time option to delay note payments in the 1999 Agreement for a period of one (1) year has been used by Catellus and shall no longer apply.

j. Exclusion of "West Parcel " The City will enter into good faith negotiations and cooperate with Catellus and the District to exclude the 21.83 acre "West Parcel" from the District and the District's Service Plan. Said "West Parcel is described on **Exhibit "3"** attached hereto and incorporated herein by this reference. The City also agrees to cooperate with Catellus and the District in revising the letter of credit and Catellus' guarantee of the letter of credit commensurate with the reduction in the cost of district improvements and related maintenance attributable to the exclusion of the West Parcel from the District and its Service Plan.

k. Replat of Northwest Business Park. Catellus agrees to submit and diligently pursue at its expense a replat of the Northwest Business Park Planned Unit Development ("PUD"). Catellus shall cooperate with the City and the other property owners within the PUD to achieve a replat that is consistent with the Amended PDP, the existing Official Development Plan ("ODP") for the Circle Point Corporate Center, the ODP for the proposed Retail Project or other user, and any other ODP's for the Northwest Business Park PUD that may be approved prior to the replatting of the PUD.

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

CITY OF WESTMINSTER,
a Colorado Home-Rule Municipality

By: _____
J. Brent McFall
City Manager

Attest: _____
Michele Kelley
City Clerk

APPROVED AS TO FORM:

Martin R. McCullough
City Attorney

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by J. Brent McFall as City Manager and Michele Kelley as City Clerk for the City of Westminster.

Witness my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public

CATELLUS WESTMINSTER COMPANY, LLC,
a Delaware Corporation

By: _____

Its: _____

Attest: _____

Printed: _____

Title: _____

STATE OF COLORADO)

)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____ as _____ and by _____ as _____ of Catellus Westminster Company, LLC.

Witness my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public

NBC METROPOLITAN DISTRICT,
a Colorado Special District pursuant to
Title 32 of the Colorado Revised Statutes

By: _____
Its: _____

Attest: _____
Printed Name _____
Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2003, by _____ as
_____ and by _____ as
_____ of the NBC Metropolitan District.

Witness my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
January 27, 2003



SUBJECT: Resolution No. 4 re 2003 Adams County Open Space Grant Applications

Prepared By: Julie M. Meenan Eck, Landscape Architect
Lynn Wodell, Open Space Coordinator

Recommended City Council Action

Adopt Resolution No. 4 authorizing the Department of Parks, Recreation and Libraries and Community Development to pursue two Adams County Open Space Grants for 2003.

Summary Statement

- The Parks, Recreation and Libraries Department wishes to pursue grants from the Adams County Open Space Program for the renovation of Carroll Butts Park, located at 94th and Raleigh Street, and for the extension of the Big Dry Creek Trail from Huron Street to I-25 including a bridge and connection to the Quail Creek Trail.
- Adams County Open Space provides grant money in Adams County to assist municipalities with recreational capital improvements and open space purchases. Each city is allowed to submit two grant applications.
- The projects selected for the grant program are the Carroll Butts Park Renovations and the Big Dry Creek Trail Extension.
- Staff recommends requesting a \$250,000 grant from Adams County Open Space towards the Carroll Butts Park Renovation and \$250,000 grant for the Big Dry Creek Trail Extension.
- The Parks, Recreation and Libraries Department have appropriate matching funds in the 2003 Capital Improvement Program for Carroll Butts Park and the Community Development Department has appropriate matching funds for the Big Dry Creek Trail Extension.
- Hyland Hills will partner on the Adams County Open Space Grant. Hyland Hills has \$150,000 as part of their Bond Issue for this park.
- Design and construction for the selected improvements for Carroll Butts Park will begin in 2003. Proposed improvements will include the installation of concrete trails around the park, new landscaping, irrigation system improvements, and improvements to the lake edge treatments. Work is completed on the Quail Creek Trail connection to the Big Dry Creek Trail.

Expenditure Required: \$350,000 for Carroll Butts Park is already approved in the CIP Fund and \$438,000 for Big Dry Creek/Quail Creek already spent.

Source of Funds: Parks, Recreation and Libraries 2003 General Capital Improvement Program and the 136th Avenue and I-25 Interchange Account

Policy Issue

Should the City try to increase the funding for the Carroll Butts Park project by pursuing grant monies from Adams County Open Space? Should the City also apply for funding for the Big Dry Creek Trail Extension?

Alternatives

1. Council could choose not to pursue additional funding for these projects and proceed with the improvements at the current budget level. Staff recommends, however, that the opportunity be taken to increase the scope of these projects without increasing funding allocations. Receipt of grant money for these projects would significantly enhance the scope of the projects.
2. Council could choose to pursue other projects.

Background Information

The Department of Parks, Recreation and Libraries has been successful in applying for and receiving grants from Adams County Open Space. In recent years, the Department of Parks, Recreation and Libraries has been awarded \$100,000 from Adams County Open Space. These projects include the Big Dry Creek Trail and Foxshire Park. Plus additional grants have been received for Open Space acquisitions including Big Dry Creek, Hidden Lake, Vogel Pond, and McKay Lake acquisitions.

The Carroll Butts Park Renovation project is based on a master plan provided by Staff and Hyland Hills. The project will consist of removal of an old asphalt parking lot and replacing it with landscaping behind the new Breakaway Center. The project also consists of concrete trail replacement of the soft trails that are currently looping the park, specifically around the pond adding benches, boulders, a new bridge, and landscaping. The pond is being dredged and increased in size in hopes of promoting clean water and fishing in the future. Receipt of a \$250,000 Adams County Open Space grant, with a City match of \$350,000 and a Hyland Hills match of \$150,000, would increase the project budget to \$750,000 in 2003 for these new improvements.

In addition, the City has completed the improvements to the Quail Creek Corridor that includes a concrete trail from Huron Street on the north to Big Dry Creek on the south. The City can provide a match of approximately \$438,000 that has been spent for the Quail Creek Trail portion of this project. This grant would allow the City to extend the Big Dry Creek Trail east to the existing underpass under I-25 and to the west to connect to Huron Street as well as build a bridge over Big Dry Creek to connect the Quail Creek and Big Dry Creek Trails. A grant from Adams County would allow this connection to take place in the near future.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. 4

INTRODUCED BY COUNCILLORS

SERIES OF 2003

GRANT REQUESTS TO THE ADAMS COUNTY OPEN SPACE PROGRAM

WHEREAS, Adams County has established an Open Space grant application process to assist municipalities and special districts within Adams County with the development of recreation capital improvements; and

WHEREAS, The City of Westminster has budgeted for improvements at Carroll Butts Park and the Big Dry Creek Trail; and

WHEREAS, grant money received from Adams County Open Space would significantly enhance the improvements for the above-mentioned projects.

NOW, THEREFORE, the Westminster City Council hereby resolves that City of Westminster Staff submit a grant application to the Adams County Open Space program for 2003, requesting funding in the amount of \$250,000, to enhance improvements at Carroll Butts Park, and \$250,000 for the extension of the Big Dry Creek Trail.

Passed and adopted this 27th day of January 2003.

Attest:

Mayor

City Clerk

Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, January 27, 2003. Present at roll call were Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, Kauffman, and McNally. Absent none.

The minutes of the January 13, 2003 meeting were approved.

Mayor Moss read the proclamation from the International and County Management Association commemorating the City's Charter 45th Anniversary and recognized Jim Hague, member of the original charter commission.

Council approved the following: Open Space Acquisition of 1.53 acres at Wadsworth Pkwy and independence for \$176,611; authorized purchase of Water Treatment Chemicals for \$295,500; authorized purchase of Water Meters for an amount not to exceed \$134,000; Special Legal Services Contract with McNally & Bowers PC for an amount not to exceed \$2,500; awarded bid for Swim and Fitness Center Weight Room Equipment to KOS Fitness Products for \$100,331.20; approved creation of new Capital Improvement Program project of McKay Lake Outfall Drainage Project; and authorized Buy-Back agreement for re-purchase of Circle Point land.

The following Councillor's Bills were passed on first reading:

A BILL FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTIONS 23, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO purpose: annexation of Lombardi/Farmers High Line Canal properties

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN TWO PARCELS OF LAND LOCATED IN SECTION 23, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO purpose: zoning of Lombardi/Farmers High Line Canal properties

The following Councillor's Bills were adopted on second reading:

A BILL FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH BALL CORPORATION FOR THE CONSTRUCTION OF BUILDING ADDITION ON THE R&D FACILITY ON THE WESTMINSTER CAMPUS

A BILL FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE ASSISTANCE AGREEMENT WITH SAFEWAY STORES 45, INC.

A BILL FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH SUMMIT SQUARE INVESTMENTS LP FOR THE OCCUPANCY OF THE SAFEWAY GROCERY SOTRE RENOVATION AND UPGRADING OF IN LINE SPACE AT SUMMIT SQUARE SHOPPING CENTER

A BILL FOR AN ORDINANCE VACATING PUBLIC RIGHT-OF-WAY WITHIN THE MAPLE PLACE SUBDIVISION, FILING NO. 2

A BILL FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THIS FUND

The following Resolutions were adopted:

Resolution No. 2 re Findings of fact for annexation of Lombardi/Farmers High Line Canal properties

Resolution No. 3 re Recovery Contract Interest Rate

Resolution No. 4 re Adams County Open Space Grants Applications

At 7:50 P.M. the meeting was adjourned

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

Published in the Westminster Window on February 6, 2003

ORDINANCE NO. **3004**

COUNCILLOR'S BILL NO. **1**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

Kauffman-Dixon

A BILL

**FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT
WITH BALL CORPORATION FOR THE CONSTRUCTION OF BUILDING ADDITION ON
THE R&D FACILITY ON THE WESTMINSTER CAMPUS**

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

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

WHEREAS, Ball Corporation plans to construct a 28,000 square foot building addition to the research and development building on the Ball Campus, off of 108th and Wadsworth Parkway in Westminster, and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Ball Corporation 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 13th day of January 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.

ORDINANCE NO. **3005**

COUNCILLOR'S BILL NO. **2**

SERIES OF 2003

INTRODUCED BY COUNCILLORS
Dittman-Atchison

A BILL

FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE ASSISTANCE AGREEMENT WITH
SAFEWAY STORES 45, INC.

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

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

WHEREAS, the city entered into a Business Assistance Agreement with Safeway Stores 45, Inc. to assist them in the construction of a store in the Westminster Plaza redevelopment area;

WHEREAS, in May of 2000 Safeway opened a new store at 104th Ave. and Federal and this store had not been anticipated at the time the Agreement was drafted; and

WHEREAS, Safeway and the City agree that it is appropriate to amend the existing agreement to remove the 84th Ave. and Federal store from the calculation of the sales tax rebate.

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 members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

Section 1: The City Manager of the City of Westminster is hereby authorized to enter into an Amendment to the Business Assistance Agreement with Safeway Stores 45, 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. 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 13th day of January, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January, 2003.

BY AUTHORITY

ORDINANCE NO. **3006**

COUNCILLOR'S BILL NO. **3**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

Dixon - Atchison

A BILL

FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH SUMMIT SQUARE INVESTMENTS LP FOR THE OCCUPANCY OF THE SAFEWAY GROCERY STORE RENOVATION AND UPGRADING OF IN LINE SPACE AT SUMMIT SQUARE SHOPPING CENTER

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

WHEREAS, it is important for the City of Westminster to generate additional sales tax revenue and remain competitive with other local governments in creating assistance for occupancy of existing retail space in the City; and

WHEREAS, Summit Square Investments LP plans to partner with Safeway grocery to complete an interior and exterior remodel upgrade and improve the building façade, as well as remodel the interior and exterior at the existing Safeway grocery store at Summit Square Shopping Center at 84th Avenue and Federal Boulevard, and

WHEREAS, a proposed Assistance Agreement between the City and Summit Square Investments LP is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Summit Square Investments LP 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 13th day of January 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.

BY AUTHORITY

ORDINANCE NO. **3007**

COUNCILLOR'S BILL NO. **4**

SERIES OF 2003

INTRODUCED BY COUNCILLORS
McNally - Atchison

A BILL

FOR AN ORDINANCE VACATING PUBLIC RIGHTS-OF-WAY WITHIN THE MAPLE PLACE SUBDIVISION, FILING NO. 2

WHEREAS, certain rights-of-way were dedicated to the City of Westminster by the plat of the Maple Place Subdivision, recorded with Adams County at File 9, Map 30; and

WHEREAS, the right-of-way is no longer needed to serve the public access purpose for which it was originally intended; and

WHEREAS, the vacation of the right-of-way is necessary to permit the completion of the Maple Place Subdivision, Filing No. 2 development.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds and determines that the public convenience and welfare require the vacation of the right-of-way described in Section 2 hereof.

Section 2. Legal Description of Right-of-Way:

A PARCEL OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 68 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, ADAMS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 31; THENCE S00°17'02"E ALONG THE EASTLINE OF SAID SOUTHWEST ONE-QUARTER A DISTANCE OF 1338.67 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S00°17'02"E ALONG THE LAST DESCRIBED COURSE A DISTANCE OF 16.28 FEET TO A POINT LYING ON THE SOUTHERLY R.O.W. LINE OF WEST 74TH AVENUE; THENCE S89°42'59" W ALONG SAID SOUTHERLY R.O.W. LINE A DISTANCE OF 114.54 FEET TO A POINT LYING NON-TANGENT ON A CURVE ON SAID NORTHEASTERLY R.O.W. LINE; THENCE ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS N37°46'58"W A DISTANCE OF 201.61 FEET AND ALONG SAID NORTHEASTERLY R.O.W. LINE, SAID CURVE HAVING A CENTRAL ANGLE OF 04°04'42", A RADIUS OF 2832.91 FEET, AN ARC LENGTH OF 201.65 FEET; THENCE N89°01'49" E NON-TANGENT TO THE LAST DESCRIBED CURVE A DISTANCE OF 48.87 FEET TO A POINT LYING NON-TANGENT ON A CURVE AT THE NORTHWESTERLY CORNER OF LOT 9, BLOCK 3, MAPLE PLACE, AS RECORDED IN PLAT BOOK 9, MAP 9, OF THE ADAMS COUNTY, COLORADO RECORDS; THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS S37°36'36"E A DISTANCE OF 126.71 FEET ALONG THE WESTERLY LINE OF LOT 89 AND LOT 9 OF SAID BLOCK 3, SAID CURVE HAVING A CENTRAL ANGLE OF 02°35'19", A RADIUS OF 2792.91 FEET, AN ARC LENGTH OF 126.18 FEET TO THE SOUTHWESTERLY CORNER OF LOT 8 OF SAID BLOCK 3; THENCE N89°42'59"E ALONG THE SOUTHERLY LINE OF LOT 8 OF SAID BLOCK 3 A DISTANCE OF 81.90 FEET TO THE SOUTHEASTERLY CORNER OF LOT 8 OF SAID BLOCK 3; THENCE S00°17'02"E ALONG THE EASTERLY LINE EXTENDED SOUTHERLY OF LOT 8 OF SAID

BLOCK 3 A DISTANCE OF 9.89 FEET; THENCE S41°40'40"E A DISTANCE OF 45.37 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.2885 ACRES (12,568 SQUARE FEET), MORE OR LESS

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 13th day of January 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.

SERIES OF 2003

INTRODUCED BY COUNCILLORS
Atchison - Dittman

A BILL

FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THIS FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2002 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2913 in the amount of \$10,305,000 is hereby increased by \$12,913,231 which, when added to the fund balance as of the City Council action on January 13, 2003 will equal \$31,309,166. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of bond proceeds for the 136th Ave Interchange project.

Section 2. The \$12,913,231 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Carryover 7500.40020.0000	\$2,587,552	\$(2,600,000)	* \$(12,448)
Bond Proceeds 7500.46020.0058	\$0	<u>\$15,513,231</u>	\$15,513,231
Total Change to Revenues		<u>\$12,913,231</u>	
*Carryover will, from time to time, show a negative balance. This is not a problem as overall fund revenues maintain a positive balance.			
EXPENSES			
136 th Ave Interchange 80175030058.80400.8888	\$3,130,000	<u>\$12,913,231</u>	\$16,043,231
Total Change to Expenditures		<u>\$12,913,231</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 AND PUBLISHED this 13 day of January 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of January 2003.