



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) is reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meeting
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Presentation of Employee Service Awards
 - B. Proclamation in Recognition of William E. "Bill" Cell
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda
 - A. Financial Report for December 2013
 - B. Quarterly Insurance Claims Report for 4th Quarter 2013
 - C. Sponsorship of Hyland Hills Park and Recreation District Grant Application
 - D. 2014 Foothills Animal Shelter Construction Debt Assessment
 - E. Northridge Tank No. 3 Design Contract
 - F. 95th and Federal Boulevard Lift Station Rehabilitation Engineering Contract
 - G. Hydropillar and Gregory Hill Water Tanks Repairs Design Contract
 - H. 2014 Asphalt and Crackseal Materials Purchase
 - I. 2014 Deicing Salt Purchase
 - J. Intergovernmental Agreement with Jefferson Academy for Offsite Location at 7575 West 103rd Avenue
9. Appointments and Resignations
 - A. 2014 Appointments to the Rocky Flats Stewardship Council
10. Public Hearings and Other New Business
 - A. Councillor's Bill No. 1, Series 2014, Modifying Floodplain Regulations in Title XI, Chapter 8, W.M.C.
 - B. Councillor's Bill No. 2, Series 2014, Amending Lease with CDOC for 8800 Sheridan Boulevard
 - C. Resolution No. 2, Series 2014, Authorizing Spring 2014 Adams County Grant Applications
 - D. Resolution No. 3, Series 2014, Authorizing IGA with CDOT for 72nd Ave/Raleigh St Bridge Replacement
 - E. Councillor's Bill No. 3, Series 2014, Authorizing Supplemental Appropriation of Federal Grant Funds
11. Old Business and Passage of Ordinances on Second Reading
 - A. Councillor's Bill No. 54 Authorizing Colorado Brownfields Grant Supplemental Appropriation (Tabled 1-13-14)
12. Miscellaneous Business and Executive Session
 - A. City Council
13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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



WESTMINSTER
Strategic Plan
2013-2018
Goals and Objectives

STRONG, BALANCED LOCAL ECONOMY

- Maintain/expand healthy retail base, increasing sales tax receipts
- Attract new targeted businesses, focusing on primary employers and higher paying jobs
- Develop business-oriented mixed use development in accordance with Comprehensive Land Use Plan
- Retain and expand current businesses
- Develop multi-modal transportation system that provides access to shopping and employment centers
- Develop a reputation as a great place for small and/or local businesses
- Revitalize Westminster Center Urban Reinvestment Area



SAFE AND HEALTHY COMMUNITY

- Maintain citizens feeling safe anywhere in the City
- Public safety departments: well-equipped and authorized staffing levels staffed with quality personnel
- Timely response to emergency calls
- Citizens taking responsibility for their own safety and well being
- Manage disaster mitigation, preparedness, response and recovery
- Maintain safe buildings and homes
- Protect residents, homes, and buildings from flooding through an effective storm water management program



FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

- Invest in well-maintained and sustainable city infrastructure and facilities
- Secure and develop long-term water supply
- Focus on core city services and service levels as a mature city with adequate resources
- Maintain sufficient reserves: general fund, utilities funds and self insurance
- Maintain a value driven organization through talent acquisition, retention, development and management
- Prepare for next generation of leaders; managers and employees.
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

- Develop transit oriented development around commuter rail stations
- Maintain and improve neighborhood infrastructure and housing
- Preserve and restore historic assets
- Have HOAs and residents taking responsibility for neighborhood private infrastructure
- Develop Westminster as a cultural arts community
- Have a range of quality homes for all stages of life (type, price) throughout the City
- Have strong community events and active civic engagement



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

- Have energy efficient, environmentally sensitive city operations
- Reduce energy consumption citywide
- Increase and maintain green space (parks, open space, etc.) consistent with defined goals
- Preserve vistas and view corridors
- A convenient recycling program for residents and businesses with a high level of participation



Mission statement: We deliver exceptional value and quality of life through SPIRIT.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JANUARY 13, 2014, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Faith Winter and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz were present at roll call. City Manager J. Brent McFall, City Attorney Martin McCullough, and City Clerk Linda Yeager also were present.

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of December 23, 2013, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported there would be no meeting of City Council on Monday, January 20, as it was Martin Luther King Day, and City administrative offices would be closed in observance of the holiday.

After adjournment of this meeting, the Westminster Housing Authority Board of Directors would meet; and following adjournment of that meeting, the Council would hold a post-meeting briefing to hear two staff presentations and to discuss Council assignments to various Boards and Commissions. The public was welcome to attend.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: designation of the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the City Council, the Westminster Housing Authority, the Westminster Economic Development Authority, Special and General Improvement Districts, and the City's Boards and Commissions pursuant to Section 24-6-402 (2)(c), C.R.S. of the Colorado Open Meetings Act; ratify the 2014 contracted purchase for 185,000 gallons of unleaded, E-10 gasoline from Hill Petroleum to be delivered to City sites for a cost not to exceed \$528,955; determine that the public interest would be best served by approving Fleet Maintenance cumulative purchases in 2014 with Chief Petroleum, Gray Oil and Hill Petroleum for fuel purchases not to exceed \$532,595 total among the three vendors; and authorize the City Manager to enter into a Site Agreement with New Cingular Wireless PCS, in substantially the same form as distributed in the agenda, to permit a telecommunications facility to be located at Fire Station #6, recognizing the permit would be retroactive to January 1, 2014.

No items were removed for individual consideration and Councillor Briggs moved, seconded by Mayor Pro Tem Winter, to approve the consent agenda as presented. The motion carried with all Council members voting in favor.

RESOLUTION NO. 1 TO REAPPOINT MEMBERS AND FILL BOARDS AND COMMISSIONS VACANCIES

Upon a motion by Mayor Pro Tem Winter, seconded by Councillor Pinter, the Council voted unanimously on roll call vote to adopt Resolution No. 1, Series 2014, reappointing members whose terms of office expired on December 31, 2013, to an additional two-year term and appointing alternate members to regular membership, where applicable, on the Board of Building Code Appeals, the Election Commission, the Environmental Advisory Board, the Historic Landmark Board, the Human Services Board, the Open Space Advisory Board, the Parks, Recreation and Libraries Advisory Board, the Personnel Board, the Planning Commission, and the Special Permit and License Board.

SECOND READING OF COUNCILLOR'S BILL NO. 54 TABLED

Councillor Baker moved, seconded by Councillor Garcia, to table the second reading of Councillor's Bill No. 54 to obtain additional information. The motion carried with all members voting affirmatively.

ADJOURNMENT

There was no further business to come before the City Council, and, hearing no objections, Mayor Atchison adjourned the meeting at 7:09 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, General Services Director
Dee Martin, Workforce Planning & Compensation Manager

Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 20 or more years of service with the City and in five year increments thereafter.

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the first grouping of 2014, employees with 20, 25, and 30 years of service will be celebrated tonight.
 - Presentation of 20-year certificates and pins – Councillor Pinter
 - Presentation of 25-year certificates, pins, and checks – Mayor Atchison
 - Presentation of 30-year certificates and pins – Councillor Baker

Expenditure Required: \$7,500

Source of Funds: \$2,500 – General Fund – General Services
\$5,000 – General Fund – Parks, Recreation & Libraries

Policy Issue

None identified

Alternative

None identified

Background Information

The following 20-year employees will be presented with certificates and service pins:

Kathe Gibb	Librarian II	Parks, Recreation & Libraries
Robert Hose	Fire Marshal	Fire Department
Tom O’Neill	Fire Lieutenant	Fire Department
Laurie Rutledge	Facility Assistant	Parks, Recreation & Libraries
Jay Sperry	Fire Paramedic	Fire Department

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

Jerry Cinkosky	Facilities Manager	General Services
Sean Layfield	Recreation Supervisor – Sports	Parks, Recreation & Libraries
Patti Wright	Open Space Volunteer Coordinator	Parks, Recreation & Libraries

The following 30-year employees will be presented with certificates and service pins:

Stephen Bauman	Assistant City Engineer	Community Development
James Feggstad	Firefighter II	Fire Department
Roger Harshman	Foreman	Public Works & Utilities
Paul Spellman	Battalion Chief	Fire Department

On January 29, 2014, the City Manager will host an employee awards luncheon. During this time, ten (10) employees will receive their 15-year service pin, seven (7) employees will receive their 10-year service pin, and three (3) employees will receive their 5-year service pin. Recognition will also be given to those celebrating their 20th, 25th, and 30th anniversaries. This is the first luncheon in 2014 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the first luncheon is 530 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

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

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 6 B

Agenda Memorandum

City Council Meeting
January 27, 2014

SUBJECT: Proclamation in Recognition of William E. “Bill” Cell

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Councillor Briggs to present a proclamation to recognize William E. “Bill” Cell, the record-holding blood donor at Bonfils Blood Center.

Summary Statement

- Although only four percent of Americans donate blood, Westminster resident William E. “Bill” Cell has been donating routinely since 1969. He donated his 85th gallon on December 27, 2013, becoming Bonfils Blood Center’s undisputed highest-contributing donor.
- Mr. Cell’s goal was never to set a record, but rather to help others by giving the “Gift of Life.”

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Bill Cell recently completed donating his 85th gallon of blood and holds the record of “highest-contributing donor” at the Bonfils Blood Center. Tracking of his donations began in 1969 after Thelma, his wife of 62 years, had birthed their three sons and Bill began donating with frequency. Bill history of donating blood is not over, as he continues to donate regularly at the Bonfils Blood Center. Over the years, he has learned that his blood has been the Gift of Life to cancer patients and accident victims. After the last drop of Mr. Cell’s 680th pint had dripped into a plastic bag marked “A+” at about 11 a.m. on December 27, he was honored by staff at the Center with a celebration in the staff break room.

Mr. Cell will be present to accept a proclamation in recognition of his achievement.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Proclamation

WHEREAS, Bill Cell made his first donation of blood in 1946 as a young sailor while serving in the United States Navy in San Francisco; and

WHEREAS, during his two-year Naval assignment, Mr. Cell and his colleagues from boot camp made repeat donations as frequently as allowed to earn a shot of bourbon and \$25 per pint at hospital donation centers ; and

WHEREAS, by 1969 Mr. Cell and his family had located in the Denver area and he resumed donating blood regularly at the Bonfils Blood Center; and

WHEREAS, the knowledge that his donations were helping save the lives of countless cancer patients and accident victims kept him returning to “the plastic donation beds” for 44 years; and

WHEREAS, on December 27, 2013, Bill Cell, at the age of 85 years, became the Bonfils Blood Center’s undisputed highest-contributing donor when the last pint of his 85th gallon of blood pumped out from his right arm.

NOW, THEREFORE, I, Herb Atchison, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff do hereby proudly recognize Westminster resident

WILLIAM E. “BILL” CELL

by honoring him for the role model he is to the community for having given the “Gift of Life” to mankind throughout his lifetime and further urge the citizens of Westminster to join Mr. Cell in his humane and regular routine of donating blood.

Signed this 27th day of January, 2014.

Herb L. Atchison, Mayor



Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Financial Report for December, 2013

Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

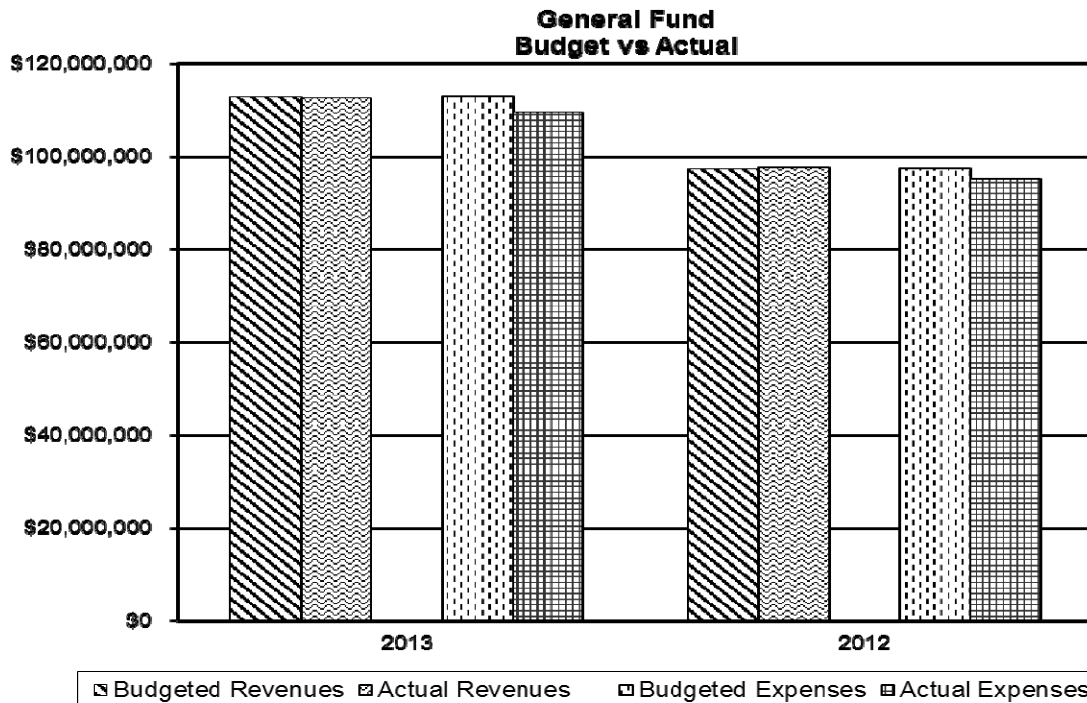
Accept the Financial Report for December as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. The financial statement reflects December month end figures. Revenue includes carryover where applicable. The budget numbers that are presented reflect the City's amended 2013 budget.

Several revenue and expense modifications will be made over the next few months based on year-end accruals that will be included in December year-end figures presented to Council in June, after the audit is complete. Some of the more significant accruals include revenue earned in 2013 but not received until 2014, in particular intergovernmental revenue, and all expenses incurred in 2013 but paid in 2014.

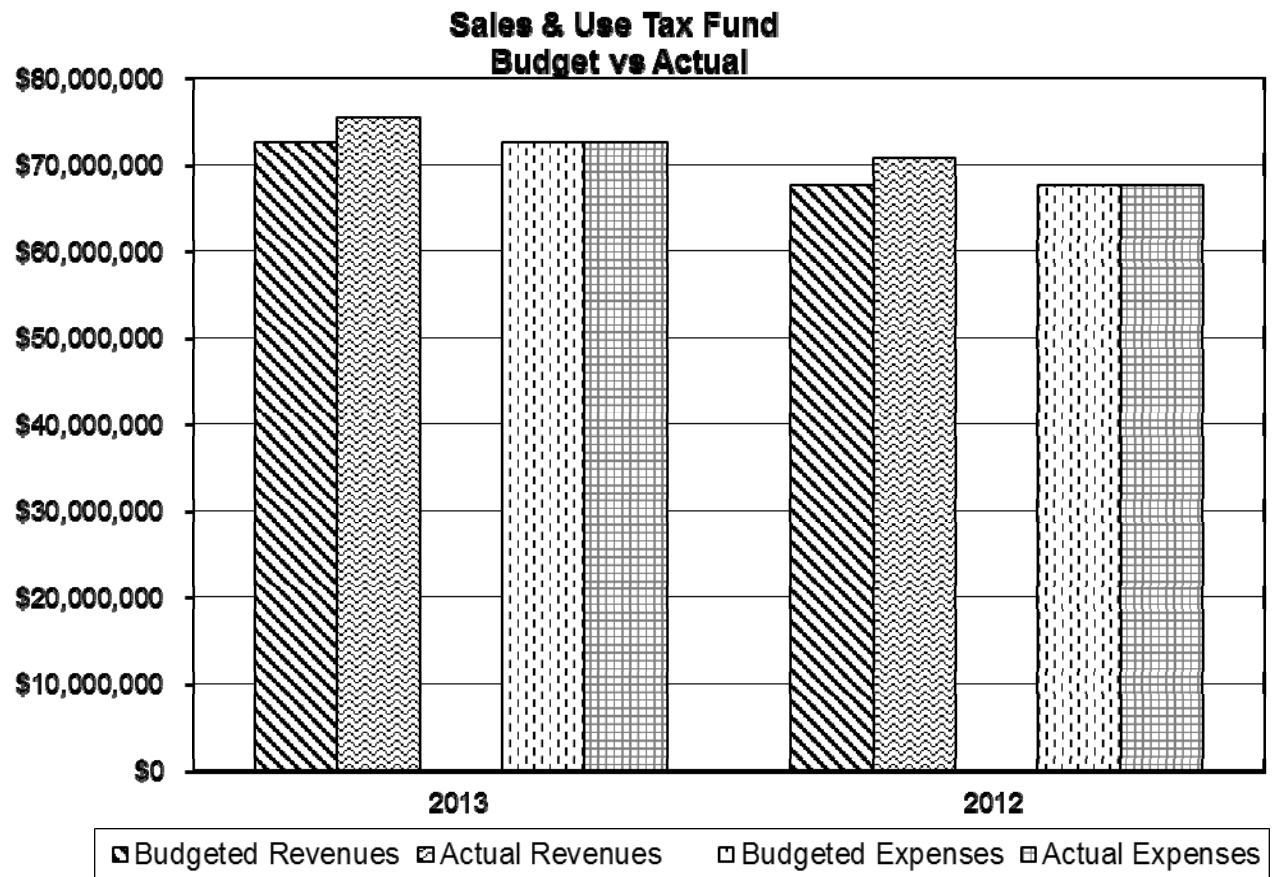
Current projections show General Fund revenues exceeding expenditures by \$3,168,482. The following graph represents Budget vs. Actual for 2012-2013.



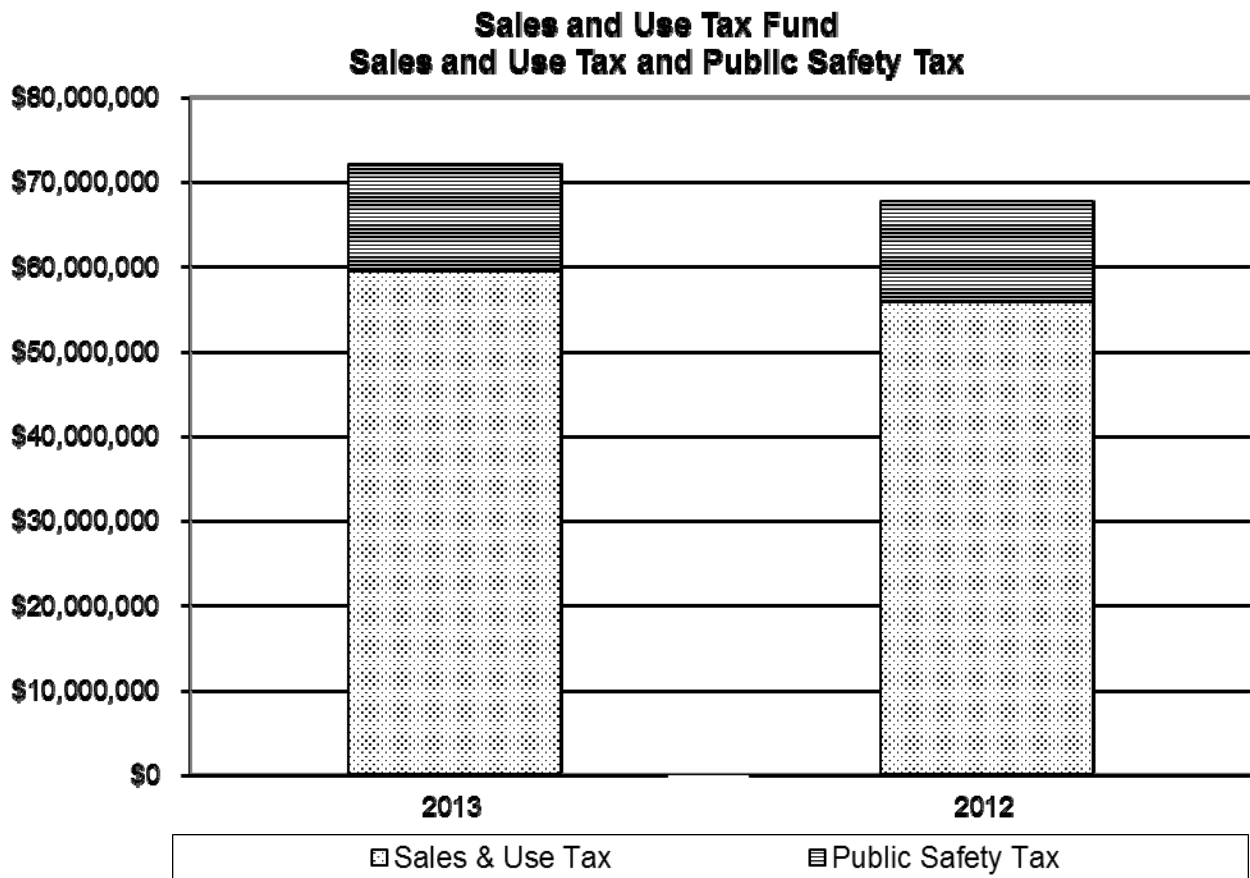
The revenue and expense variance between years reflects the 2013 refinancing of the 2005 Certificates of Participation.

Current projections show the Sales and Use Tax Fund revenues exceeding expenditures by \$2,760,834. On a year-to-date cash basis, total sales and use tax is up 6.4% from 2012. Key components are listed below:

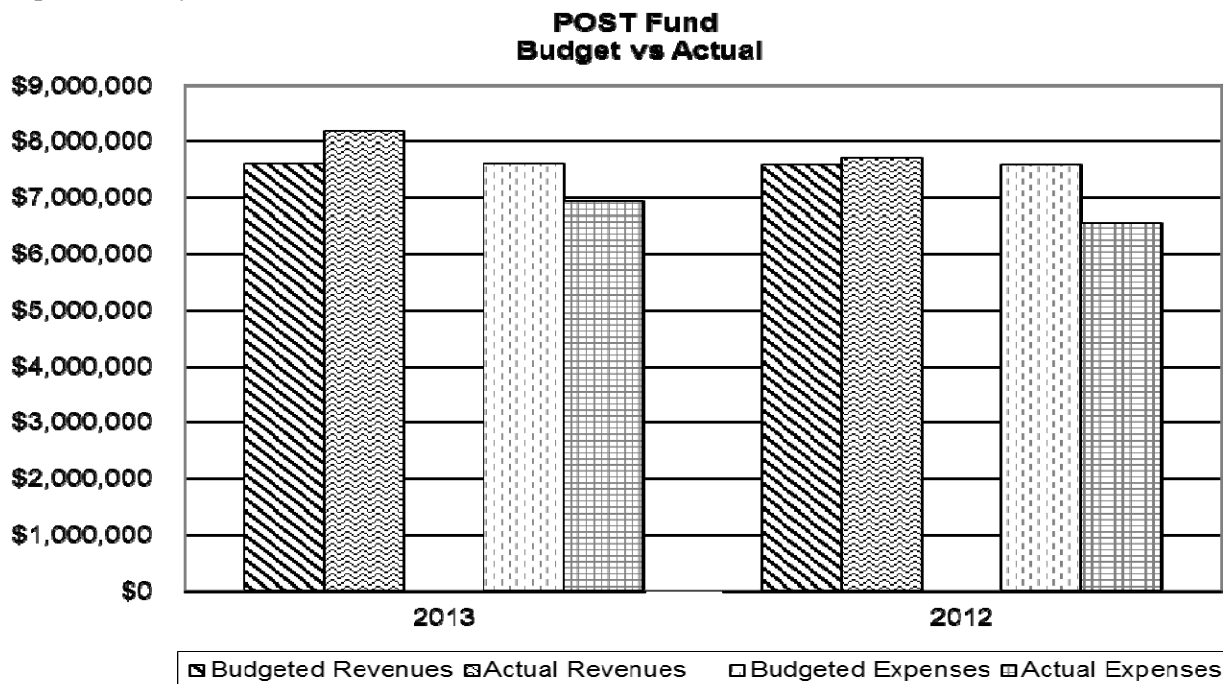
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 3.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 60.8% of all collections, are up 5.4% for the month when compared to 2012.
- Urban renewal areas make up 40.9% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 86.4% of this money is being retained for General Fund use.



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

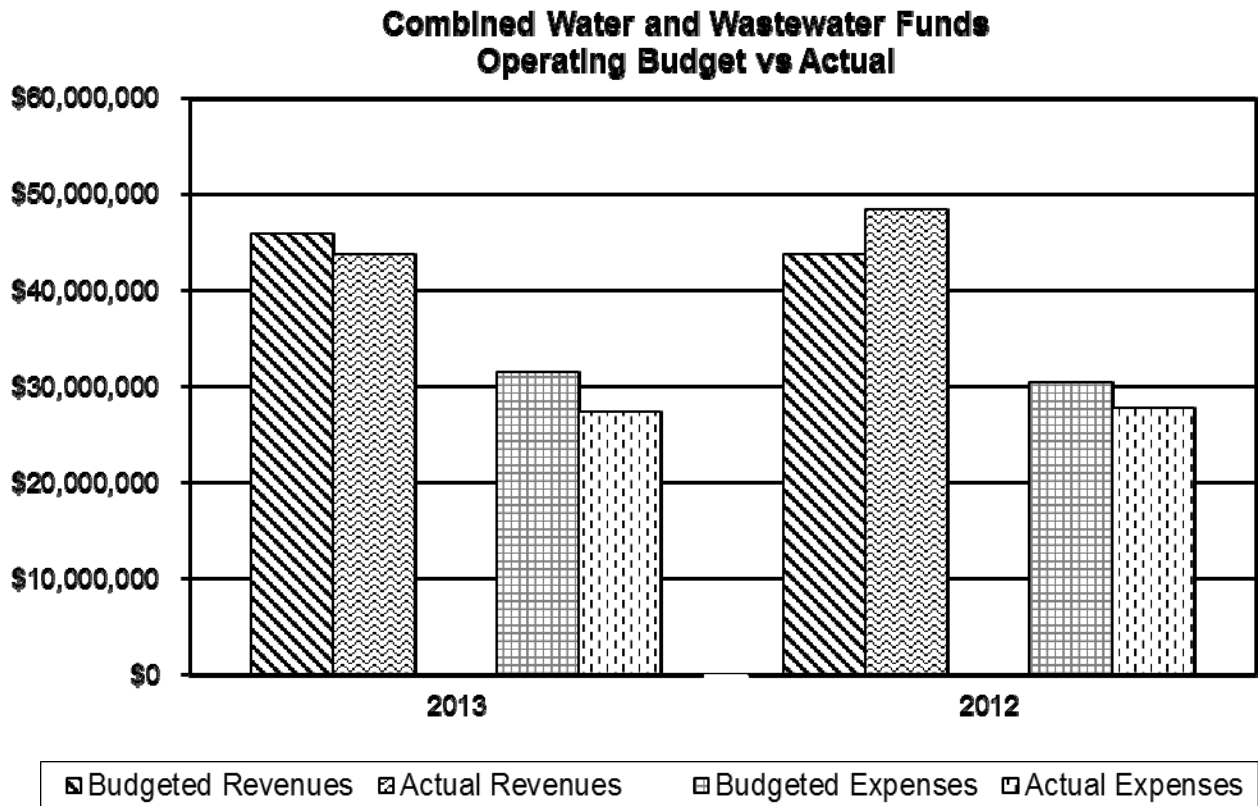


Current projections show Parks Open Space and Trails Fund budgeted revenues exceeding budgeted expenditures by \$1,247,581.

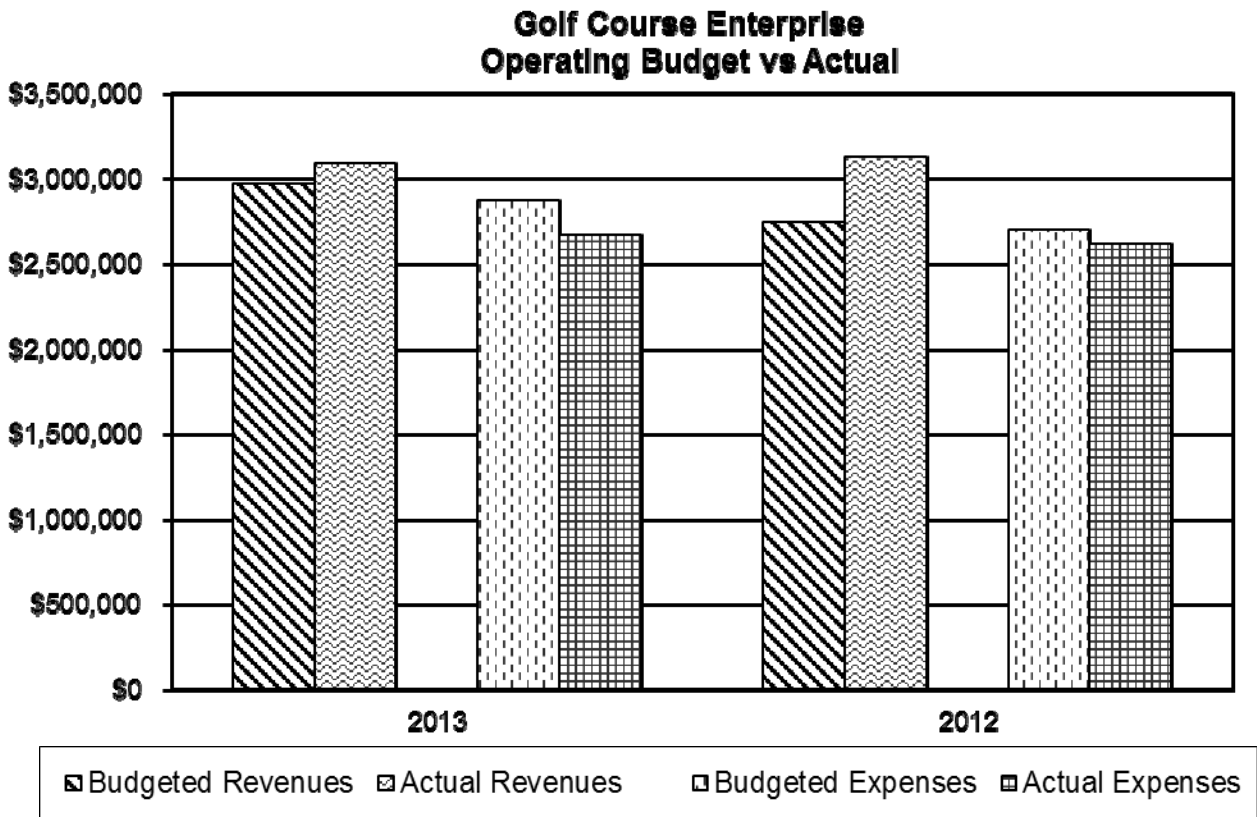


Intergovernmental reimbursements appropriated in prior years are reflected in the 2013 budget to actual revenue variance.

Current projections show combined Water & Wastewater Fund budgeted revenues exceeding budgeted expenditures by \$6,462,072.



Current projections show combined Golf Course Fund budgeted revenues exceeding budgeted expenditures by \$874,281.



At this time in 2012, green fees and driving range fees were slightly higher. The snowy spring decreased the number of rounds played in 2013.

Policy Issue

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

Alternative

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

Background Information

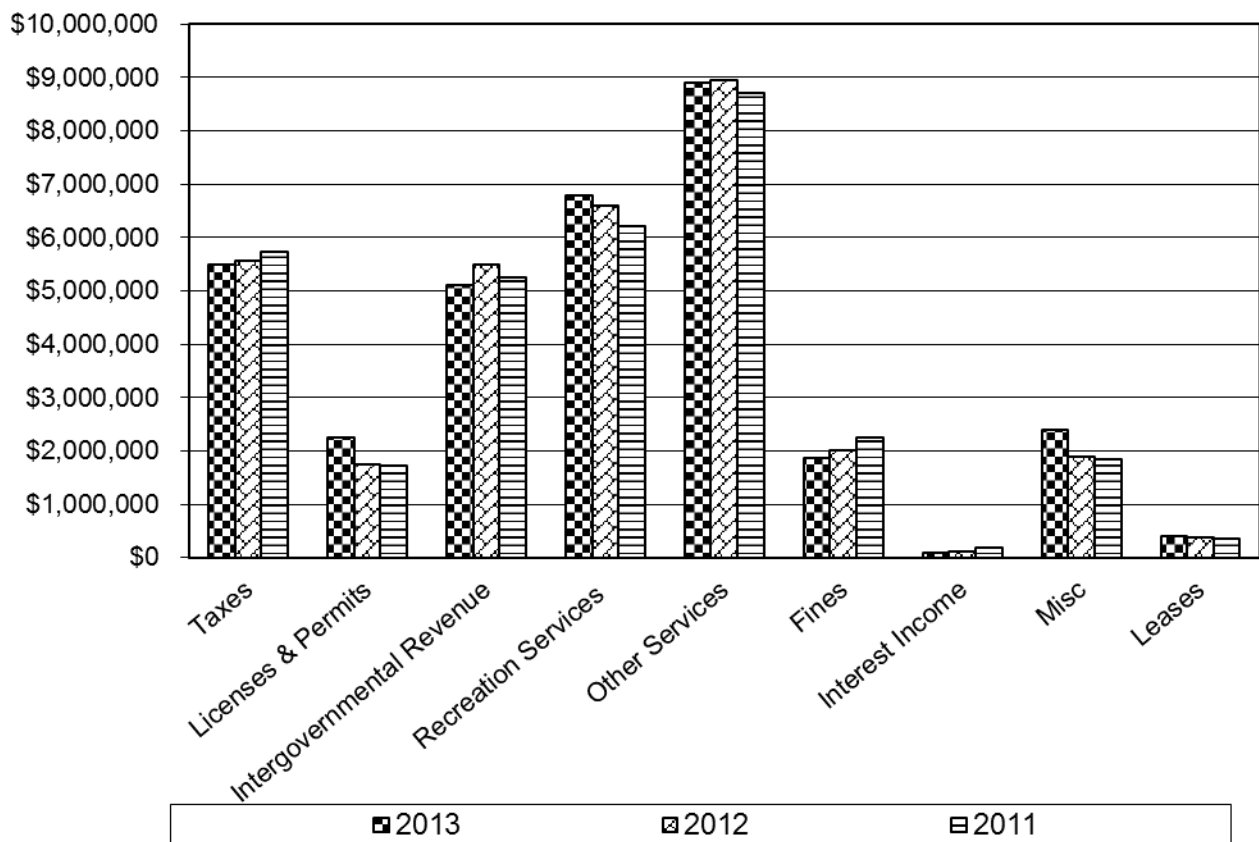
This section includes a discussion of highlights of each fund presented.

General Fund

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

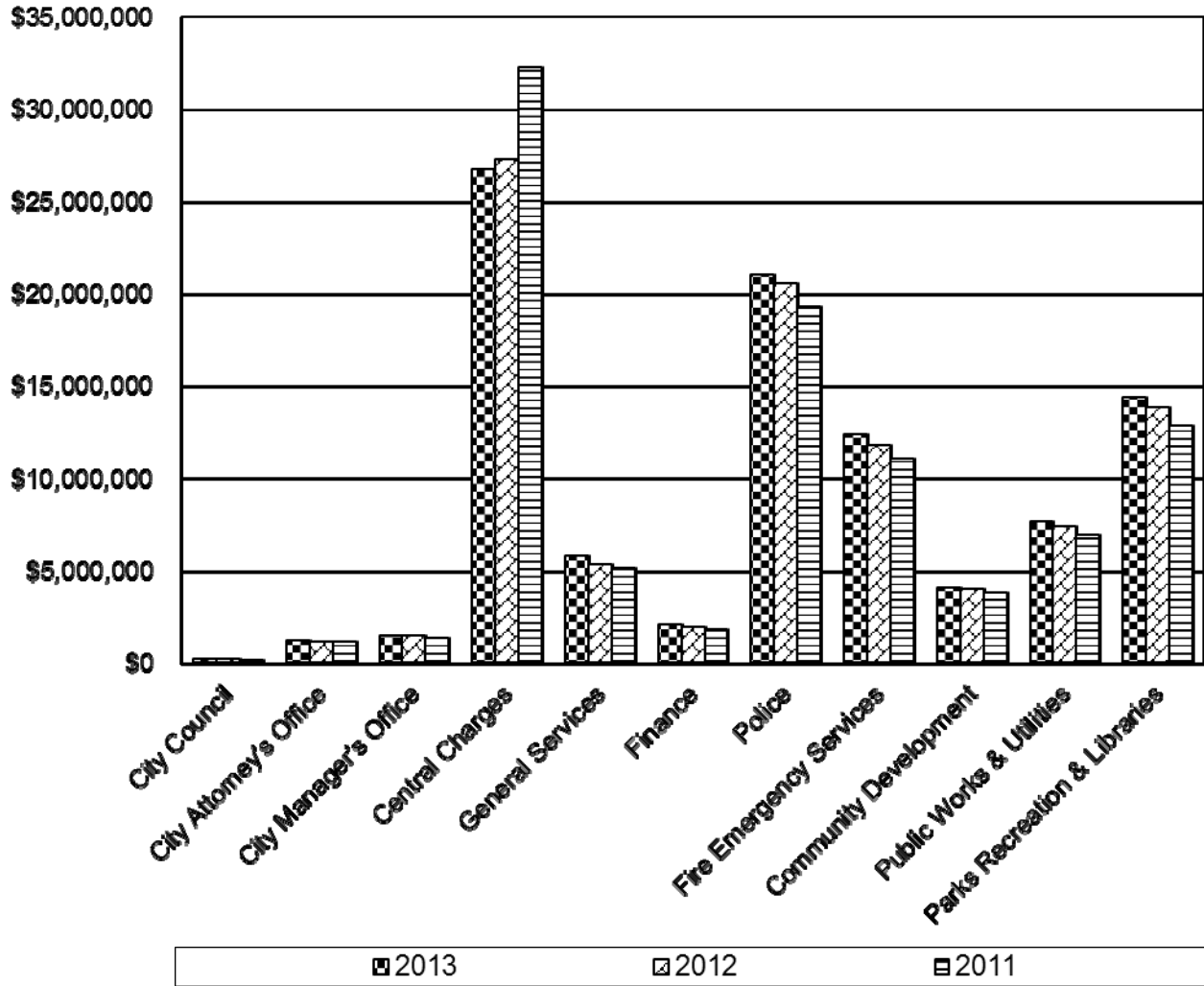
The following chart represents the trend in actual revenues from 2011-2013 year-to-date.

**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2011-2013**



Licenses and Permits revenue is up due mostly to Adams County building permits, including development projects at The Orchard. Intergovernmental Revenue is down slightly, mostly due to Road and Bridge and grant revenues. Miscellaneous revenue includes a significant receipt from the Utility Fund for the purchase of a park property easement.

**General Fund Expenditures by Function, less Other Financing Uses
2011-2013**

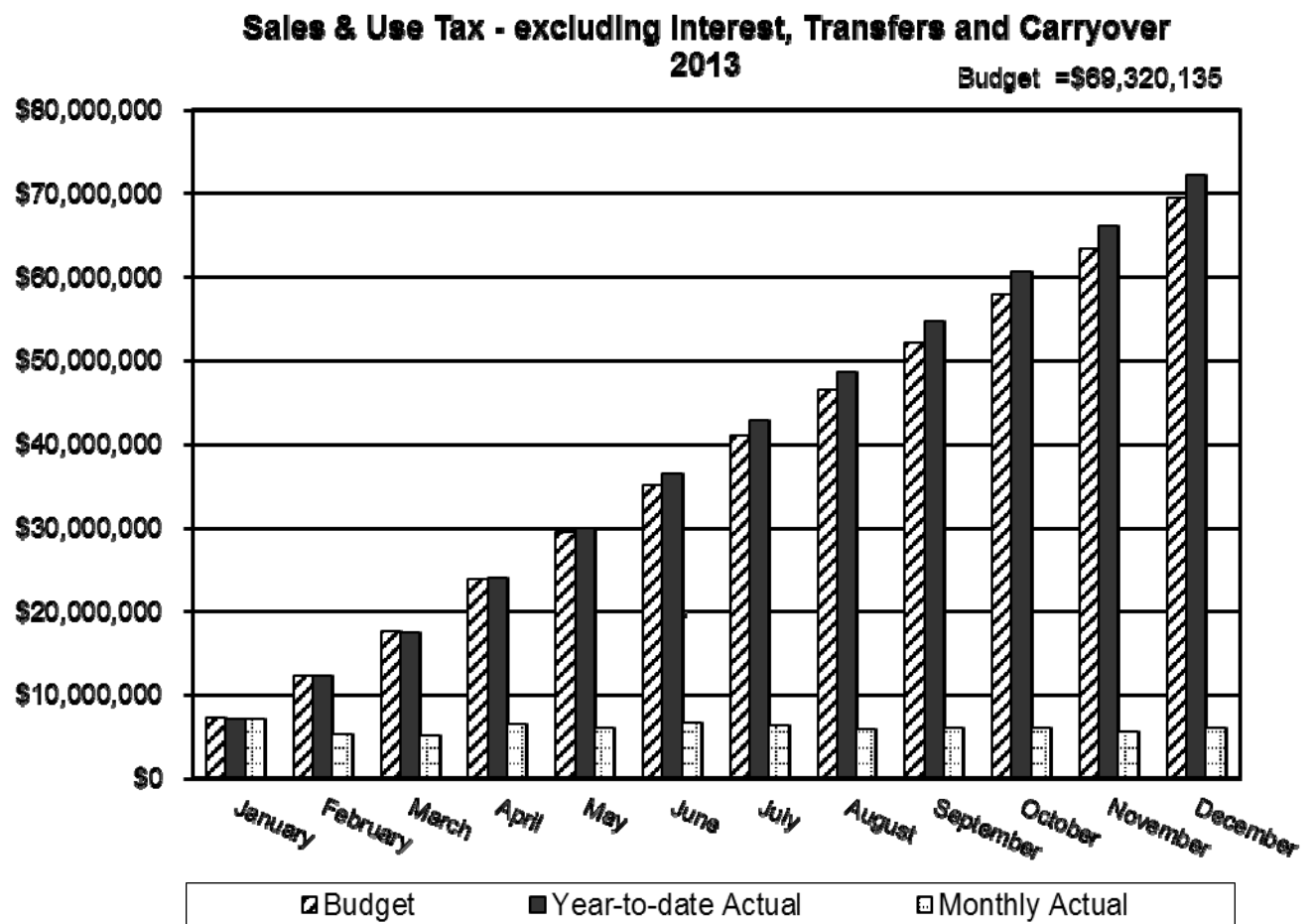


Central Charges expenditures is higher in 2011 primarily due to a transfer to WEDA of \$5.1 million.

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

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

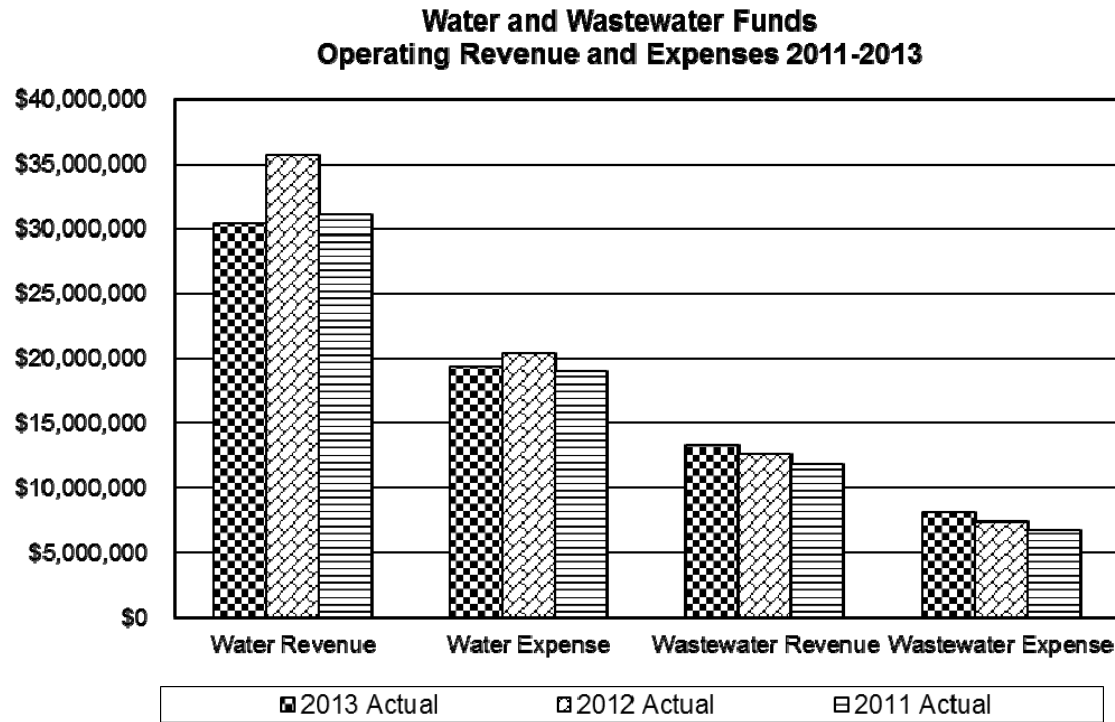
This chart indicates how the City’s Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.



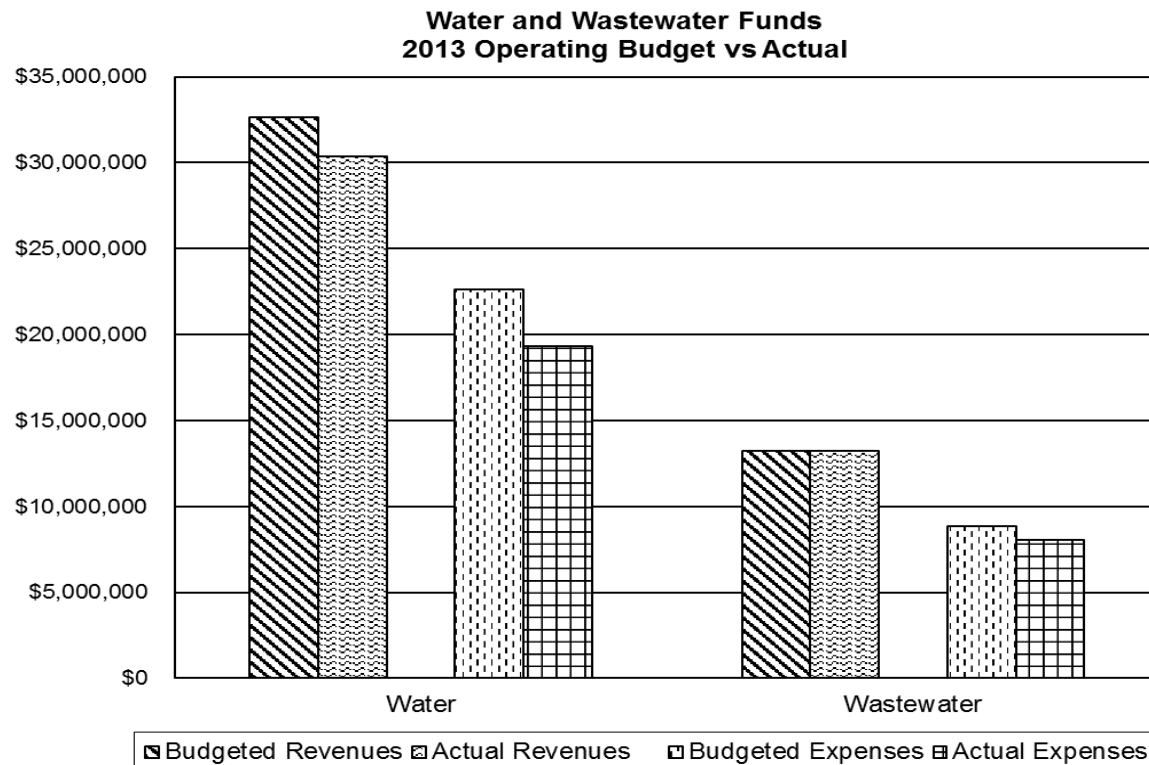
Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

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

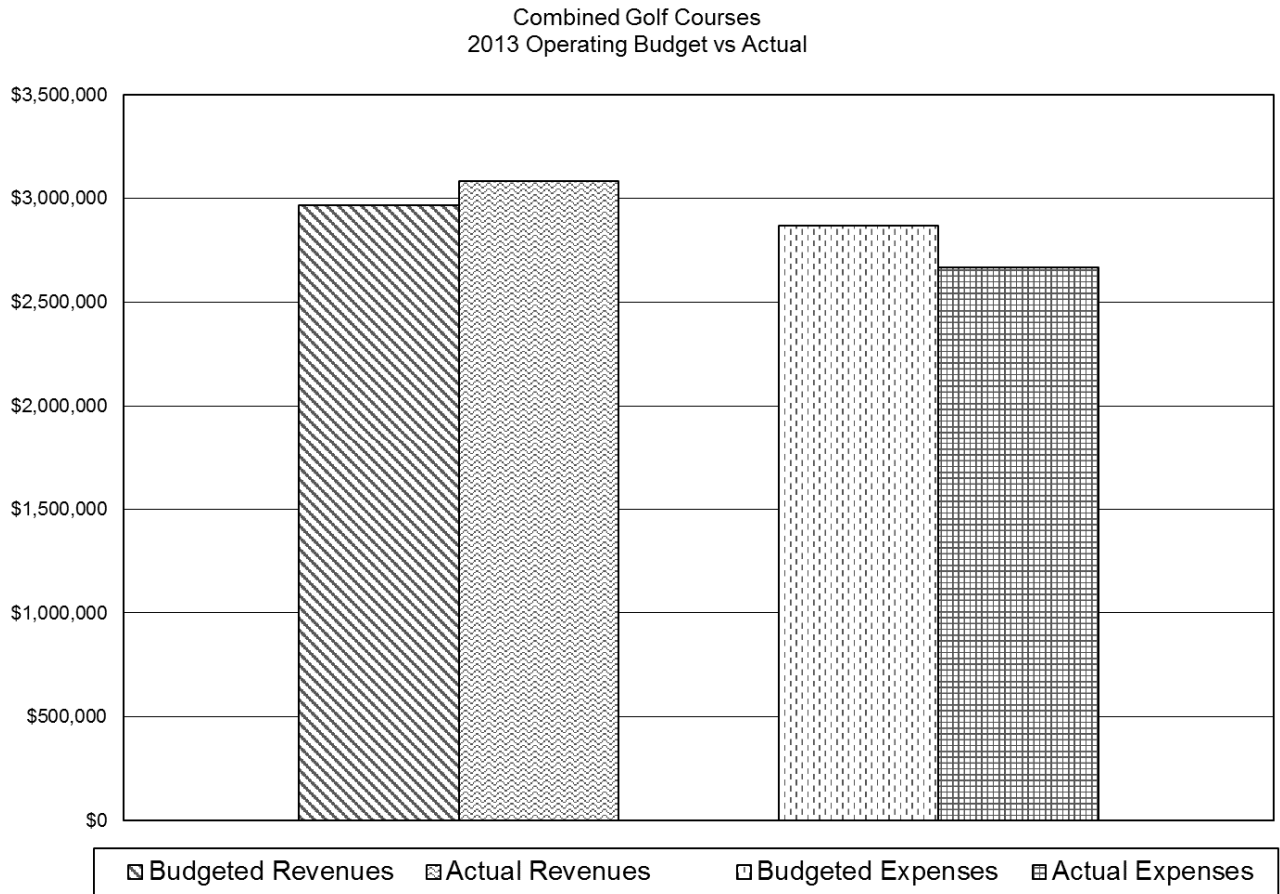


The Water Fund revenue variance is due to the effect of climatic variations on water consumption as well as changes in billing rates. 2012 was an exceptionally dry year and 2013 has seen a lot of rain. 2013 Wastewater revenues are up slightly due to changes in billing rates. 2013 Wastewater expenses exceed prior years due to capital purchases for field operations.

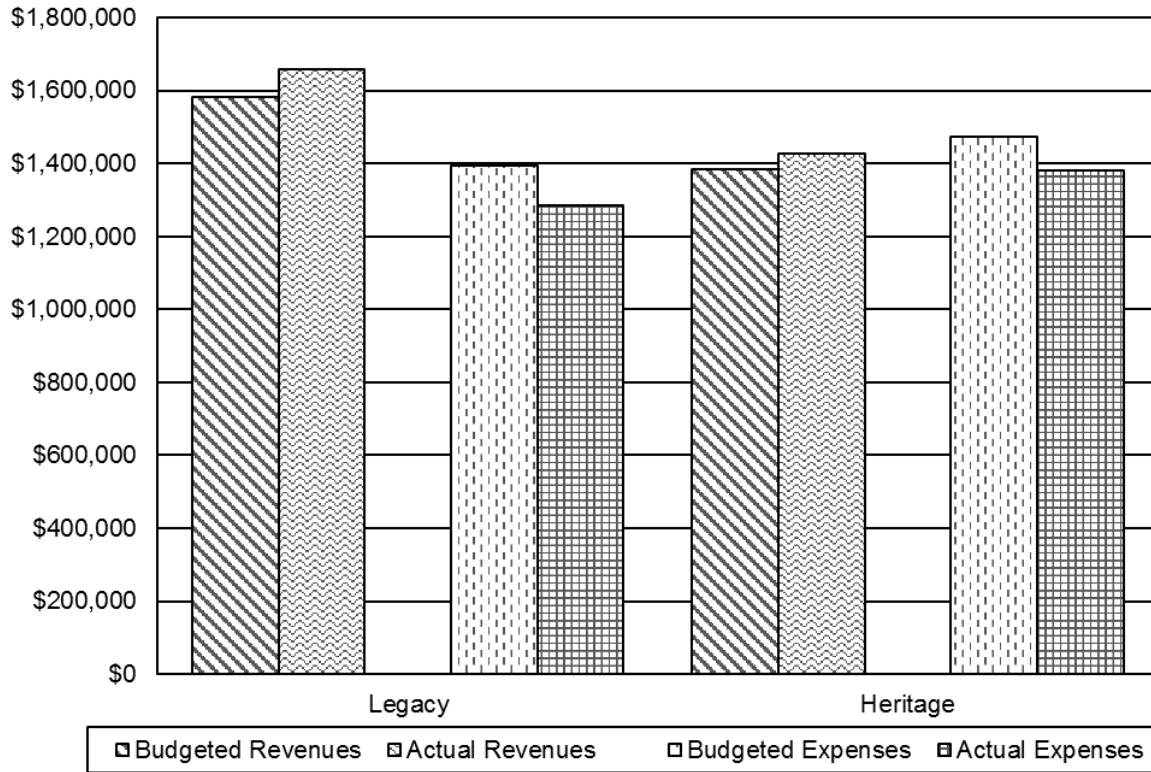


Golf Course Enterprise (Legacy and Heritage Golf Courses)

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

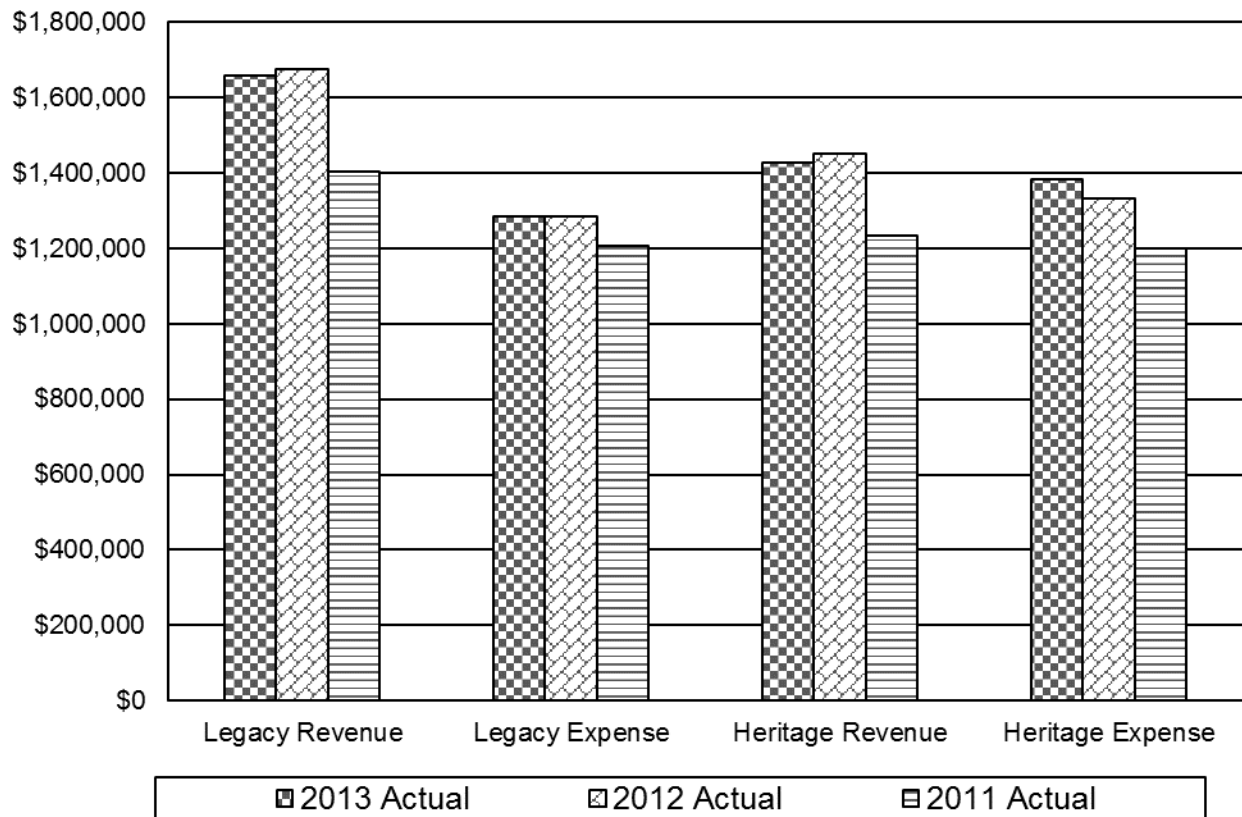


Legacy and Heritage Golf Course 2013 Operating Budget vs Actual



The following graphs represent the information for each of the golf courses.

**Legacy and Heritage Golf Courses
Operating Revenue and Expenses 2011-2013**



Revenue variances are due primarily to charges for services including driving range and greens fees.

This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

J. Brent McFall
City Manager

- Attachments
- Financial Statements
 - Shopping Center Report

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,729,500	5,729,500	(1)	5,478,949	(250,551)	95.6%
Licenses & Permits	1,619,750	1,619,750		2,252,708	632,958	139.1%
Intergovernmental Revenue	5,115,620	5,115,620		5,115,593	(27)	100.0%
Charges for Services						
Recreation Services	6,710,438	6,710,438		6,776,838	66,400	101.0%
Other Services	9,881,292	9,881,292		8,898,770	(982,522)	90.1%
Fines	2,260,000	2,260,000	(2)	1,861,834	(398,166)	82.4%
Interest Income	125,000	125,000		80,845	(44,155)	64.7%
Miscellaneous	1,763,630	1,763,630	(3)	2,399,199	635,569	136.0%
Leases	401,779	401,779		395,621	(6,158)	98.5%
Interfund Transfers	64,049,819	64,049,819		64,049,819	0	100.0%
Other Financing Sources	12,262,165	12,262,165		12,262,165	0	100.0%
Sub-total Revenues	<u>109,918,993</u>	<u>109,918,993</u>		<u>109,572,341</u>	<u>(346,652)</u>	<u>99.7%</u>
Carryover	2,921,136	2,921,136		2,921,136	0	100.0%
Total Revenues	<u>112,840,129</u>	<u>112,840,129</u>		<u>112,493,477</u>	<u>(346,652)</u>	<u>99.7%</u>
Expenditures						
City Council	254,094	254,094		191,519	(62,575)	75.4%
City Attorney's Office	1,256,450	1,256,450		1,232,050	(24,400)	98.1%
City Manager's Office	1,573,013	1,573,013		1,497,900	(75,113)	95.2%
Central Charges	40,541,482	40,541,482		39,021,586	(1,519,896)	96.3%
General Services	6,009,953	6,009,953		5,774,340	(235,613)	96.1%
Finance	2,110,661	2,110,661		2,060,580	(50,081)	97.6%
Police	21,496,383	21,496,383		20,997,697	(498,686)	97.7%
Fire Emergency Services	12,574,040	12,574,040		12,401,494	(172,546)	98.6%
Community Development	4,228,402	4,228,402		4,093,957	(134,445)	96.8%
Public Works & Utilities	8,046,901	8,046,901		7,649,715	(397,186)	95.1%
Parks, Recreation & Libraries	14,748,750	14,748,750		14,404,157	(344,593)	97.7%
Total Expenditures	<u>112,840,129</u>	<u>112,840,129</u>		<u>109,324,995</u>	<u>(3,515,134)</u>	<u>96.9%</u>
Revenues Over(Under) Expenditures						
	<u>0</u>	<u>0</u>		<u>3,168,482</u>	<u>3,168,482</u>	

(1) The budget to actual Taxes variance is due mostly to property, admissions and accommodations taxes.

(2) The budget to actual Fines variance is due mostly to traffic fines.

(3) The budget to actual Miscellaneous variance is due mostly to a Utility Fund payment for the purchase of a City park property easement.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	47,601,952	47,601,952		49,003,764	1,401,812	102.9%
Sales Tx Audit Revenues	724,000	724,000		671,408	(52,592)	92.7%
S-T Rev. STX	<u>48,325,952</u>	<u>48,325,952</u>		<u>49,675,172</u>	<u>1,349,220</u>	102.8%
Use Tax						
Use Tax Returns	8,017,000	8,017,000		8,665,862	648,862	108.1%
Use Tax Audit Revenues	785,000	785,000		1,010,603	225,603	128.7%
S-T Rev. UTX	<u>8,802,000</u>	<u>8,802,000</u>		<u>9,676,465</u>	<u>874,465</u>	109.9%
Total STX and UTX	<u><u>57,127,952</u></u>	<u><u>57,127,952</u></u>		<u><u>59,351,637</u></u>	<u><u>2,223,685</u></u>	103.9%
Public Safety Tax						
PST Tax Returns	11,883,683	11,883,683		12,422,244	538,561	104.5%
PST Audit Revenues	308,500	308,500		336,274	27,774	109.0%
Total Rev. PST	<u><u>12,192,183</u></u>	<u><u>12,192,183</u></u>		<u><u>12,758,518</u></u>	<u><u>566,335</u></u>	104.6%
Interest Income	85,000	85,000		55,814	(29,186)	65.7%
Interfund Transfers	265,458	265,458		265,458	0	100.0%
Carryover	3,036,366	3,036,366		3,036,366	0	100.0%
Total Revenues	<u><u>72,706,959</u></u>	<u><u>72,706,959</u></u>		<u><u>75,467,793</u></u>	<u><u>2,760,834</u></u>	103.8%
Expenditures						
Central Charges	<u>72,706,959</u>	<u>72,706,959</u>		<u>72,706,959</u>	<u>0</u>	100.0%
Revenues Over(Under)						
Expenditures	<u><u>0</u></u>	<u><u>0</u></u>		<u><u>2,760,834</u></u>	<u><u>2,760,834</u></u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Sales & Use Tax	5,085,325	5,085,325		5,314,686	229,361	104.5%
Intergovernmental Revenue	832,899	832,899	(1)	1,232,899	400,000	148.0%
Interest Income	10,000	10,000		15,118	5,118	151.2%
Miscellaneous	87,130	87,130		26,141	(60,989)	30.0%
Interfund Transfers	19,542	19,542		19,542	0	100.0%
Sub-total Revenues	<u>6,034,896</u>	<u>6,034,896</u>		<u>6,608,386</u>	<u>573,490</u>	109.5%
Carryover	1,566,139	1,566,139		1,566,139	0	100.0%
Total Revenues	<u>7,601,035</u>	<u>7,601,035</u>		<u>8,174,525</u>	<u>573,490</u>	107.5%
Expenditures						
Central Charges	7,270,219	7,270,219		6,664,831	(605,388)	91.7%
Park Services	330,816	330,816		262,113	(68,703)	79.2%
Total Expenditures	<u>7,601,035</u>	<u>7,601,035</u>		<u>6,926,944</u>	<u>(674,091)</u>	91.1%
Revenues Over(Under) Expenditures	<u>0</u>	<u>0</u>		<u>1,247,581</u>	<u>1,247,581</u>	

(1) Intergovernmental Revenue reflects a \$400,000 grant reimbursement that was budgeted in a prior year.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	75,000		100,370	25,370	133.8%
Intergovernmental Revenue	0	0	(1)	514,267	514,267	
Rates and Charges	45,315,766	45,315,766		42,712,656	(2,603,110)	94.3%
Miscellaneous	460,000	460,000		301,556	(158,444)	65.6%
Total Operating Revenues	<u>45,850,766</u>	<u>45,850,766</u>		<u>43,628,849</u>	<u>(2,221,917)</u>	95.2%
Operating Expenditures						
Central Charges	6,299,672	6,299,672		6,091,118	(208,554)	96.7%
Finance	646,064	646,064		536,290	(109,774)	83.0%
Public Works & Utilities	21,486,266	21,486,266		17,901,301	(3,584,965)	83.3%
Parks, Recreation & Libraries	152,415	152,415		115,570	(36,845)	75.8%
Information Technology	2,868,928	2,868,928		2,718,390	(150,538)	94.8%
Total Operating Expenditures	<u>31,453,345</u>	<u>31,453,345</u>		<u>27,362,669</u>	<u>(4,090,676)</u>	87.0%
Operating Income (Loss)	<u>14,397,421</u>	<u>14,397,421</u>		<u>16,266,180</u>	<u>1,868,759</u>	
Other Revenue and Expenditures						
Tap Fees	4,560,000	4,560,000	(2)	9,118,467	4,558,467	200.0%
Interest Income	365,000	365,000		308,513	(56,487)	84.5%
Interfund Transfers	2,533,172	2,533,172		2,533,172	0	100.0%
Sale of Assets	67,746	67,746		130,188	62,442	192.2%
Carryover	9,058,544	9,058,544		9,058,544	0	100.0%
Debt Service	(7,221,199)	(7,221,199)		(7,192,308)	28,891	99.6%
Reserve Transfer	(5,941,977)	(5,941,977)		(5,941,977)	0	100.0%
Total Other Revenue (Expenditures)	<u>3,421,286</u>	<u>3,421,286</u>		<u>8,014,599</u>	<u>4,593,313</u>	
Revenues Over(Under) Expenditures	<u>17,818,707</u>	<u>17,818,707</u>		<u>24,280,779</u>	<u>6,462,072</u>	

(1) The Intergovernmental budget variance reflects the 2010 Build America Bonds interest rate subsidy.

(2) Tap Fees budget to actual variance reflects commercial tap fees from new multi-family development at The Orchard.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	75,000		100,370	25,370	133.8%
Intergovernmental Revenue	0	0	(1)	514,267	514,267	
Rates and Charges	32,100,766	32,100,766		29,483,217	(2,617,549)	91.8%
Miscellaneous	450,000	450,000		292,806	(157,194)	65.1%
Total Operating Revenues	<u>32,625,766</u>	<u>32,625,766</u>		<u>30,390,660</u>	<u>(2,235,106)</u>	
Operating Expenditures						
Central Charges	4,427,473	4,427,473		4,242,799	(184,674)	95.8%
Finance	646,064	646,064		536,290	(109,774)	83.0%
Public Works & Utilities	14,527,801	14,527,801		11,683,037	(2,844,764)	80.4%
PR&L Standley Lake	152,415	152,415		115,570	(36,845)	75.8%
Information Technology	2,868,928	2,868,928		2,718,390	(150,538)	94.8%
Total Operating Expenditures	<u>22,622,681</u>	<u>22,622,681</u>		<u>19,296,086</u>	<u>(3,326,595)</u>	85.3%
Operating Income (Loss)	<u>10,003,085</u>	<u>10,003,085</u>		<u>11,094,574</u>	<u>1,091,489</u>	
Other Revenue and (Expenditures)						
Tap Fees	3,500,000	3,500,000	(2)	6,859,353	3,359,353	196.0%
Interest Income	250,000	250,000		213,300	(36,700)	85.3%
Interfund Transfers	2,097,065	2,097,065		2,097,065	0	100.0%
Sale of Assets	67,746	67,746		130,188	62,442	192.2%
Carryover	7,451,335	7,451,335		7,451,335	0	100.0%
Debt Service	(5,714,756)	(5,714,756)		(5,685,866)	28,890	99.5%
Reserve Transfer	(4,777,768)	(4,777,768)		(4,777,768)	0	100.0%
Total Other Revenues (Expenditures)	<u>2,873,622</u>	<u>2,873,622</u>		<u>6,287,607</u>	<u>3,413,985</u>	
Revenues Over(Under) Expenditures	<u>12,876,707</u>	<u>12,876,707</u>		<u>17,382,181</u>	<u>4,505,474</u>	

(1) The Intergovernmental budget variance reflects the 2010 Build America Bonds interest rate subsidy.

(2) Tap Fees budget to actual variance reflects commercial tap fees from new multi-family development at The Orchard.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	13,215,000	13,215,000		13,229,439	14,439	100.1%
Miscellaneous	10,000	10,000		8,750	(1,250)	87.5%
Total Operating Revenues	<u>13,225,000</u>	<u>13,225,000</u>		<u>13,238,189</u>	<u>13,189</u>	100.1%
Operating Expenditures						
Central Charges	1,872,199	1,872,199		1,848,319	(23,880)	98.7%
Public Works & Utilities	6,958,465	6,958,465		6,218,264	(740,201)	89.4%
Total Operating Expenditures	<u>8,830,664</u>	<u>8,830,664</u>		<u>8,066,583</u>	<u>(764,081)</u>	91.3%
Operating Income (Loss)	<u>4,394,336</u>	<u>4,394,336</u>		<u>5,171,606</u>	<u>777,270</u>	
Other Revenue and Expenditures						
Tap Fees	1,060,000	1,060,000	(1)	2,259,114	1,199,114	213.1%
Interest Income	115,000	115,000		95,213	(19,787)	82.8%
Interfund Transfers	436,107	436,107		436,107	0	100.0%
Carryover	1,607,209	1,607,209		1,607,209	0	100.0%
Debt Service	(1,506,443)	(1,506,443)		(1,506,442)	1	100.0%
Reserve Transfer	(1,164,209)	(1,164,209)		(1,164,209)	0	100.0%
Total Other Revenues (Expenditures)	<u>547,664</u>	<u>547,664</u>		<u>1,726,992</u>	<u>1,179,328</u>	
Revenues Over(Under) Expenditures	<u>4,942,000</u>	<u>4,942,000</u>		<u>6,898,598</u>	<u>1,956,598</u>	

(1) Tap Fees budget to actual variance reflects commercial tap fees from new multi-family development at The Orchard.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,082,000	2,082,000		2,015,669	(66,331)	96.8%
Interest Income	50,000	50,000		31,185	(18,815)	62.4%
Miscellaneous	0	0		23	23	
Sub-total Storm Drainage Revenues	<u>2,132,000</u>	<u>2,132,000</u>		<u>2,046,877</u>	<u>(85,123)</u>	96.0%
Carryover	44,136	44,136		44,136	0	100.0%
Total Revenues	<u>2,176,136</u>	<u>2,176,136</u>		<u>2,091,013</u>	<u>(85,123)</u>	96.1%
Expenditures						
General Services	86,200	86,200		86,692	492	100.6%
Community Development	174,090	174,090		171,073	(3,017)	98.3%
PR&L Park Services	200,000	200,000		86,126	(113,874)	43.1%
Public Works & Utilities	358,590	358,590		264,997	(93,593)	73.9%
Total Expenditures	<u>818,880</u>	<u>818,880</u>		<u>608,888</u>	<u>(209,992)</u>	74.4%
Revenues Over(Under) Expenditures	<u>1,357,256</u>	<u>1,357,256</u>		<u>1,482,125</u>	<u>124,869</u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Operating Revenues						
Charges for Services	2,967,608	2,967,608		3,085,764	118,156	104.0%
Total Revenues	<u>2,967,608</u>	<u>2,967,608</u>		<u>3,085,764</u>	<u>118,156</u>	104.0%
Operating Expenditures						
Central Charges	217,435	217,435		173,511	(43,924)	79.8%
Recreation Facilities	2,650,708	2,650,708		2,493,520	(157,188)	94.1%
Total Expenditures	<u>2,868,143</u>	<u>2,868,143</u>		<u>2,667,031</u>	<u>(201,112)</u>	93.0%
Operating Income (Loss)	<u>99,465</u>	<u>99,465</u>		<u>418,733</u>	<u>319,268</u>	
Other Revenues and Expenditures						
Interest Income	0	0		5,013	5,013	
Other Financing Sources	484,283	484,283		484,283	0	100.0%
Other Financing Use	(484,283)	(484,283)		(484,283)	0	100.0%
Debt Service	(681,608)	(681,608)		(681,608)	0	100.0%
Interfund Transfers In	617,771	617,771	(1)	1,167,771	550,000	189.0%
Interfund Transfers Out	(585,628)	(585,628)		(585,628)	0	100.0%
Carryover	550,000	550,000		550,000	0	100.0%
Total Other Revenue (Expenditures)	<u>(99,465)</u>	<u>(99,465)</u>		<u>455,548</u>	<u>555,013</u>	
Revenues Over(Under) Expenditures	<u>0</u>	<u>0</u>		<u>874,281</u>	<u>874,281</u>	

(1) Interfund Transfers In reflects a reallocation of funds from Legacy to Heritage at Westmoor.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Operating Revenues						
Charges for Services	1,582,258	1,582,258		1,657,589	75,331	104.8%
Total Revenues	<u>1,582,258</u>	<u>1,582,258</u>		<u>1,657,589</u>	<u>75,331</u>	104.8%
Operating Expenditures						
Central Charges	113,659	113,659		88,372	(25,287)	77.8%
Recreation Facilities	1,280,371	1,280,371		1,196,970	(83,401)	93.5%
Total Expenditures	<u>1,394,030</u>	<u>1,394,030</u>		<u>1,285,342</u>	<u>(108,688)</u>	92.2%
Operating Income (Loss)	<u>188,228</u>	<u>188,228</u>		<u>372,247</u>	<u>184,019</u>	
Other Revenues and Expenditures						
Interest Income	0	0		4,545	4,545	
Other Financing Sources	240,539	240,539		240,539	0	100.0%
Other Financing Use	(240,539)	(240,539)		(240,539)	0	100.0%
Debt Service	(152,600)	(152,600)		(152,600)	0	100.0%
Interfund Transfers Out	(585,628)	(585,628)		(585,628)	0	100.0%
Carryover	550,000	550,000		550,000	0	100.0%
Total Other Revenue (Expenditures)	<u>(188,228)</u>	<u>(188,228)</u>		<u>(183,683)</u>	<u>4,545</u>	
Revenues Over(Under) Expenditures	<u>0</u>	<u>0</u>		<u>188,564</u>	<u>188,564</u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Operating Revenues						
Charges for Services	1,385,350	1,385,350		1,428,175	42,825	103.1%
Total Revenues	<u>1,385,350</u>	<u>1,385,350</u>		<u>1,428,175</u>	<u>42,825</u>	103.1%
Operating Expenditures						
Central Charges	103,776	103,776		85,139	(18,637)	82.0%
Recreation Facilities	1,370,337	1,370,337		1,296,550	(73,787)	94.6%
Total Expenditures	<u>1,474,113</u>	<u>1,474,113</u>		<u>1,381,689</u>	<u>(92,424)</u>	93.7%
Operating Income (Loss)	<u>(88,763)</u>	<u>(88,763)</u>		<u>46,486</u>	<u>135,249</u>	
Other Revenues and Expenditures						
Interest Income	0	0		468	468	
Other Financing Sources	243,744	243,744		243,744	0	100.0%
Other Financing Use	(243,744)	(243,744)		(243,744)	0	100.0%
Debt Service	(529,008)	(529,008)		(529,008)	0	100.0%
Interfund Transfers In	617,771	617,771	(1)	1,167,771	550,000	189.0%
Total Other Revenue (Expenditures)	<u>88,763</u>	<u>88,763</u>		<u>639,231</u>	<u>550,468</u>	
Revenues Over(Under) Expenditures	<u>0</u>	<u>0</u>		<u>685,717</u>	<u>685,717</u>	

(1) Interfund Transfers In reflects a reallocation of funds from Legacy to Heritage at Westmoor.

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF DECEMBER 2013

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	493,956	13,072	507,028	425,442	109,554	534,997	16	-88	-5
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	373,764	753	374,517	371,346	1,025	372,371	1	-27	1
SHOPS AT WALNUT CREEK 104TH & REED TARGET	257,060	1,307	258,367	218,033	1,536	219,570	18	-15	18
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	237,452	212	237,663	228,952	1,423	230,375	4	-85	3
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	228,834	2,166	231,000	202,687	1,434	204,120	13	51	13
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	194,625	672	195,297	179,948	567	180,515	8	19	8
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	190,863	415	191,278	202,536	3,050	205,585	-6	-86	-7
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	184,135	917	185,052	172,847	440	173,287	7	108	7
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	137,670	21,147	158,817	122,360	24,300	146,660	13	-13	8
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	120,981	473	121,454	111,585	667	112,252	8	-29	8
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	91,054	2,008	93,061	99,199	396	99,595	-8	407	-7
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	91,530	1,270	92,800	59,773	914	60,687	53	39	53
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	87,283	271	87,554	83,694	354	84,049	4	-24	4
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	81,909	199	82,108	75,569	256	75,825	8	-22	8
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	8,071	67,865	75,936	14,071	4,231	18,302	-43	1504	315

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH OF DECEMBER 2013

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	67,373	100	67,473	63,253	85	63,338	7	18	7
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	62,725	116	62,841	55,631	1,739	57,370	13	-93	10
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH H MART	54,850	384	55,234	52,938	855	53,794	4	-55	3
NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART	36,021	11,387	47,408	21,019	138	21,157	71	8153	124
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	45,915	140	46,056	43,357	178	43,535	6	-21	6
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	44,612	882	45,495	39,645	291	39,936	13	203	14
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	32,544	222	32,766	25,230	0	25,230	29	*****	30
WILLOW RUN 128TH & ZUNI SAFEWAY	32,354	169	32,523	32,770	164	32,934	-1	3	-1
MEADOW POINTE NE CRN 92ND & OLD WADS CARRABAS	29,326	17	29,343	24,107	15	24,122	22	10	22
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	24,938	448	25,385	26,151	41	26,193	-5	979	-3
	<u>3,209,846</u>	<u>126,611</u>	<u>3,336,457</u>	<u>2,952,144</u>	<u>153,655</u>	<u>3,105,799</u>	<u>9</u>	<u>-18</u>	<u>7</u>

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
DECEMBER 2013 YEAR-TO-DATE

Center Location Major Tenant	YTD 2013			YTD 2012			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	5,241,134	167,382	5,408,516	4,703,282	259,768	4,963,049	11	-36	9
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	4,044,845	27,616	4,072,462	4,129,814	23,213	4,153,026	-2	19	-2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	3,038,969	35,165	3,074,134	2,808,657	20,988	2,829,645	8	68	9
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,867,845	11,259	2,879,104	2,745,366	12,078	2,757,445	4	-7	4
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	2,598,948	57,232	2,656,180	2,291,445	21,789	2,313,234	13	163	15
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	2,100,170	7,060	2,107,230	2,339,758	9,121	2,348,879	-10	-23	-10
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	2,068,331	11,806	2,080,137	2,049,861	37,485	2,087,346	1	-69	0
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	2,043,699	15,402	2,059,101	1,993,860	6,868	2,000,728	3	124	3
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,632,540	227,795	1,860,335	1,512,614	219,143	1,731,757	8	4	7
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,529,518	14,412	1,543,929	1,419,141	8,691	1,427,832	8	66	8
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,267,727	16,549	1,284,276	1,405,323	8,518	1,413,842	-10	94	-9
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	1,031,382	4,596	1,035,978	954,460	2,324	956,784	8	98	8
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	919,604	5,999	925,604	901,179	7,014	908,193	2	-14	2
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	799,637	27,050	826,687	749,453	7,355	756,808	7	268	9
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	759,584	6,073	765,657	732,912	2,970	735,882	4	104	4

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
DECEMBER 2013 YEAR-TO-DATE

Center Location Major Tenant	YTD 2013			YTD 2012			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	681,478	7,427	688,904	664,329	9,042	673,371	3	-18	2
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	585,307	9,909	595,216	863,793	20,629	884,422	-32	-52	-33
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	555,038	20,894	575,932	517,802	22,536	540,338	7	-7	7
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	537,873	2,330	540,202	539,875	7,787	547,662	0	-70	-1
WILLOW RUN 128TH & ZUNI SAFEWAY	402,865	2,866	405,731	416,934	3,640	420,574	-3	-21	-4
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	370,018	6,275	376,293	326,955	1,290	328,245	13	387	15
BOULEVARD SHOPS 94TH & WAOSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	353,706	5,499	359,206	318,410	3,236	321,646	11	70	12
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	330,181	32,759	362,939	296,115	5,013	301,129	12	553	21
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	310,022	7,074	317,096	309,282	9,299	318,581	0	-24	0
MEADOW POINTE NE CRN 92ND & OLD WADS CARRABAS	305,100	869	305,970	290,694	696	291,390	5	25	5
	<u>36,375,522</u>	<u>731,297</u>	<u>37,106,819</u>	<u>35,281,315</u>	<u>730,492</u>	<u>36,011,806</u>	<u>3</u>	<u>0</u>	<u>3</u>



Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Quarterly Insurance Claims Report – October through December 2013

Prepared By: Martee Erichson, Risk Manager

Recommended City Council Action

Accept the Fourth Quarter 2013 Insurance Claims Report.

Summary Statement

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

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 4th quarter of 2013 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow-up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the fourth quarter of 2013, Staff has noted the following summary information:

- Five of the eight claims reported in the fourth quarter of 2013 are closed at this time.
- Total claims for the quarter and year-to-date are broken down by department as follows:

Department	4th Qtr 2013			YTD
	Total Claims	Open	Closed	Total
General Services (GS) - Building Operations & Maintenance	0	0	0	1
Parks, Recreation and Libraries (PRL)	2	1	1	6
Police (PD)	3	1	2	10
Public Works and Utilities (PWU) - Street Maintenance	0	0	0	3
Public Works and Utilities (PWU) - Utilities Planning & Engineering	0	0	0	1
Public Works and Utilities (PWU) - Utility Field Operations	3	1	2	9
TOTAL	8	3	5	30

Risk Management supports Council’s Strategic Plan goals of a Safe and Healthy Community and a Financially Sustainable City Government Providing Exceptional Services by working to mitigate the cost of claims to the City and maintaining a loss control program that strives to keep City streets and facilities safe for the general public.

Respectfully submitted,

J. Brent McFall
City Manager

Quarterly Insurance Claims Report – October through December 2013

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2013-316	10/26/2013	PRL	Jeffrey Guirguis	9786 97th Ct, Westminster CO 80021	Employee operating a back loader during a tree limb chipping event, backed into claimant's vehicle.	\$1,116.54	Closed	Claim denied based on Colorado Governmental Immunity Act; however, claimant was paid under the City's "good neighbor" settlement program.
2013-361-1	11/2/2013	PWU - Util	Jack/Melanie Swager (tenant)	8570 Oakwood St, Westminster CO 80031	Claimant's private sewer line was damaged during repair of a water main break.	\$479.00	Closed	
2013-361-2	11/2/2013	PWU - Util	Lois Storer (homeowner)	7600 Harlan St, Arvada CO 80003	Claimant's private sewer line was damaged during repair of a water main break.	\$ 19,206.00	Closed	
2013-368	12/5/2013	PWU - Util	Katrina Messick	3161 W 94th Ave, Westminster CO 80031	Citizen alleges unnecessary plumber costs and damage to her property due to City staffs failure to turn her water back on after checking her meter for water flow.	\$0	Open	CIRSA investigating.
2013-380	12/18/2013	PD	Jasmine Colgan	7151 Wolff St, Westminster CO 80030	Westminster police officer driving a police car, rear-ended claimant's vehicle that was stopped at a light.	\$1,205.98	Open	CIRSA investigating.
2013-393	12/23/2013	PRL	Linda Smith	5541 W 117th Pl, Westminster CO 80020	Claimant alleges she was injured when she slipped and fell on ice on the pedestrian bridge at Sherwood Park.	\$0	Open	CIRSA investigating.
CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 4th QUARTER 2013:								
2013-360	5/9/2013	PD	Gary Wisbey	2221 Arapahoe #3504, Centennial CO 80122	Claimant's property was lost and turned into the police department by another individual. Although the claimant filed a lost property report with the police department, the lost and then found reports were not matched up and his property was later destroyed according to current property evidence procedures.	\$1,920.00	Closed	Claim denied based on Colorado Governmental Immunity Act; however, claimant was paid under the City's "good neighbor" settlement program.
2013-293	9/26/2013	PD	Laura Ordonez-Pasillas	8855 Hunter Way, Westminster CO 80031	Westminster police officer driving a police car, side swiped claimant's vehicle.	\$3,174.62	Closed	
					TOTAL	\$27,102.14		



Agenda Item 8 C

Agenda Memorandum

City Council Meeting

January 27, 2014

SUBJECT: Sponsor of Grant Application for Hyland Hills Park and Recreation District

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

By motion, approve sponsoring a grant application for Hyland Hills Park and Recreation District to the Adams County Open Space Grant Program.

Summary Statement

Hyland Hills Park and Recreation District has requested that the City of Westminster sponsor a grant application to the Adams County Open Space grant program for a grant to assist with the construction of an irrigation pond located at 88th Avenue and Pecos Street located within the City of Federal Heights. The proposed project will cost approximately \$150,000 of which the District will be requesting a 66% or \$100,000 grant. Since Hyland Hills is a non-sales tax collection entity within Adams County, sponsorship from a qualified entity is required to submit grant applications. The City of Westminster is considered a qualified entity within Adams County and can sponsor grant applications. Sponsoring grants does not negatively affect the City of Westminster's ability to apply for grants in the same grant cycle. Sponsorship also does not have to be based on jurisdictional boundaries.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City agree to sponsor a grant for Hyland Hills Park and Recreation District for an irrigation pond near the Waterworld property to the Adams County Open Space grant program?

Alternative

The City could choose to not sponsor the grant application and Hyland Hills could ask another jurisdiction to sponsor the grant for them. Adams County rules require sponsorship from separate entities for each grant submitted per cycle. Hyland Hills plans to submit two grant applications plus a mini-grant and has already asked other jurisdictions to sponsor the remaining two grants.

Background Information

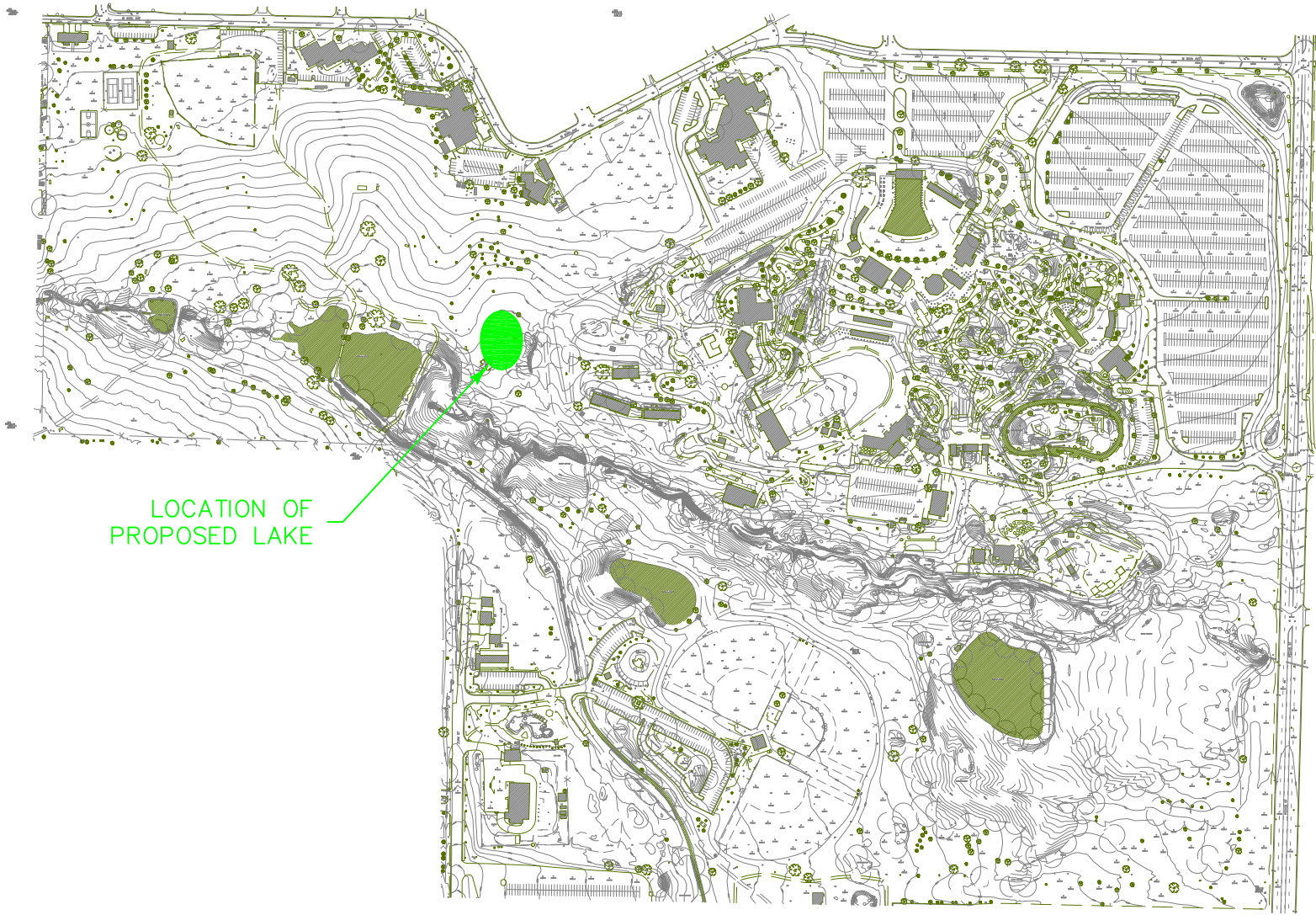
Hyland Hills Park and Recreation District has asked the City of Westminster to sponsor a grant to the Adams County Open Space program. Since Hyland Hills is a non-sales tax collection entity within Adams County, a sponsorship from a qualified entity is required. The project includes a proposed pond that will be located on the 160-acre Hyland Hills property at 88th Avenue and Pecos Street where Waterworld is located. An earthen dam and a 3.5-acre pond will be constructed in a small draw adjacent to an existing irrigation pond. The two ponds will be linked together by a level 12 inch diameter underground pipe with two isolation valves. The new pond will be used to increase the amount of available irrigation water during dry periods or when the Allen Ditch (a lateral ditch to the Farmers' High Line Canal) is not running. This additional water storage will utilize the existing pump house and irrigation distribution system for Camenisch Park, a portion of the disc golf course, Sports Complex (baseball diamonds) and other areas of the Hyland Hills property. The proposed project will cost approximately \$150,000 of which the District will be requesting a 66% or \$100,000 grant. Hyland Hills will fund the balance. Construction plans are completed.

By agreeing to sponsor this grant, the City of Westminster can still apply for the maximum allowable grants in the same cycle and does not retain any responsibility for the grant or the project itself.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment- Site Map



LOCATION OF
PROPOSED LAKE

**HYLAND HILLS PROPERTY
PROPOSED IRRIGATION LAKE**
8801 NORTH PECOS STREET
FEDERAL HEIGHTS, COLORADO



HYLAND HILLS
Park & Recreation District

VICINITY MAP

Drawn by:
HPB

Date:
16JAN14

File Name:
VICINITY.DWG

REF.	DATE	DESCRIPTION	BY

DRAWING NO.
N.T.S.

DRAWING SCALE



Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: 2014 Foothills Animal Shelter Construction Debt Assessment

Prepared By: Mike Cressman, Deputy Chief of Police
Kim Barron, Neighborhood and Support Services Commander

Recommended City Council Action

Authorize payment of \$87,580.57 to Jefferson County for the City's 2014 assessment for construction debt repayment.

Summary Statement

- On November 25, 1996, City Council authorized the City Manager to enter into an Intergovernmental Agreement (IGA) for the provision of all animal sheltering functions for the City of Westminster to be located at Table Mountain Animal Center (TMAC). Westminster is party to this agreement with Jefferson County, Lakewood, Wheat Ridge, Arvada, Edgewater and Golden. The Agreement covers Westminster residents who live in Adams County as well as Jefferson County. In August 2010, TMAC changed its name to Foothills Animal Shelter (FAS) in conjunction with the move to the new facility located at 580 McIntyre Street in Golden.
- In August of 2012, Council approved a new IGA with Jefferson County and the cities of Lakewood, Wheat Ridge, Arvada Edgewater and Golden. This new IGA combined and restructured the Foothills Animal Shelter (FAS) construction debt repayment and the Countywide Dog Licensing Program agreements that had been in effect.
- The former agreements allowed for the revenue collected from the sale of dog licenses throughout the County to be applied toward the FAS construction debt repayment to Jefferson County, while the parties were annually assessed for operational costs of the facility. The new IGA allows for the dog licensing revenue to cover FAS operational costs and the parties will now be annually assessed for the construction debt repayment by Jefferson County.
- The amount requested for the annual assessment, is within the funds authorized by City Council for this item in the 2014 Police Department budget.

Expenditure Required: \$87,580.57

Source of Funds: 2014 General Fund – Police Department Operating Budget

Policy Issue

Should City Council authorize the expenditure of \$87,580.57 for Westminster's 2014 assessment for Foothills Animal Shelter construction debt repayment?

Alternative

Council could decline payment. This alternative is not recommended as the City is a part of the IGA agreement to provide a healthy and safe shelter environment for our animals. The Foothills Animal Shelter remains a very cost effective approach for the City to shelter animals.

Background Information

In November 1996, the City entered into an agreement with Table Mountain Animal Center for the provision of all animal sheltering functions, effective January 1, 1997. An intergovernmental agreement set out the method for calculating each participating agencies assessment for operating expenses. This method was based upon population and property valuation. In 2010, a new facility was constructed and the name was changed to Foothills Animal Shelter.

In August 2012, City Council directed the City Manager to enter into an Intergovernmental Agreement with five other Jefferson County parties for Animal Shelter/Dog Licensing/Funding. The agreement provided for future operating expenses of Foothills Animal Shelter to be paid from dog licensing revenue. Participating parties would pay an annual construction debt assessment based upon the number of households and dog population.

The construction debt assessment for 2014 represents a 1.9% decrease from the 2013 assessment of \$89,242.97. Because the assessment is based on the loan principal balance, the annual assessment will incrementally decrease as the principal is paid down.

Additional background information is contained in the Information Only Staff Report providing an animal management overview, included in this week's packet.

Adequate funds are budgeted in the Police Department's 2014 General Fund Operating Budget for this expense.

Action on this item supports City Council's Strategic Plan goals of Safe and Healthy Community and Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Northridge Tank No. 3 Design Contract

Prepared By: Dan Strietelmeier, Senior Engineer
Stephen Grooters, Senior Projects Engineer

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest would best be served by authorizing the City Manager to execute a contract amendment with Burns and McDonnell Engineers Inc. in the amount of \$281,847 to provide final design services for the Northridge Tank No. 3 project, plus a contingency in the amount of \$28,185 for a total authorized expenditure of \$310,032.

Summary Statement

- The Water Tanks Major Repair and Replacement Program began in 2010 with inspection and assessment of all the City's tanks and hydraulic modeling of the City's current and future water storage tank needs.
- Results indicated the need for several improvements to the City's existing tanks to extend the life of the tanks, improve reliability within the distribution system, and add storage.
- The implementation plan will repair all City tanks and add storage over the next 8 years.
- The three key initial steps of the program are: 1) repair the two tanks at the Wandering View site (completed 2013); 2) repair the tank at the Northwest Treatment Facility (currently in construction); and 3) add a third tank at the Northridge Tank site behind the Public Safety Center.
- Burns and McDonnell Engineering Company recently completed the preliminary design phase of the Northridge Tank No. 3 Project under a contract approved by City Council on May 13, 2013.
- The preliminary design confirmed: 1) the Northridge Tank site (see attached map) is the preferred site for the new tank; 2) 3.5 million gallons is the most appropriate size for the new tank; and 3) the most cost effective tank material is concrete (see attached rendering).
- Adding a tank at this site also provides needed flexibility during future repairs of the two existing tanks.
- Burns and McDonnell was selected through a competitive process for preliminary design, which anticipated negotiating a contract for final design. It is Staff's assessment they provide the best value for final design given their successful performance and ability to streamline project tasks.
- On January 13, 2014, Council reviewed an update from Staff and confirmed Staff's direction to negotiate a final design contract with Burns & McDonnell for a new Northridge Tank No. 3 and report back with a recommendation for action following negotiations.
- Staff has negotiated a competitive scope of work and fee with Burns and McDonnell for final design in the amount of \$281,847 and is requesting Council approval for the contract amendment.
- Staff recommends awarding the contract to Burns & McDonnell based on their competitive pricing, proposed scope of work, familiarity with the City's infrastructure and the successful completion of the preliminary design phase.
- Upon completion of the design contract Staff will return to Council with a construction services contract.
- Adequate funds were budgeted and are available for this project.

Expenditure Required: \$310,032

Source of Funds: Utility Fund Capital Improvement – Northridge Tank No. 3 Project

Policy Issue

Should the City execute a contract amendment with Burns And McDonnell Engineering Company, Inc. for final design engineering for the Northridge Tank No. 3 project?

Alternatives

1. Council could choose to not proceed with the design phase for the new Northridge Tank No. 3. This is not recommended as proceeding with the Northridge Tank No. 3 project addresses the current need for more storage and also provides the desired flexibility related to repairs on the two existing Northridge tanks.
2. Council could choose to request proposals for the design task. This is not recommended as Burns and McDonnell Engineers Inc. was selected through a competitive process for the Northridge Tank No. 3 preliminary design, which anticipated additional project tasks such as final design of new Northridge Tank No.3. It is Staff's assessment that Burns and McDonnell Engineers Inc. provides the best value because their team has already performed the predesign work for the new tank and will be able to streamline tasks on the Northridge site. Council confirmed this direction at its post City Council meeting on January 13, 2014.

Background Information

The City currently owns and operates 12 water storage tanks with a total replacement value of approximately \$54 Million dollars. These tanks are a necessary part of the water distribution system to meet short-term periods of high consumer demand, emergency storage for potential times of interrupted water supply, and fire flow. Previous distribution system modeling and master planning has shown that the City needs additional potable water storage to meet current and buildout water demands. For this reason, additional storage is part of the overall Water Tanks Repair and Replacement Program.

In 2013, staff implemented a preliminary design project to confirm the optimum site for new storage, size the first phase of new storage construction, and to provide recommendations to reduce rates of corrosion, especially with roof structural supports. The preliminary design included life-cycle analysis of alternative tank roof designs and tank materials (i.e. steel versus concrete). Results of the preliminary design include:

1. A new tank at the Northridge site is the preferred location for the first phase of new storage construction. A new tank at this site can be constructed on City owned land and also provides operational flexibility during planned repair projects to the two existing Northridge tanks. In addition, a booster pump station already exists at the site and can readily accommodate the increased storage.
2. The new tank should be sized similarly to the existing tanks at 3.5 million gallons.
3. A key finding was that, based on current material and commodity costs, a concrete tank with concrete dome roof will be more cost-effective compared to a steel tank. Because of its superior resistance to corrosion, the concrete tank does not require frequent and expensive recoating. As such the slightly higher initial capital costs will be offset within the first 20 years of the 60-year life-cycle.

Staff is seeking Council approval for a contract amendment with Burns and McDonnell Engineers Inc. for the final design of Northridge Tank No. 3. As reported to City Council previously, Burns and McDonnell Engineers Inc. was selected through a competitive process for preliminary design, which anticipated negotiating final design of new Northridge Tank No. 3 and returning to City Council for approval. It is Staff's assessment that Burns and McDonnell Engineers Inc. provides the best value because their team successfully completed the preliminary design work for the new tank and will be able to streamline tasks

during final design. As such, Staff negotiated a scope of work and competitive fee with Burns and McDonnell Engineering for this next step of the project and is now seeking Council approval. Final design tasks include a project information open house to address customer concerns and review architectural renderings for proposed tank construction. Construction management services will be negotiated with Burns and McDonnell Engineering and presented to City Council at a later date once the scope and schedule for construction is established.

Final design work is anticipated to commence immediately with construction of the new Northridge Tank No. 3 to begin this fall with completion anticipated in Summer of 2015. Costs for the overall project with construction are currently estimated within the adopted budget of \$5,800,000.

This project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods In One Livable Community" by contributing to the objectives of well-maintained City infrastructure and facilities and maintaining neighborhood infrastructure.

Respectfully submitted,

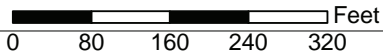
J. Brent McFall
City Manager

Attachments: Map of Tank Site
Photo of Model Tank Landscaped

City of Westminster Northridge Tank No. 3 Site



City of Westminster







Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: 95th and Federal Blvd Lift Station Rehabilitation Engineering Contract

Prepared By: Adam Marsh, Engineer
Stephen Grooters, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with Lidstone and Associates, Inc. in the amount of \$98,333 for the design of the 95th & Federal Blvd Wastewater Lift Station Rehabilitation project, plus a project contingency amount of \$9,833 for a total authorized expenditure of \$108,166.

Summary Statement

- The City owns and operates six wastewater lift stations located throughout the City (see the attached map).
- These lift stations are used to transfer wastewater from low-lying areas and neighborhoods of the City into the City's larger-sized wastewater collection system. Sewage subsequently flows by gravity to either the Big Dry Creek Wastewater Treatment Plant or the Metro Wastewater Reclamation District's Central Plant.
- In 2011 staff completed an evaluation of each lift station and developed a prioritized plan for recommended improvements. The highest priority was to replace the 87th and Wadsworth Lift Station, which is currently in the construction phase. Repairs to the North Huron Lift Station were also prioritized and are currently being designed.
- The purpose of this project is to continue implementing the lift stations repair program by rehabilitating the lift station located adjacent to the intersection of 95th and Federal Blvd.
- The 95th and Federal Lift Station equipment is nearing the end of its useful life and needs to be repaired. In addition, this lift station has a history of pump clogging and requires frequent maintenance.
- Rehabilitating this lift station is necessary to prevent equipment failures, sewer back-ups, and impacts to City customers.
- This project includes replacing the existing pumps and electrical equipment, repairing existing concrete structures, and improvements to site access, security and safety.
- Of four proposals received for the design services, Staff believes Lidstone and Associates Inc. (Lidstone) submitted the most comprehensive proposal and competitive engineering fees providing the best value to the City. Staff is recommending that a contract for the project design be awarded to Lidstone at a fee of \$98,333.
- This contract includes engineering services for the project design and bidding assistance. Design is expected to be completed by December of 2014 with construction completion mid-2015.
- Adequate funds were budgeted and are available for this project.

Expenditure Required: \$108,166

Source of Funds: Utility Fund Capital Improvement – 95th and Federal LS Remodel Project

Policy Issue

Should the City execute a contract with Lidstone and Associates for engineering design of the 95th & Federal Blvd Lift Station Rehabilitation project?

Alternatives

1. City Council could decline to approve the contract and place the contract on hold. However, the existing lift station is in poor condition and is prone to clogging at the suction pipe. Delaying the project is not recommended since it could result in increased maintenance and repair expenses and possible service impacts to residents.
2. City Council could choose to award the contract to one of the other consultants that submitted proposals; however, this is not recommended as Staff believes that Lidstone provides the best value for this project.

Background Information

The City owns and operates a number of sewage lift stations that are used to transfer wastewater from low-lying areas and neighborhoods of the City into the City's larger-sized wastewater collection system. Sewage subsequently flows by gravity to either the Big Dry Creek Wastewater Treatment Plant or the Metro Wastewater Reclamation District's Central Plant. The six lift stations are listed below and shown in the attached map.

1. 87th and Wadsworth Lift Station located adjacent to Wadsworth Blvd just north of the Old Chicago Restaurant
2. 95th and Federal Lift Station located on the west side of Federal Blvd just south of 95th Avenue
3. North Huron Lift Station located at 133rd and Huron Street on the campus of the Big Dry Creek Wastewater Treatment Facility
4. 80th and Clay Lift Station located on the north side of 80th avenue just east of Clay Street
5. 88th and Zuni Street Lift Station
6. Standley Lake Regional Park Lift Station located at 100th and Simms Street

In 2011 staff completed an evaluation of each lift station and developed a prioritized plan for recommended improvements. The three highest priority projects included: 1) Replacement the 87th and Wadsworth Lift Station. This project is currently in the construction phase; 2) Repairs to the North Huron Lift Station electrical and instrumentation equipment. These repairs are currently being designed with construction anticipated by the end of 2014; and 3) Eliminating the 80th and Clay Lift Station. The City currently has an agreement with the Crestview Water and Sanitation District (Crestview) to divert and accept sewer flows during times of lift station maintenance, power outages, and/or other emergency situations. Per City Council's direction from 10-14-13, Staff has been working with Crestview to modify our existing agreement to allow permanently diverting sewer flows to their system and eliminating the lift station altogether. Staff is working to formalize an Intergovernmental Agreement with Crestview and anticipates presenting this to Council for approval later this year.

The purpose of this project is to continue implementing the lift stations repair program by rehabilitating the 95th & Federal Lift Station. This lift station was originally constructed in 1972 as part of the Sunset Ridge Subdivision development project and eventually became City property. It is located within the existing utility easement along the west side of Federal Boulevard just south of 95th Street. The lift station was reconstructed in 1999 and pumps sewage collected in the eastern portion of the Sunset Ridge Subdivision through a pipeline that discharges into an 8-inch gravity sewer near 95th and Hooker Street. The flow is ultimately transmitted to the Big Dry Creek Wastewater Treatment Facility.

The 95th and Federal Lift Station equipment is nearing the end of its useful life and needs to be replaced. In addition, this lift station has a history of pump clogging and requires frequent maintenance. As a result, the City would like to rehabilitate the pump station with new, clog-resistant pumps similar to the other lift stations owned and operated by the City.

Due to the specialized nature of this project and the corresponding engineering expertise required, Staff sent a Request for Proposals (RFP) to four engineering firms who specialized in this type of lift station design. Four proposals were received on September 10, 2013. Lidstone and Associates was selected for this work based on their response to the following criteria as outlined in the Request for Proposals:

- Approach that clearly indicates understanding of the project scope and City's goals and expectations.
- Firm's specialized experience of similar size, scope and complexity.
- Recent projects experience in the Rocky Mountain region on similar work.
- Positive reference feedback regarding past project performance and the performance of individuals proposed for the project, including experience and availability of each members of the team.
- Project schedule that demonstrates their ability to meet the City's targeted completion dates.

The four consultants that submitted proposals and hourly rate ranges for their key staff were as follows:

Burns & McDonnell	\$133 to \$206 /hr
J&T Consulting	\$75 to \$115/hr
Stantec Consulting	\$108 to \$162/hr
Lidstone & Associates	\$105 to \$155/hr

Engineering fees from the proposals received ranged from \$77,350 to \$104,965 with Lidstone's proposed fee at \$98,333. Of the firms that proposed, the Lidstone approach and team experience were the best and most qualified for the project, and their level of effort and fee was competitive for the desired project scope of work. Some proposals received did not include the level of detail and comprehensive understanding necessary to successfully complete this project. In Staff's opinion, retaining Lidstone will provide the best value to the City.

Following successful completion of the design, Staff intends to negotiate a subsequent contract for engineering services during construction. The design is anticipated to be completed in December 2014 and construction completion in the summer of 2015.

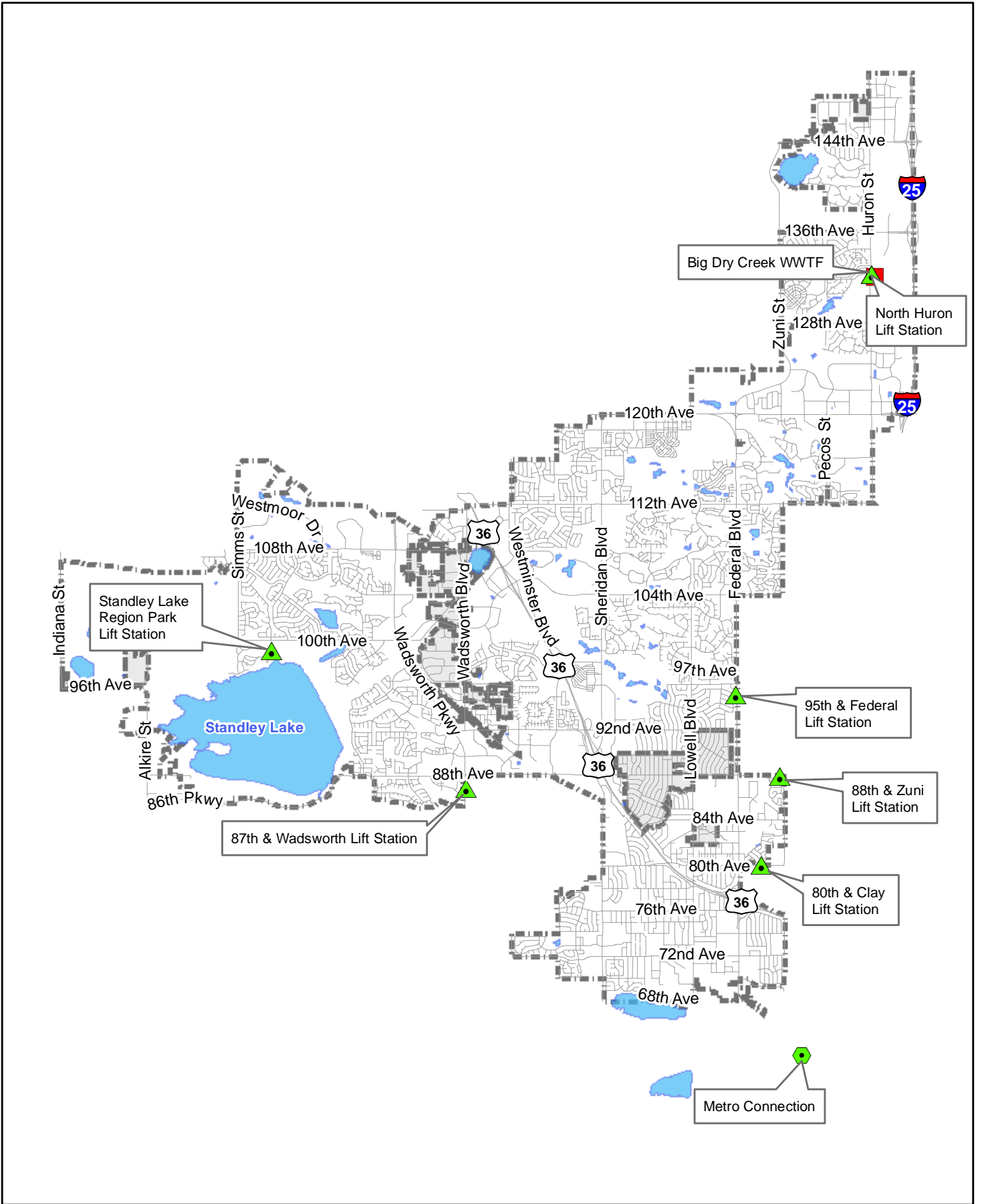
Funding for this design project is from the 95th & Federal LS Remodel Project account. Staff will request future funding from the same account for construction and engineering services during construction.

The 95th and Federal Blvd Lift Station Rehabilitation Project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods In One Livable Community" by contributing to the objectives of well-maintained City infrastructure and facilities and providing sewer service with reduced risk of system failures.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Lift Station Map



 Project Location Map



Agenda Item 8 G

Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Hydropillar and Gregory Hill Water Tanks Repairs Design Contract

Prepared By: Adam Marsh, Engineer
Stephen Grooters, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with Carollo Engineers, Inc. in the amount of \$501,263 to provide design services for the Hydropillar and Gregory Hill Tanks Repairs, plus a contingency in the amount of \$50,126 for a total authorized expenditure of \$551,389.

Summary Statement

- The City's Water Tanks Major Repair and Replacement Program was initiated in 2010 to extend the life of the City's tanks and improve reliability within the potable water distribution system, including replacing corroded roof supports, installing new coatings, and carrying out other safety related repairs to conform to current State regulations.
- The Program includes: 1) evaluations of each tank and development of prioritized capital improvements; 2) design of recommended improvements; and 3) construction of improvements.
- The implementation plan presented to City Council at the post meeting on January 13, 2014, will repair all of the City's tanks and add new storage over the next 8 years. City Council directed Staff to bring this item for official action.
- Key initial steps of the plan include: 1) repair the two tanks at the Wandering View site (completed in 2013); 2) repair the tank at the Northwest Treatment Facility (currently in construction); and 3) add a new third tank at the Northridge Tank site behind the Public Safety Center (currently in the design phase).
- The next priority in the plan includes repairs to the Hydropillar and Gregory Hill tanks.
- This project also includes a public outreach effort prior to and during construction of repairs for these highly visible tanks.
- Staff prepared a Request for Proposals for the completion of the design phase services and distributed it to three engineering firms qualified to perform this work. One proposal was received by Carollo Engineers, Inc.
- Staff recommends awarding the contract to them based on their competitive pricing, proposed scope of work, familiarity with the City's infrastructure and the successful water tank repairs design experience of their proposed project team.
- This contract is for design services. At the completion of this work Staff will return to City Council with a contract for services during construction.
- Adequate funds were budgeted and are available for this project.

Expenditure Required: \$551,389

Source of Funds: Utility Fund Capital Improvement - Hydropillar and Gregory Hill Tanks Project

Policy Issue

Should the City execute a contract with Carollo Engineers, Inc. for final design engineering for the Hydropillar and Gregory Hill Tanks repairs project?

Alternatives

1. Council could choose to not proceed with the design phase for the new Hydropillar and Gregory Hill Tanks repairs project. This is not recommended due to the critical near-term improvements recommended to maintain the reliability of the water tanks and the City's water distribution system.
2. The City could award the contract to another firm but Staff does not recommend this alternative since Carollo Engineers, Inc. presented the only qualified proposal and will provide the best value to the City.
3. The City could re-advertise the project for design proposals. Staff does not recommend this alternative because a qualifications review process of design firms was conducted prior to the start of the Tanks Repair Program, and Carollo Engineers, Inc. was determined to be highly qualified to perform tank repair design and has proposed competitive pricing.

Background Information

The City currently owns and operates 12 water storage tanks with a total replacement value of approximately \$54 Million dollars. These tanks are a necessary part of the water distribution system to meet short-term periods of high consumer demand, emergency storage for potential times of interrupted water supply, and fire flow. Recent inspections of these tanks confirmed the need for various repairs to each of the tanks. The implementation plan supported by City Council after receiving a Staff Report and presentation on January 13, 2014, will repair all of the City's tanks and add new storage over the next 8 years. The multi-year effort was required to spread out project costs and limit the number of tanks that are offline at any given time.

Several projects in the tanks repairs program have been implemented or are in progress. Staff is seeking Council approval to continue the program with the next priority project – design of repairs to the Hydropillar and Gregory Hill tanks. The design for repairs at both of these tank sites includes developing roof support replacement details and improvements to tank access, safety and security. Specifications for new interior and exterior coatings for the tank will be similar to those previously developed and successfully implemented for the Wandering View and Northwest Water Treatment Facility tanks.

Due to the proximity of these project sites to our customers, Staff will incorporate special precautions into the design to minimize disruption or inconvenience to our customer's daily routine including:

1. Hiring a specialty contractor with high qualifications and successful experience specifically for this type of work.
2. Restricting work hours to Mondays through Fridays from 7am to 5pm to limit the impact of construction equipment and work noise. Weekend work will only be permitted if special circumstances arise.
3. Implementing a comprehensive dust and paint containment strategy, including protective tenting around the work zones as needed.
4. Designing the contractor staging area to minimize noise to the surrounding neighbors and monitoring of contractor compliance to State and local permit requirements for noise and dust control.
5. Use of low-odor paints that are formulated and certified for use in drinking water systems.
6. Sequencing the work to minimize the potential need for water service disruptions.

In addition to these special precautions, Staff will be implementing a comprehensive public notification process to keep City customers informed with what to expect with this project and the impacts it may impose. The outreach will include information letters mailed to the neighborhood surrounding the sites, a Project Information Open House to address customer concerns and review architectural renderings of the designed exterior coatings.

At the start of the Tanks Repair Program, Statements of Qualification were received from four firms. Upon review of these qualifications, three firms were determined to be qualified for tank repairs for the current project. Staff distributed a Request for Proposals (RFP) for design of the Hydropillar and Gregory Hill Tanks Repairs to these three local engineering firms qualified and specializing in this type of work. One proposal was received from Carollo Engineers, Inc. The other two firms stated that they were thankful for the opportunity to provide a proposal and asked to be considered for future projects, however, both the firms provided feedback that they did not have staff available in the time frame required for this project to meet the 2014/15 winter construction of the Hydropillar. An additional concern by one firm that they could be cost-competitive since they were not involved in the inspection work or in the development of rehab details for the previous rehabilitation at the City's Wandering View site.

Even though there was only one proposal submitted, Staff recommends that Carollo Engineers, Inc. be selected for this work. This selection is based on their successful response to the following criteria as outlined in the Request for Proposals:

- Response to specific requirements in RFP, clarity and presentation of proposed scope, tasks and fee.
- The firm's background and expertise in completing water tank projects of similar size, scope, and complexity.
- Firm's references related to the ability to complete project requirements on schedule and within budget.
- Firm's reputation with the City and familiarity with City codes, policy, procedures, and regulations.
- Professional background and experience of each key person of the project team.
- Key team member availability and commitment to the project.
- Level of effort, competitive firm fee and competitive hourly rates for staff assigned to this project relative to their experience level.

Carollo Engineers, Inc.'s hourly rate ranges for their professional key staff were \$137 to \$247/hr. and are consistent with their previous work performed for the City and similar to the ranges of other firms as submitted with proposals for previous project work. For those reasons it is Staff's assessment that their proposed fee for this project is competitive. In addition, Carollo's approach was comprehensive and their team is highly qualified for the project. The staff they proposed as project leads have a history of successful projects with the City that are similar in size and scope including the successful Wandering View tank repairs project. As a result of their recent project experience, they offered an approach that streamlined project tasks allowing them to accomplish the goals of the project at a competitive fee. In Staff's opinion, retaining Carollo Engineers, Inc. to complete the design and bidding services will result in a high quality end product and provide high value to the City.

Following successful completion of this design phase, Staff plans to negotiate with Carollo Engineers, Inc. for services during construction and will return to City Council for approval of additional work. Design work is anticipated to commence immediately with construction of the repairs to Hydropillar to begin this fall. The overall project with construction is currently estimated to cost \$2,300,000 for Hydropillar and \$2,600,000 for the two Gregory Hill tanks. Repairs to the Hydropillar and Gregory Hill Tanks are estimated to be completed by the Spring of 2015 and 2016, respectively.

This project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods In One Livable Community" by contributing to the objectives of well-maintained City infrastructure and facilities and maintaining neighborhood infrastructure.

Respectfully submitted,

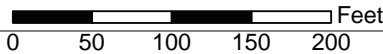
J. Brent McFall
City Manager

Attachments: Gregory Hill Tanks and Hydropillar Water Tank Site Maps

City of Westminster Gregory Hill Tanks Site



City of Westminster



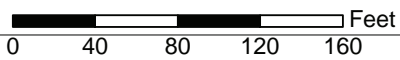
City of Westminster Hydropillar Water Tank



97th Ave

66th Cir

City of Westminster





Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: 2014 Asphalt and Crackseal Materials Purchase

Prepared By: Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the purchase of asphalt and crackseal materials from the low price MAPO (Multiple Assembly of Procurement Officials) bidder each quarter during 2014 in an amount not to exceed \$705,063 for asphalt and \$80,000 for crackseal materials.

Summary Statement

- City Council approved adequate funds for these expenses in the 2014 Department of Public Works & Utilities, Street Operations Division, Utilities Field Operations Division, and General Fund CIP Arterial Roadway Rehabilitation and Improvements Project Budgets.
- The vendors bidding hot mix asphalt on the 2014 MAPO bid are: Aggregate Industries (first quarter low bidder), Brannan Companies, Premier Paving, Asphalt Specialties, APC Construction, and Colorado Asphalt Services, Inc. The crackseal bidders are Crafcoc, Inc. (first quarter low bidder), Maxwell Products, and Denver Industrial, for crackseal materials at the unit prices indicated on the bid tabulation on an as-needed basis.
- Hot mix asphalt material is used for all types of street maintenance repairs including: pothole patching, surface replacement and preparation of streets earmarked for 2014 and 2015 improvements (Street Operations and CIP Arterial Roadway Rehabilitation and Improvements Project Budgets), and water break and valve repair excavation in-house pavement patching (Utilities Field Operations Budget).
- Rubberized cracksealing material is used to seal moisture from asphalt pavements citywide (Street Operations Budget).
- The MAPO bid allows for quarterly price adjustment pending substantial and agreed upon justification. Council's approval to purchase these materials from the lowest price vendor per quarter should result in a cost savings opportunity for the City.

Expenditure Required: \$785,063

Source of Funds: \$635,063 – General Fund, Street Operations Division Budget
\$100,000 – General Fund CIP Arterial Roadway Rehabilitation and Improvements Project Budgets
\$50,000 – Utility Fund, Utilities Field Operations Division Budget

Policy Issue

Should City Council authorize the purchase of asphalt and crackseal materials from the low price vendor per quarter utilizing the 2014 MAPO bids?

Alternative

Council could choose to execute a bid for the City's materials requirements, rather than join the MAPO bid. This alternative is not recommended because this would likely result in increased costs.

Background Information

City Crews will need an estimated 18,078 tons of hot mix asphalt material (16,796 tons for Street Division related work and 1,282 tons for Utilities related work), and 162,932 lbs. of rubberized crackseal material to be purchased on an as-needed basis throughout 2014.

2014 MAPO Hot Mix Asphalt Material Bid

	Aggregate Industries	Brannan Companies	Premier Paving	Asphalt Specialties Company	APC Construction	Colorado Asphalt Services, Inc.
Grading "SX" ½" material per ton	\$39.00	\$39.61	\$42.15	\$42.50	\$44.00	\$46.50

Aggregate Industries is the 2014 low bidder for hot mix asphalt material and Staff has confirmed that they will guarantee pricing through first quarter 2014. The MAPO bid allows for quarterly price adjustments pending substantial and agreed upon justification. Should one of the MAPO bidders offer lower pricing during a particular quarter in 2014, Staff will purchase asphalt from the vendor with lowest pricing. Staff's quarterly asphalt price monitoring on the MAPO bid in 2013 allowed a lower price vendor switch during the third quarter, resulting in a savings to the City of \$3,800. The asphalt pricing remained unchanged for the fourth quarter.

All vendors' plants are able to supply mix per City specifications. Street Operations Division Staff successfully purchased hot mix asphalt material from all of the vendor's plants in the Denver metro area in past years.

2014 MAPO Rubberized Crackseal Material Bid

	Crafco, Inc.	Maxwell Products	Denver Industrial
Cost per pound - delivered	\$0.4910	\$0.53	\$0.65

Crafco, Inc. is the 2014 MAPO low bidder for crackseal material. Staff has confirmed that they will guarantee pricing through first quarter 2014. The MAPO bid allows for quarterly price adjustments pending substantial and agreed upon justification. Should one of the MAPO bidders offer lower pricing during a particular quarter in 2014, Staff will purchase crackseal material from the vendor with lowest

pricing. City street maintenance crews have utilized the crackseal material specified in the bid successfully over the past 14 years on roadways throughout the city.

The 2014 asphalt materials bid reflects a 1.15% decrease below 2013 first quarter pricing and the crackseal materials bid did not increase above 2013 pricing.

Purchasing these materials through the MAPO bid process and tracking costs quarterly helps achieve City Council's goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods in one Livable Community" by meeting the following objectives: invest in well-maintained and sustainable City infrastructure and facilities and maintain and improve neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 I

Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: 2014 Deicing Salt Purchase

Prepared By: Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the purchase of deicing salt from the two low bid vendors to achieve the City's desired 50/50 blend: "Rock Salt" from Independent Salt Company and "Ice Slicer" from Envirotech Services, Inc. in a total amount not to exceed \$323,000.

Summary Statement

- Deicing salt is purchased to ensure safer winter storm travel for residents and visitors.
- Two products are available, "Ice Slicer" mined in Utah and "Rock Salt" from Kansas. Each of the products possess specific performance qualities highly desired and captured in a 50/50 blend of the two materials. The desired blend provides optimal deicing performance across the varied conditions experienced in the City.
- 2014 bids for "Rock Salt" were obtained through the Multiple Assembly of Procurement Officials (MAPO). Independent Salt Company is the low MAPO Bidder for 2014 at \$66.64/ton.
- The 2014 State of Colorado low bid for deicing salt, ("Ice Slicer") with Envirotech Services, Inc. has been quoted at \$98.66/ton.
- Staff estimates that 3,900 tons of deicing salt will be utilized during 2014, roughly divided between the two vendors.
- Adequate funds were budgeted and are available for this purchase.

Expenditure Required: \$ 323,000

Source of Funds: General Fund – Public Works and Utilities Street Operations Budget

Policy Issue

Should City Council authorize the purchase of deicing salt from the two available vendors, Independent Salt Company and Envirotech Services, Inc.?

Alternatives

One alternative is to not purchase deicing materials, which is not recommended, as keeping the streets safe for residents and visitors during the winter months is of the highest priority.

A second alternative is for the City to re-bid the MAPO and State salt purchases. This alternative is not recommended since Staff believes the unit cost of salt from the MAPO and State bids represent best value to the City.

Background Information

Two products are available, “Ice Slicer” mined in Utah and “Rock Salt” from Kansas. Each of the products possess specific performance qualities highly desired and captured in a 50/50 blend of the two materials. The desired blend provides optimal deicing performance across the varied conditions experienced in the City.

The “Ice Slicer” material is stock piled and available locally from Envirotech Services Inc. Generally, an order can be delivered to active customers within a one week period or can be scheduled to arrive in sync with “Rock Salt” delivery, in order to blend the materials as it is stock piled at the Municipal Service Center and North Salt Storage Facility.

The “Rock Salt” material is shipped via rail from Kansas and generally takes two weeks for delivery. Weather and rail car availability can prolong delivery time.

The City has successfully purchased salt through the MAPO and State bids in past years. These expenditures are within the approved 2014 Public Works and Utilities Street Operations Division budgeted amount for these items. Envirotech pricing increased 3.96% over 2013 pricing, and Independent Salt prices increased .77% over 2013 prices. The increases are due to increased freight and fuel costs.

If the 2014 budgeted allotment of \$323,000 for deicing salt is depleted, depending on the severity of the remaining winter season, additional funding in 2014 may be required. At this time, Westminster’s stockpile is at 78% capacity. Staff will make a recommendation to City Council if such a situation should arise.

This purchase helps achieve City Council’s strategic plan goal of a “Safe and Healthy Community” by meeting the objective of maintaining citizens feeling safe anywhere in the City.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Intergovernmental Agreement with Jefferson Academy re: An Offsite Location at 7575 W. 103rd Avenue, Westminster, CO

Prepared By: Walter G. Patrick

Recommended City Council Action

Authorize the City Manager to enter into an intergovernmental agreement with Jefferson Academy, in substantially the same form as attached, regarding an off-campus location in a building at 7575 W. 103rd Avenue, and authorize Staff to waive, if required, the application of Section 11-1-3, Westminster Municipal Code, to the use of the building for the Summit Academy for the duration of the agreement.

Summary Statement

Jefferson Academy, a Charter School, proposes to open an off-campus subsidiary program for home-schooled students in an existing vacant office/warehouse building in the Church Ranch Business Center located at 7575 W. 103rd Avenue. The proposed program is called the Summit Academy.

The Official Development Plan (ODP) for this property specifically lists “instructional facility” as an allowable land use. Consistent with past practice, the City staff has interpreted “instructional facility” to be intended for adult educational purposes such as a trade school, business school, or technical-vocational training, and not for the use of primary or secondary education (instruction of the elementary, junior, and/or senior high school levels of learning and study). Jefferson Academy and the building owner entered into a lease for this building apparently based on the misunderstanding that the use was permitted under the ODP without first checking with City staff. Additionally, the school district feels that the location of this program falls under the provision of the state statute regarding the location and construction of school facilities, and is therefore outside of the City’s jurisdiction. Because the parties wish to cooperate with one another rather than litigate their respective legal positions, the City and Jefferson Academy propose entering into an Intergovernmental Agreement to facilitate a timely tenancy of the property.

A school use has the potential to create considerable negative impacts to the property. For example, increased traffic and car stacking for student drop off and pick-up could adversely affect access to other businesses in the development. This could make it difficult to attract new tenants or retain existing ones. An intergovernmental agreement allows the City some assurances that these impacts can be reduced by controlling site factors such as number of students and square footage of the school.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City Council authorize the City Manager to enter into an intergovernmental agreement with Jefferson Academy?

Alternative

Do not authorize the City Manager to enter into an Intergovernmental Agreement with Jefferson Academy.

This option is not recommended as the agreement will allow the City to minimize potential negative impacts to the property and surrounding businesses. Since the building's owner has entered into a lease agreement with Jefferson Academy, this alternative will potentially set up litigation if the School District, Charter School, or property owner chooses to pursue such action. Additionally, this option would initiate code enforcement action against the property owner based upon the illegal use of the property for primary or secondary education, which the City is attempting to avoid.

Background Information

Jefferson Academy is a Charter School that proposes to open an off-campus subsidiary program for home-schooled students of various ages in an existing office/warehouse building in the Church Ranch Business Center located at 7575 W. 103rd Avenue, west of Church Ranch Boulevard. The program would be called the Summit Academy and it would offer courses that supplement the in-home instruction that its students receive.

The ODP for this property specifically lists "instructional facility" as an allowable land use. However, the City staff has always interpreted "instructional facility" to be intended for adult educational purposes such as a trade school, business school, or technical-vocational training, and not for the use of primary or secondary education (instruction of the elementary, junior, and/or senior high school levels of learning and study). The City staff has consistently made this interpretation citywide in other Planned Unit Developments (PUDs).

At issue is the interpretation of a state statute regarding the acquisition of school sites and the applicability of a municipality's home rule authority over zoning to this charter school program. As yet, no definitive case law has resolved this issue. The principals for Jefferson Academy, involved in this program, had previously attempted to rent a facility in the City for a similar program and were advised that the use was not allowed in the particular ODP that regulated the building they were considering leasing. They searched for another location where they felt the program would be permitted. Mistakenly, and without checking with the City, they assumed that the term *instructional facility* was broad enough to allow their proposed use, and they entered into a lease with the building's owner. The building owner's leasing agent was also under the misimpression that the use was allowed. Jefferson Academy started advertising the Summit Academy program in August on their website. In order to allow Summit Academy to potentially occupy the tenant space in a timely manner, City staff has prepared and the Academy's board has agreed to an Intergovernmental Agreement that would place limitations on the school's current operation and require the City's review and consultation before these could be increased. These conditions would reduce the potential negative impacts the school might have on surrounding businesses.

Specific conditions include:

- Allowing no more than 180 students per day during the school week.

- Establishing a clear pattern of traffic circulation for dropping off and picking up students. Traffic would enter on the east side of the building, loop around to a drop off point at the rear of the building and continue out to W. 103rd Avenue from the west side of the building (see attachment).
- Maintaining 35 parking spaces for the school use.
- Limiting the use of building space to approximately 16,005 square feet, which includes classroom space plus a potential additional future lease space of 4,400 square feet for a multi-purpose area.

Each of these limitations, which can only be changed by mutual agreement of the parties or termination of the agreement, attempts to reduce the adverse impacts to the surrounding development by traffic backing up onto adjacent streets or parking shortages for existing Business Center tenants. Jefferson Academy has expressed their clear intention to abide by the terms of this agreement, which will be key to the future functionality of this Business Center.

The approval of this Intergovernmental Agreement is consistent with the City Council strategic goal of “Vibrant Neighborhoods, in One Liveable Community” by providing a mix of land uses in the development.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments:

- Attachment A – Intergovernmental Agreement
- Attachment B – Traffic Pattern

INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into as of this _____ day of January, 2014 (the "Effective Date"), by and between the **CITY OF WESTMINSTER, COLORADO**, a home rule municipality, hereinafter referred to as "**City**," and the Jefferson Academy, a public charter school organized pursuant to C.R.S. § 22-30.5-101, et seq., hereinafter referred to as "**School**," and hereinafter referred to collectively as "**Parties**."

WHEREAS, the Parties are authorized by Colorado Constitution, Article XIV, Section 18 and C.R.S. Section 29-1-201 et seq., to enter into cooperative agreements to provide any function, service, or facility lawfully authorized to each of them; and

WHEREAS, the Parties both provide services of an educational nature to the citizens and residents of Westminster; and

WHEREAS, the School has multiple programs that integrate with homeschooling programs to provide homeschooled students with additional opportunities to participate as students at a public school facility with access to additional academic opportunities, group interactions and activities including the Summit Academy program ("**Summit Academy**"); and

WHEREAS, the School has leased space in a building located at 7575 W. 103rd Ave., Westminster, CO, hereinafter referred to as "**Building**" to locate the Summit Academy; and

WHEREAS, in 1996, the City approved the Church Ranch Home Place ODP and PDP that provided for the use of *instructional facility* as a permitted use in the aforementioned building; and

WHEREAS, the School desires to use the space leased from time to time in the Building for the Summit Academy ; and

WHEREAS, the Parties desire, through this Agreement, to resolve their differences regarding the location of the Summit Academy in a portion of the Building located within the Church Ranch Home Place ODP;

NOW, THEREFORE, in consideration of above-referenced Recitals (which are acknowledged by the Parties as a material part of this Agreement), and the mutual covenants and promises set forth below, the Parties agree as follows:

1. Areas of Responsibilities.

1.1. School Responsibilities:

1.1.1 Schedule – The Summit Academy school day typically begins at 8:30 and ends at 3:15, Monday through Friday. Accordingly, students are typically dropped off between 8:15 and 8:35 and picked up between 3:10 and 3:30. As of the date of this Agreement, the Summit Academy has classes on Wednesday, Thursday and Friday. As demand increases for the Summit Academy, classes will be added on Monday and Tuesday.

1.1.2 Traffic Pattern – For the purposes of morning drop-off and afternoon pick-up, the School will instruct parents or other persons delivering students to the facility to observe the following traffic pattern all as shown in the attached diagram (“**Traffic Circulation Plan**”):

Traffic will enter from West 103rd Avenue at the Access Point on the east side of the Building. Traffic will continue along the east side of the Building and then proceed, turning left, to a drop-off zone at the rear of the Building. From the drop-off zone, traffic will continue along the west side of the Building and exit onto W 103rd Avenue.

The Parties agree that they will meet and confer on an annual basis to review their actual experience with traffic generated by the School's use of the Building and determine if any mutually agreed revision is needed to the Traffic Circulation Plan. A failure to mutually agree on a revision to the Traffic Circulation Plan is not a material breach of this Agreement.

1.1.3 Parking Requirements – Through its lease arrangements with the land owner, the School shall ensure that 35 parking spaces will be provided for the Summit Academy use.

1.1.4 Use – The School will limit the use of the Building's space to approximately 16,005 square feet, which area includes the School's currently leased classroom space plus a possible future lease space of 4,400 square feet for a multi-purpose area (together with the non-exclusive use of the Building's common areas), unless an expansion is agreed to by the City. The number of students attending the Summit Academy on a daily basis varies from approximately 120 to 160 and will not exceed 180 without the Parties mutual agreement.

1.1.5 Expansion of Use – If the School determines that it would like to increase the size of the space leased beyond the total area specified above or the daily number of students beyond 180 (neither of which is contemplated as of the Effective Date), it will notify the City of that new expansion no less than 60 days before implementing the new expansion. The City and the School will then meet and confer regarding the new expansion to determine if there are any traffic or safety issues that the Parties agree should be addressed through an amendment to this Agreement. If the Parties cannot agree and if the School determines that it will nevertheless proceed with the new expansion, then the School will notify the City in writing within 10 days of its determination. This Agreement will then terminate and the termination will be effective at the end of the then existing school year.

1.1.6 Charter Contract with District – The School acknowledges that it is permitted to operate the Summit Academy program pursuant to the School’s charter contract with the Jefferson County School District Board of Education.

1.2 City Responsibilities:

1.2.1 Enforcement forbearance – The City agrees that the School’s use of the Building for the Summit Academy may commence and continue subject to this Agreement. Specifically, while this Agreement is in effect, the City shall refrain from taking any enforcement action, under §11-1-3, W. M. C., against the School or the owner of the Building, so long as the conditions in 1.1, above, are being met.

1.2.2 Future fire and life safety code inspections – The City shall diligently and promptly perform any additional fire and life safety code inspections that may be required after the execution of this Agreement. Building Code issues, if any, shall remain the responsibility of the State of Colorado.

2. Relationship of the Parties. By entering into this Agreement, both the City and the School agree that neither party is waiving or conceding any rights, claims, defense, interpretation or jurisdictional authority, which it may possess under the U.S. or Colorado Constitutions or federal or state laws (including, without limitation common law), rules, regulations or statutes.

3. Term.

3.1 This Agreement shall be effective upon the last to occur of its approval by the City Council of the City and the Board of Directors of the School and the date this Agreement is signed by the authorized representatives of both Parties (the “**Effective Date**”).

3.2 This Agreement may be terminated by either party for any uncured material breach of its covenants following the exhaustion of the process described in paragraph 4.1 below, upon 90 days prior written notice to the other party.

3.3 The term of this Agreement shall be from the Effective Date to the first to occur of the date when (a) the School is no longer leasing a portion of the Building; (b) the Summit Academy is no longer an approved program of the School under its charter contract with the Jefferson County School District or (c) June 30, 2023.

4. Other Provisions:

4.1. Default. In the event of an alleged breach of this Agreement by a Party, before taking formal legal action or terminating this Agreement, the Parties shall first attempt in good faith to resolve the alleged breach through negotiation, followed by mediation, if necessary. If negotiation and mediation do not result in a resolution acceptable to the Parties, the non-defaulting Party may take any of one or more of the following actions:

4.1.1 The non-defaulting Party may bring an action in the District Court against the defaulting Party for specific performance of this Agreement, including mandatory injunctive relief requiring the performance of the obligations contained in this Agreement.

4.1.2 In no event shall either Party be entitled to recover monetary damages against the other on account of a breach of this Agreement.

4.2. Attorney's Fees. In the event either Party brings an action in the District Court against the other to enforce any provision of this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable attorney's fees and costs.

4.3. Successors and Assigns. The School shall not assign this Agreement or delegate any of its responsibilities hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and legal representatives of the Parties.

4.4. Severability. If any court determines that any provision hereof is unenforceable, it is the intention of the Parties that this Agreement shall not thereby be terminated but that the court reform this Agreement to the extent

required to make it valid and enforceable, to the extent such reformation may be accomplished without materially and adversely affecting intended benefits and burdens of the Parties under this Agreement.

4.5 Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Jefferson County, Colorado.

4.6. Amendments. This Agreement may be amended only by written agreement between the Parties.

4.7. Authority. All Parties represent and warrant that the person signing this Agreement on behalf of each Party has been duly authorized to execute and enter into this Agreement, and that the terms, conditions and obligations contained herein shall be binding on the Party upon execution.

4.8. Notice. Any notice required or desired to be given under the terms of this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, to the party at the address set forth below:

To the City:

City of Westminster
Department of Community Development
Attention: Planning Manager
4800 W. 92nd Ave.
Westminster, CO 80031

To the School:

Jefferson Academy, Charter School
Summit Academy
11251 Reed Way
Broomfield, CO 80020
Attention: Stephanie Scarato, Principal
Email: sscarato@yahoo.com

4.9. Counterparts. This Agreement may be executed in several counterparts and each counterpart shall be deemed an original.

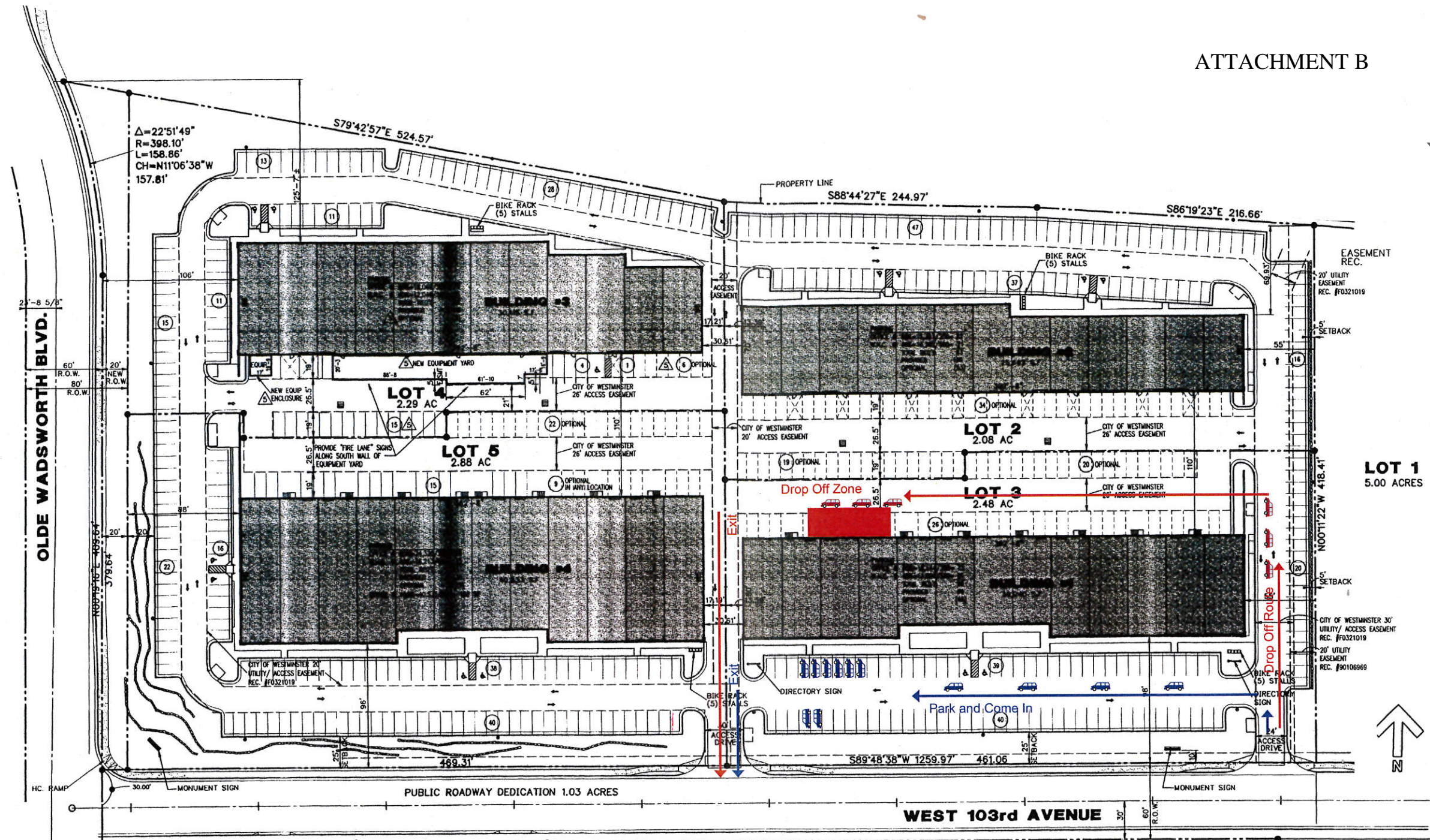
IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED AND DELIVERED this Agreement as of the day and year first written above.



Jefferson Academy, a Charter School

By: _____
Title: _____
Date: _____

City of Westminster

By: _____
Title: _____
Date: _____



The average length of a minivan is 16 feet.
 On this site plan, this is 25 feet. 
 And 16 feet is this long. 

SITE PLAN LEGEND	
	PROPERTY LINE
	CURB AND GUTTER
	CENTER LINE OF ROAD
	SITE AND BUILDING LIGHTING TO BE DOWNCAST



Agenda Item 9 A

Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: 2014 Appointments to the Rocky Flats Stewardship Council

Prepared By: Mary Fabisiak, Water Quality Administrator
Mike Happe, Utilities Planning & Engineering Manager

Recommended City Council Action

Reappoint City Councillor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council, Water Quality Administrator Mary Fabisiak as alternate representative, and Water Quality Specialist Cathy Shugarts as second alternate representative.

Summary Statement

- The Intergovernmental Agreement establishing the Rocky Flats Stewardship Council (RFSC) was entered into on February 13, 2006 and renewed in 2009 and 2012.
- The Intergovernmental Agreement requires that each participating local government appoint or reappoint a representative and up to two alternate representatives annually.
- Council previously appointed City Councillor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council Board of Directors and appointed Water Quality Administrator Mary Fabisiak as the alternate representative for the one year term. This City Council action would reappoint Bob Briggs and Mary Fabisiak for another one year term and add Cathy Shugarts as a second alternate.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City continue to participate in and support the Rocky Flats Stewardship Council by authorizing reappointments to the board of directors for the year 2014?

Alternative

The City of Westminster could determine that it is not in the best interest of the City to reappoint representatives to the Rocky Flats Stewardship Council or to appoint a second alternative representative. This alternative is not recommended as the City would lose an opportunity to continue to work with the other local governments that are contiguous to Rocky Flats in order to “speak with one voice” to the Department of Energy (DOE), State and Federal Governments and elected delegations on issues related to the long-term stewardship of the Rocky Flats Environmental Technology Site.

Background Information

The Rocky Flats Stewardship Council (RFSC) is made up of elected officials and staff representing ten local governments, three community organizations and one individual. The ten local governments include the cities of Westminster, Arvada, Boulder, Golden, Northglenn, Thornton, Boulder County, Jefferson County, the City and County of Broomfield, and the Town of Superior. The League of Women Voters, Rocky Flats Cold War Museum, Rocky Flats Homesteaders and an individual complete the membership.

The RFSC was formed in February 2006 to meet the mandates of Congressional legislation that requires that all former DOE facilities once closed must have a Local Stakeholders Organization (LSO) to provide environmental oversight, communication and advocacy between the DOE and nearby communities on any issues involving the retained DOE lands. It provides oversight of the ongoing ground and surface water monitoring programs, maintenance activities and serves as an advocate for the surrounding communities with state and federal agencies.

This action helps achieve the City Council’s Strategic Plan Goal of a Safe and Healthy Community by overseeing the City’s interests and ensuring long-term stewardship of the Rocky Flats Environmental Technology Site. This action also supports City Council’s Strategic Plan Goal of a Beautiful and Environmentally Sensitive City by providing oversight of the post-closure management of the Rocky Flats National Wildlife Refuge.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Councillor’s Bill No. 1 Modifying Floodplain Regulations in Title XI, Chapter 8, W.M.C.

PREPARED BY: John Burke, Senior Engineer

Recommended City Council Action

Pass Councilors Bill No. 1 as an emergency ordinance to amend Westminster Municipal Code Title XI, Chapter 8 regarding floodplain regulations.

Summary Statement

- The Colorado Water Conservation Board (CWCB), which is the governing agency in the State of Colorado on floodplain matters, adopted updated floodplain regulations that require all jurisdictions across the State to adopt floodplain ordinances that meet or exceed the new minimum criteria. The attached draft revisions to the Westminster Municipal Code (W.M.C.) Title XI, Chapter 8 – Floodplain Regulations meet the current minimum criteria of the CWCB regulations.
- The following is a brief summary of the major, proposed changes to the current City floodplain regulations:
 Various definitions have been added, including a new one-half foot rise criteria for establishing the regulatory floodway. Though more restrictive than the current one-foot rise criteria, this new regulation will not have a significant impact on development in Westminster.

The recently published "Flood Insurance Study for Jefferson County, Colorado" with an effective date of February 5, 2014 and accompanying Flood Insurance Rate Maps (FIRM) has been adopted.

A new definition to protect Critical Facilities (police and fire stations, emergency medical facilities, hospitals, hazardous materials facilities, schools, government operations such as community administration, building permits, courts, jails, etc.) has been included.

- Additionally, the Federal Emergency Management Agency (FEMA) has been in the process of updating the City of Westminster’s Flood Insurance Rate Maps (FIRM) in accordance with the findings of the Jefferson County Flood Insurance Study. The new maps are helpful to Staff as they incorporate various map revisions that have occurred since the last map update. It is proposed that these new maps be adopted as part of the City’s Floodplain Regulations.
- These revisions are proposed as an emergency ordinance because the updated FIRMs need to be officially adopted by the City prior to February 5, 2014, or the City will be suspended from the National Flood Insurance Program (NFIP). Such a suspension would make it impossible for the owners of the 26 properties that are located within the 100-year floodplain within the City, as well as 78 other property owners whose lenders require flood insurance, to purchase this insurance through the NFIP.

Expenditure Required: \$0
Source of Funds: N/A

Policy Issue

Should the City adopt the proposed amendments to the floodplain regulations?

Alternative

An alternative to the recommended action is for Council to direct Staff to leave the current Code in place and not make the revisions. This alternative is not recommended since that action would cause the City of Westminster to be suspended from the National Flood Insurance Program (NFIP), which will make the City and its residents ineligible for flood insurance through the NFIP.

Background Information

The Colorado Water Conservation Board (CWCB) adopted updated floodplain regulations that require all jurisdictions across the State to adopt floodplain ordinances that meet or exceed the new minimum criteria. City staff reviewed the new regulations and found them to be acceptable for the protection of Westminster residents and their properties from flooding. It is important to note that the City opposed some of the more restrictive regulations that the CWCB was initially proposing, such as a regulatory 500-year floodplain and the inclusion of waste water treatment plants in the Critical Facilities definition. The CWCB conceded, and the current regulations reflect a collaborative approach to floodplain management.

The following is a general summary of the proposed floodplain regulation changes:

- Various definitions were added, including a new one-half foot rise criteria for establishing the regulatory floodway. Though more restrictive than the current one-foot rise criteria, this new regulation will not have a significant impact on development in Westminster because the City already has standards in place that require developments to meet this level of floodplain mitigation.
- The recently published "Flood Insurance Study for Jefferson County, Colorado" with an effective date of February 5, 2014, with accompanying Flood Insurance Rate Maps (FIRM) will be specifically adopted. The newly published maps are helpful to Staff as they incorporate many of the changes the City has made with road, drainage and development projects.
- A new definition to protect Critical Facilities (police and fire stations, emergency medical facilities, hospitals etc.); hazardous materials facilities (chemical plants, pharmaceuticals, refineries etc.); at risk populations (elder care, congregate care, schools, etc.); and government operations (community administration, building permits, courts, jails, etc.) has been added. Staff believes the identification and better protection of Critical Facilities is a good addition to the floodplain regulations.
- The section "Alteration of Watercourse" has been added. The proposed floodplain ordinance will now codify the general conditions associated with watercourse modifications. This is a good addition as the City generally implemented this by requiring developers to follow Urban Drainage and Flood Control District Criteria Manuals.

The Federal Emergency Management Agency (FEMA) has been in the process of updating the City of Westminster's Flood Insurance Rate Maps (FIRM) through the Jefferson County Flood Insurance Study. These updated FIRMs were delivered to the City on September 25, 2013, and they need to be officially adopted by the City prior to February 5, 2014, or the City will be suspended from the National Flood

Insurance Program (NFIP). Suspension from the NFIP would make it impossible for residents and businesses of the City to purchase flood insurance to protect their properties. This impacts 104 properties with approximately \$27 million in coverage. If not a member of NFIP and the City experienced a major flood event, the City (including residents and businesses) would not be eligible for federal funds to assist in any flood mitigation and recovery.

The proposed revisions to the floodplain ordinance meet the minimum standards set by the CWCB and also specifically adopt the new FIRMs prepared by FEMA. The proposed revisions will satisfy both the CWCB and FEMA requirements.

Adoption of the attached proposed revisions to the W.M.C. Title XI, Chapter 8 – Floodplain Regulations will assist City Council in advancing the Strategic Plan goal of having a Safe and Healthy Community by protecting residents, homes and buildings from flooding through an effective storm water management program.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments – Councillor’s Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **1**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING CHAPTERS 11-2 AND 11-8 OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING FLOODPLAIN REGULATIONS

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Section 11-2-1, W.M.C., is hereby AMENDED by certain deletions and revisions to the Section as follows:

11-2-1: DEFINITIONS: (3599 3644) The following words, terms and phrases, when used in this ~~Title~~Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

~~“Base Flood (100 Year Flood)” shall mean the flood having a one percent (1%) probability of being equaled or exceeded in any given year.~~

~~“Base Flood Elevation (BFE)” shall mean the water surface elevation of the base flood (100 year flood) as indicated in the Official Flood Studies.~~

~~“Development” shall mean any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drilling operations or storage of equipment or materials.~~

~~“Encroachment Lines” shall mean lines that establish the floodway by the "equal conveyance reduction method" that differentiate those areas of the floodplain that must be preserved for the conveyance of flood flows and those areas of the floodplain that can be used for purposes other than flood flow conveyance.~~

~~“Equal Conveyance Reduction Method” shall mean the procedure for determining the "encroachment lines." This method establishes encroachment lines by reducing equal proportions of flood conveyance from both sides of a floodplain until the water surface elevation of the one hundred (100) year floodplain is increased by one foot (1').~~

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

~~“Flood or Flooding” shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland waters from channels and reservoir spillways or (2) the unusual and rapid accumulation of runoff of surface waters from any source or (3) mudslides or mudflows that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas, such as, Earth carried by a current of water and deposited along the path of the current.~~

~~“Flood Hazard Area” shall mean the area that will be inundated during the occurrence of the one hundred (100) year flood (base flood).~~

~~“Flood Insurance Rate Map (FIRM) shall mean the map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community for the purpose of insurance rating only.~~

~~“Flood Insurance Study (FIS) shall mean the report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary, floodway map, and the water surface elevation of the base flood for the purpose of insurance rating only.~~

“Floodplain” shall mean the area that will be inundated during the occurrence of a storm of a given magnitude or frequency.

~~“Floodplain Development Permit” shall mean the permit required under Section 11-9-13, W.M.C.~~

“Floodplain Management” shall mean the operation of an overall a program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

“Floodplain Variance” shall mean a grant of relief by the City from the terms of the floodplain ordinance.

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

“Flood Profile” shall mean a graph or longitudinal profile showing the relationship of the water surface elevation of a flood event to the ground surface along a stream or river.

~~“Flood Protection Elevation” shall mean an elevation one foot (1’) above the water surface elevation or flood profile of the one hundred (100) year flood under existing channel and floodplain conditions. This elevation is applicable to development within the “flood storage area.”~~

“Flood Storage Area” shall mean those portions of the floodplain that may serve as a temporary storage area for floodwaters from the one hundred- (100) year flood that are outside the floodway area.

~~“Flood Study” shall mean an engineering study utilizing hydrologic and hydraulic analyses to identify storm runoff characteristics, including flow rates and the extent of inundation for a specified storm recurrence interval.~~

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

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

“Manufactured Home” shall mean a structure, transportable in one (1) or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes mobile homes, park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. ~~For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.~~

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

~~“New Construction” shall mean, for the purpose of determining flood insurance rates, structures for which the “start of construction” commenced on or after September 30, 1988, and includes any subsequent improvements to such structures.~~

~~“Official Flood Studies” shall mean flood studies adopted by official action of the City Council.~~

~~“One Hundred Year Flood (Base Flood) shall mean the flood having a one percent (1%) probability of being equaled or exceeded in any given year.~~

~~“One Hundred Year Floodplain” shall mean the area of land that will be inundated during the occurrence of one hundred (100) year flood (base flood).~~

~~“One Hundred Year Flood Elevation” shall mean the water surface elevation of the one hundred (100) year flood (base flood) as indicated in the Official Flood Studies.~~

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

~~“Special Flood Hazard Areas” shall mean the areas of land that will be inundated during the occurrence of the one hundred (100) year flood (base flood).~~

~~“Structure” shall mean a walled and roofed building, storage tank, manufactured home or anything constructed or erected with a fixed location on the ground above grade but not including poles, lines, cables, or other transmission or distribution facilities of public utilities that is principally above ground.~~

~~“Substantial Improvement” shall mean any repair, reconstruction, addition or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:~~

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

~~The term does not, however, include either:~~

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

~~“Water Surface Elevation” shall mean the height in relation to mean sea level, reached by floods of various magnitudes and frequencies in floodplains.~~

Section 2: The index of Chapter 11-8, W.M.C., is hereby AMENDED as follows:

FLOODPLAIN REGULATIONS

11-8-1: AUTHORIZATION AND APPLICABILITY

11-8-2: DEFINITIONS

11-8-32: FINDINGS OF FACT

11-8-43: STATEMENT OF PURPOSE

11-8-54: METHODS OF REDUCING FLOOD LOSSES

11-8-5: APPLICABILITY

11-8-6: OFFICIAL FLOOD INSURANCE STUDY

11-8-76: BASIS FOR ESTABLISHING THE SPECIAL FLOODPLAINS AND FLOOD HAZARD AREAWAYS

11-8-87: BASIS FOR DETERMINING BOUNDARIES LOCATIONS OF THE 100-YEAR FLOODPLAIN AND FLOODWAY

11-8-8: OFFICIAL FLOOD STUDIES

11-8-9: COMPLIANCE

11-8-10: ABROGATION AND GREATER RESTRICTIONS

11-8-11: INTERPRETATION

11-8-12: WARNING AND DISCLAIMER OF LIABILITY

11-8-13: FLOODPLAIN REGULATIONS AND FLOODPLAIN DEVELOPMENT PERMITS

11-8-14: FLOODWAY REGULATIONS

11-8-15: STANDARDS FOR WATERCOURSE ALTERATION PROCEDURES FOR MODIFYING THE OFFICIAL FLOOD STUDIES

11-8-16: NON-CONFORMING STRUCTURES

11-8-17: FLOODPLAIN MANAGEMENT ORDINANCE ADMINISTRATOR

11-8-18: VARIANCES

11-8-19: RECORDS

11-8-20: STANDARDS FOR CRITICAL FACILITIES ANNEXATION NOTIFICATION OF FEDERAL INSURANCE

11-8-21: ANNUAL REPORT TO FEDERAL EMERGENCY MANAGEMENT AGENCY

Section 3: Section 11-8-1, W.M.C., is hereby AMENDED as follows:

11-8-1: AUTHORIZATION AND APPLICABILITY: (2534) Pursuant to Title 29 of Article XX of the Constitution of the State of Colorado and Section 31-23-301, Colorado Revised Statutes, the City of Westminster has the authority to adopt flood control regulations designed to promote the public health, safety and general welfare of its citizenry. These regulations shall apply to all special flood hazard areas and areas removed from the floodplain by the issuance of a FEMA letter of map revision based on fill (LOMR-F) within the City.

Section 4: A new Section 11-8-2, W.M.C., is hereby ADOPTED as follows:

11-8-2: DEFINITIONS: The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“100-Year Flood” shall mean a flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms "one-hundred-year flood" and "one percent chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every one hundred years.

“100-Year Floodplain” shall mean the area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

“500-Year Flood” shall mean a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual-flood). The term does not imply that the flood will necessarily happen once every five hundred years.

“500-Year Floodplain shall mean the area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

“Addition” shall mean any activity that expands the enclosed footprint or increases the square footage of an existing structure.

“Area of Shallow Flooding” shall mean a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of

one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Base Flood Elevation (BFE)” shall mean the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

“Basement” shall mean any area of a building having its floor sub-grade (below ground level) on all sides.

“Channel” shall mean the physical confine of stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

“Channelization” shall mean the artificial creation, enlargement or realignment of a stream channel.

“Code of Federal Regulations (CFR)” shall mean the codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

“Community” shall mean any political subdivision in the state of Colorado that has authority to adopt and enforce floodplain management regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts.

“Conditional Letter of Map Revision (CLOMR)” shall mean FEMA’s comment on a proposed project, which does not revise an effective floodplain map, which would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

“Critical Facility” shall mean a structure or related infrastructure, but not the land on which it is situated, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. The classification and detailed description of critical facilities is specified in Rule 6 of the Department of Natural Resources, Colorado Water Conservation Board’s “Rules and Regulations for Regulatory Floodplains in Colorado,” dated November 17, 2010, or as such rule is amended.

“DFIRM Database” shall mean the database (usually spreadsheets containing data and analyses) that accompany the DFIRM. The “FEMA Mapping Specifications and Guidelines” outline requirements for the development and maintenance of DFIRM databases.

“Digital Flood Insurance Rate Map (DFIRM)” shall mean the FEMA digital floodplain map. These digital maps serve as “regulatory floodplain maps” for insurance and floodplain management purposes.

“Elevated Building” shall mean a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor above the highest adjacent grade level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

“Existing Manufactured Home Park or Subdivision” shall mean a manufactured or mobile home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before January 27, 2014.

“Expansion to an Existing Manufactured Home Park or Subdivision” shall mean the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured or mobile

homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Federal Register” shall mean the official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

“FEMA” shall mean the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” shall mean an official map of a community, on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

“Flood Insurance Study (FIS)” shall mean the official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map as well as flood profiles for studied flooding sources that can be used to determine Base Flood Elevations for some areas.

“Floodplain or Flood-Prone Area” shall mean any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

“Floodplain Ordinance Administrator” or “Floodplain Administrator” shall mean the City’s official designated to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” shall mean the permit required before construction or development begins within any Special Flood Hazard Area (SFHA). For those areas where FEMA has not defined a SFHA, the City shall require permits for all proposed construction or other development including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this floodplain management ordinance.

“Floodplain Management Regulations” shall mean the City’s zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, stormwater quality ordinance) and other applications of police power. The term also describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

“Floodproofing” shall mean any combination of structural and/or non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

“Flood Control Structure” shall mean a physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

“Floodway or “Regulatory Floodway” shall mean the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be one-half (0.5) foot (six inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

“Freeboard” shall mean the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

“Highest Adjacent Grade” shall mean the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic Structure” shall mean any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior, or

(b) Directly by the Secretary of the Interior in states without approved programs.

“Letter of Map Revision (LOMR)” shall mean FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

“Letter of Map Revision Based on Fill (LOMR-F)” shall mean FEMA’s modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway but inside the flood storage area.

“Levee” shall mean a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

“Levee System” shall mean a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

“Lowest Adjacent Grade (LAG)” shall mean the lowest elevation of the ground surface touching a structure.

“Lowest Floor” shall mean the lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

“Mean Sea Level” shall mean the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on the City's Flood Insurance Rate Map are referenced.

“National Flood Insurance Program (NFIP)” shall mean FEMA’s program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable Federal regulations promulgated in Title 44 of the Code of Federal

Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

“New Manufactured Home Park or Subdivision” shall mean a manufactured or a mobile home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after January 27, 2014.

“No-Rise Certification” shall mean a record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

“Physical Map Revision (PMR)” shall mean FEMA’s action whereby one or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations, and/or planimetric features.

“Special Flood Hazard Area” or “Flood Hazard Area” shall mean the land in the floodplain within a communityCity subject to a one percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

“Structure” shall mean a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

“Substantial Damage” shall mean damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure just prior to when the damage occurred.

“Substantial Improvement” shall mean any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before start of construction of the improvement. This includes structures which have incurred Substantial Damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to insure safe living conditions, or
- (2) Any alteration of an Historic Structure provided that the alteration will not preclude the structure's continued designation as an Historic Structure.

“Variance” shall mean a grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations).

“Violation” shall mean the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSEL)” shall mean the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Section 5: Former Section 11-8-2, W.M.C., is hereby AMENDED as follows:

11-8-32: FINDINGS OF FACT: (2534)

(A) The special flood hazard areas of the City of Westminster are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which would adversely affect the public health, safety and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains ~~hazard areas~~ ~~which~~ ~~that~~ increase flood heights and velocities, and by the occupancy of special flood hazard areas by uses or structures vulnerable to floods and hazardous to other lands because they are ~~when~~ inadequately floodproofed, or elevated or otherwise protected from flood damage ~~also contribute to the flood loss.~~

Section 6: Former Section 11-8-4, subsection (A), W.M.C., is hereby AMENDED as follows:

11-8-54: METHODS OF REDUCING FLOOD LOSSES: (2534) In order to accomplish its purposes, this ordinance includes methods and provisions for:

(A) Restricting or prohibiting uses that ~~which~~ are dangerous to health, safety and property in times of flooding ~~due to water or erosion hazards~~, or that cause excessive ~~which result in damaging~~ increases in ~~erosion or in~~ flood heights or velocities.

Section 7: Former Section 11-8-3, "Statement of Purpose", W.M.C., is renumbered as **Section 11-8-4, STATEMENT OF PURPOSE:** and former Section 11-8-5, "Applicability", W.M.C., is hereby REPEALED.

Section 8: Former Section 11-8-8, W.M.C., is hereby REPEALED and a new Section 11-8-6, W.M.C. is hereby ADOPTED as follows:

11-8-6: OFFICIAL FLOOD INSURANCE STUDY:

The Flood Insurance Study for Jefferson County, Colorado, as provided to the City by the Federal Emergency Management Agency, along with its accompanying FIRMs (effective February 5, 2014) and any revisions thereto are adopted as the applicable FIS and FIRMs for the City. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs and FIRMs on file and available for public inspection.

Section 9: Former Section 11-8-6, W.M.C., is hereby AMENDED as follows:

11-8-67: BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREA ~~FLOODPLAINS AND FLOODWAYS~~: (2534)

The Special Flood Hazard Areas (SFHA) within the City are those identified in the official FIS. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum areas of the City subject to the applicability of this ordinance and may be supplemented by studies designated and approved by the City of Westminster. Westminster hereby establishes floodplains and floodways whose boundaries are those of the designated 100-year floodplain, special flood hazard areas and the designated floodways as are shown or tabulated in the Official Flood Studies.

Section 10: Former Section 11-8-7, W.M.C., is hereby AMENDED as follows:

11-8-78: BASIS FOR DETERMINING BOUNDARIES ~~THE EXACT LOCATIONS OF THE 100-YEAR FLOODPLAIN AND FLOODWAY~~: (2534)

(A) The boundaries of the 100-year floodplain and the floodway shall be determined from information presented in the Flood Insurance Study (FIS) ~~Official Flood Studies~~. In the absence of other information

(i.e., site specific studies as provided by the property owner), boundaries shall be determined by scaling distances on the maps provided in the ~~FIS~~Official Flood Studies. Where interpretation is needed as to the exact location of the boundaries, the ~~floodplain administrator~~ Director of Community Development shall make the necessary interpretation. In all cases, the 100-year flood elevation as provided in the ~~FIS~~Official Flood Studies shall be the governing factor in locating the boundary on any property.

(B) If the ~~Official Flood Studies~~FIS does not provide 100-year flood elevations, then the ~~floodplain administrator~~ Director of Community Development shall obtain, review and reasonably utilize any 100-year flood elevation and floodway data available from any federal, state, local or other source as criteria for requiring that new construction, substantial improvements or other developments in floodplain areas are administered in accordance with ~~section 11-8-14, Floodplain Regulations,~~ of this ~~Chapter~~ordinance.

Section 11: Section 11-8-9, W.M.C., is hereby AMENDED as follows:

11-8-9: COMPLIANCE: (2534) No structure ~~or land~~ shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations. Nothing herein shall prevent the City from taking such lawful action as is necessary to prevent or remedy any violation of this Chapter. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

Section 12: Section 11-8-13, W.M.C., subsections (A), (B), (C), and (I) are hereby AMENDED and a new subsection (K) is hereby ADDED as follows:

11-8-13: FLOODPLAIN REGULATIONS: (2534) The following regulations shall apply to all lands located within the 100-year floodplain:

(A) GENERAL STANDARDS:

~~(1)~~ All proposed developments within the ~~Special Flood Hazard Area~~100-year floodplain shall be designed and constructed in accordance with this ordinance and shall not adversely affect any upstream, downstream or adjacent properties.

~~(2)~~ No development, use, fill, construction or alteration on or over any portion of a designated floodplain shall be permitted which would cause or result in any of the following:

(a) The storage or processing of materials that in times of flooding are buoyant, flammable, explosive or otherwise potentially injurious to human, animal or plant life.

(b) The disposal of garbage or other solid waste materials.

(c) Substantial solid debris being carried downstream by flood waters.

(d) Any obstruction which would impair the flow capacity of a designated floodplain so as to cause foreseeable damage to others, wherever located.

~~(3)~~ All new construction, lateral additions and substantial improvements (including the placement of prefabricated buildings and manufactured homes) shall be:

(a) Designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure,

(b) Designed and ~~C~~constructed with materials and utility equipment resistant to flood damage, and

(c) Designed and ~~C~~constructed by methods and practices that minimize flood damage,

(d) Designed and constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding, and

~~(e)~~ Designed and ~~C~~constructed in conformance with all sections of this ~~Chapter~~ordinance.

(B) RESIDENTIAL STRUCTURES:

~~(1) In floodplain areas in which the 100-year flood elevations are not known, all new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated two feet (2') above the gutter flowline of the nearest street.~~

~~(2) In floodplain areas in which the base 100-year Flood Elevations (BFE) is known, ~~or in areas where depth numbers for areas of shallow flooding are available~~, all new construction and substantial improvements of residential construction shall have the lowest floor, including basement, elevated one foot (1') above the BFE 100-year Flood Elevation as indicated in the appropriate Official Flood Insurance Study (FIS).~~

(3) Require within any AO Zone that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated three feet (3') above the highest adjacent grade, if no depth number is specified, or at least one foot higher than the depth number specified (in feet) in the FIS.

(4) Within Zones AH or Zone AO, adequate drainage paths around structures on slopes are required to guide floodwaters around and away from proposed structures.

(5) No new residential lot shall be platted if located entirely within the 100-year floodplain. Any use of or construction upon a residential lot that is partially located in the 100-year floodplain must comply with all requirements of this Chapter.

(C) NON-RESIDENTIAL STRUCTURES:

~~(1) In floodplain areas in which the 100-year flood elevations are not known, all new construction and substantial improvements of non-residential structures shall have the lowest floor, including basement, elevated two feet (2') above the gutter flow line of the nearest street.~~

~~(2) In floodplain areas in which the BFE is 100-year Flood Elevations are known, ~~or in areas where depth numbers for areas of shallow flooding are available~~, all new construction and substantial improvements of non-residential construction shall have the lowest floor, including basement, elevated one foot (1') above the BFE 100-year Flood Elevation as indicated in the FIS appropriate Official Flood Study.~~

~~(3) Require within any AO Zone that all new construction and substantial improvements of non-residential structures have the lowest floor (including basement) elevated ~~two~~ three feet (3') above the highest adjacent grade, if no depth number is specified, or at least one foot higher than the depth number specified (in feet) on the FIS Official Flood Study or, together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standards specified in (5) below.~~

~~(4) Within Zones AH or Zone AO, adequate drainage paths around structures on slopes are required to guide floodwaters around and away from proposed structures.~~

~~(45) As an alternative for non-residential structures only, the structure, including utility and sanitary facilities, can be completely floodproofed to the levels mentioned above. The walls and basement floor shall be completely waterproofed and they shall be built to withstand lateral and uplift water pressure, and~~

~~(a) be floodproofed so that, below the BFE base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water;~~

~~(b) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and~~

~~(c) be certified by a registered professional engineer ~~or architect~~ that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this~~

paragraph. Such certification shall be provided to the floodplain administrator~~official as set forth in section 11-8-19.~~

~~(56)~~ When floodproofing is used for non-residential structures, a registered professional engineer ~~or licensed architect~~ shall certify that the floodproofing methods are adequate to withstand the flood pressures, velocities, impact and uplift forces, and other factors caused by the 100-year flood. A record of this certification shall be maintained on file with the building permit by the Building Official. The elevation to which the structure is floodproofed (based on mean sea level) shall be noted on the attached~~to~~ certification.

(I) ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT: A Floodplain Development Permit shall be obtained before construction or development begins within any 100-year floodplain area as established in the FIS~~Appropriate Official Flood Study~~. Application for a Floodplain Development Permit shall be made on forms furnished by the City of Westminster and may include, but are not limited to: Plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

~~(1)~~ Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

~~(2)~~ Elevation in relation to mean sea level to which any structure has been floodproofed;

~~(3)~~ Certification by a registered professional engineer ~~or certified architect~~ that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 11-8-13(C), above; and

~~(4)~~ Description and analysis prepared by a registered professional engineer of the extent to which any watercourse, floodplain or floodway will be altered or relocated as a result of proposed development.

(K) FLOODPLAIN DEVELOPMENT PERMIT FOR PROPERTY REMOVED FROM THE FLOODPLAIN BT FILL: The City will not issue a floodplain development permit for the construction of a new structure or an addition to an existing structure on a property that has been removed from the floodplain by the issuance of a FEMA LOMR-F, unless the elevation of the lowest floor is placed one (1') foot above the BFE that existed prior to the placement of the approved fill.

Section 13: Section 11-8-14, W.M.C., is hereby AMENDED as follows:

11-8-14: FLOODWAY REGULATIONS: (2534)

(A) The State of Colorado has adopted standards for the floodway that are more stringent than the FEMA minimum standards. Because floodways are extremely hazardous areas due to the velocity of floodwaters, which carry debris, potential projectiles and significant amounts of eroded materials, only the following uses are permitted in the regulatory floodway:

~~There shall be no encroachment of fill, new construction, substantial improvements or any other development within or above a floodway unless certification by a professional engineer is provided demonstrating that encroachments shall not result in any increase in the 100 year Flood Elevations or any negative impacts on upstream, downstream or adjacent properties. If the above requirement is satisfied, then all new construction and substantial improvements shall comply with the following permitted uses in the floodway:~~

~~(1)~~ General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm and other similar agricultural, wildlife and related uses.

~~(2)~~ Lawns, gardens, play areas, bikeways, pedestrian pathways and other similar uses.

(3) Portions of golf courses, driving ranges, archery ranges, fairer grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses not involving structures.

(4) Buried or underground utility lines.

(B) The uses permitted in subsection (A) above may not involve any encroachment such as fill, new construction, substantial improvements or any other development within or above the floodway, unless certification is provided by a registered professional engineer demonstrating that such encroachment shall not result in any increase in the BFE or have any negative impacts on upstream, downstream or adjacent properties.

(C) Notwithstanding the above provisions, under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City may permit encroachments within the adopted regulatory floodway that would result in an increase in BFE, provided that the City first applies for a CLOMR and receives a floodway revision through FEMA.

Section 14: Section 11-8-15, W.M.C., is hereby AMENDED as follows:

11-8-15: PROCEDURES FOR MODIFYING THE OFFICIAL FLOOD STUDIES:

~~(2534)~~**ALTERATION OF A WATERCOURSE:** For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:

(A) Applicants proposing channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability may be required by the City to assist in determining the most appropriate design.

(B) Channelization and flow diversion projects shall identify and evaluate the residual 100-year floodplain.

(C) Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.

(D) Any stream alteration activity shall be designed and stamped by a registered Colorado Professional Engineer or Certified Professional Hydrologist.

(E) All activities within the regulatory floodplain shall meet all applicable federal, state and local floodplain requirements and regulations.

(F) Within the regulatory floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a floodway analysis and report, stamped by a registered Colorado Professional Engineer, that there is no rise in the existing BFE resulting from the project (otherwise known as a No-Rise Certification), unless the City first applies for and receives a CLOMR and Floodway revision.

(G) Applicants must demonstrate that future maintenance of the channelization or flow diversion project will occur for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

~~(A) 100 year floodplain elevations may increase or decrease resulting from physical changes, hydrologic changes, or criteria changes that directly affect flooding conditions. Within six months of the date that such~~

~~information becomes available to the City, the City shall notify the Federal Emergency Management Agency of changes by submitting technical or scientific data that the Official Flood Studies do not accurately reflect flood risks as they currently exist. When these changes are the result of new developments, the developer shall be responsible for submitting all required technical and scientific data necessary to identify and delineate the new floodplain elevation and floodway boundaries.~~

~~(B) The City shall notify adjacent communities, when affected, and the Federal Emergency Management Agency prior to any alteration or relocation of a watercourse on which the 100-year flood elevations have been provided by the Federal Emergency Management Agency. This notice will verify that the flood carrying capacity within the altered or relocated portion of the watercourse has been maintained.~~

~~(C) Any submissions that result in changes or corrections to the existing 100-year Flood Elevations as shown in the Official Flood Studies will not be officially approved by the City until after the Federal Emergency Management Agency has approved such changes or corrections.~~

Section 15: All references in Sections 11-8-16 and 11-8-19, W.M.C., to the “Official Flood Study” are hereby AMENDED to reference the Flood Insurance Study, instead.

Section 16: Section 11-8-18, sub-subsection (B)(2), W.M.C., is hereby AMENDED as follows:

11-8-18: VARIANCES: (2534)

(B) CONDITIONS FOR VARIANCES:

(2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure without regard to the procedures set forth in the remainder of this section.

Section 17: Sections 11-8-20, “Annexation Notification of Federal Insurance” and 11-8-21, “Annual Report to FEMA”, W.M.C., are hereby REPEALED and a new Section 11-8-20 is hereby ADOPTED as follows:

11-8-20: STANDARDS FOR CRITICAL FACILITIES: The City will use the following criteria in order to identify and confirm which specific structures within the City are critical facilities:

(A) CLASSIFICATION OF CRITICAL FACILITIES: Critical Facilities are classified under the following categories: (1) Essential Services; (2) Hazardous Materials; (3) At-risk Populations; and (4) Vital to Restoring Normal Services.

(1) Essential Services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

(a) These facilities consist of:

(i) Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);

(ii) Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures, but not including clinics, doctor’s offices, and non-urgent care medical structures that do not provide these functions);

(iii) Designated emergency shelters;

(iv) Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);

(v) Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and

(vi) Air transportation lifelines (municipal and larger airports, helicopter pads and structures serving emergency functions, and associated infrastructure such as aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).

(b) Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances, which have plans in place to avoid system failures during extreme floods events and adequate restoration plans following flood emergencies.

(c) Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the City that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Chapter, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the City on an as-needed basis upon request.

(2) Hazardous Materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.

(a) These facilities may include:

(i) Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);

(ii) Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;

(iii) Refineries;

(iv) Hazardous waste storage and disposal sites; and

(v) Above ground gasoline or propane storage or sales centers.

(b) Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation “Designation, Reportable Quantities, and Notification,” 40 C.F.R. § 302 (2010) and OSHA regulation “Occupational Safety and Health Standards,” 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this ordinance, but exclude later amendments to or editions of the regulations

(c) Specific exemptions to this category include:

(i) Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.

(ii) Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.

(iii) Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

(d) The exemptions, listed in paragraph (c) above, shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this section.

(3) At-risk Populations facilities include medical care, congregate care, and schools.

(a) These facilities consist of:

(i) Elder care (nursing homes);

(ii) Congregate care serving 12 or more individuals (day care and assisted living);

(iii) Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);

(4) Facilities Vital to Restoring Normal Services including government operations.

(a) These facilities consist of:

(i) Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);

(ii) Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

(b) These facilities may be exempted if it is demonstrated to the City that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the City on an as-needed basis upon request.

(B) PROTECTION FOR CRITICAL FACILITIES - All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this, protection shall include either (1) location outside the Special Flood Hazard Area or (2) elevation or floodproofing of the structure to at least two feet above the Base Flood Elevation.

(C) INGRESS AND EGRESS FOR NEW CRITICAL FACILITIES - New Critical Facilities shall, when practicable as determined by the City, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

Section 18. Emergency. In order to insure that participants in the FEMA flood insurance program have uninterrupted coverage, the above regulations must be in place before February 5, 2014, and therefore an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on January 27, 2014, by an affirmative vote of six of the

members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 19: This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 27th day of January, 2014.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Memorandum

City Council Meeting
January 27th 2014



SUBJECT: Councilors Bill No. 2 Amending Lease with Colorado Department of Corrections for Former Police Department Building, 8800 Sheridan Blvd.

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Pass Councilors Bill No. 2 authorizing the City Manager to sign an amendment to the original Lease Agreement between the City of Westminster, Colorado Department of Corrections (CDOC) and the Colorado Department of Transportation (CDOT), which allows for CDOC to lease an additional 1,850 square feet of vacant space in the former Westminster Police Department building located at 8800 Sheridan Blvd.

Summary Statement

- In 1978, the former Police Department facility was built on land owned by CDOT that was not needed by CDOT. For the next 25 years, the building was occupied by the Westminster Police Department.
- In 2002, the new Public Safety Building was built, leaving the former police building vacant. For the next four years, the City searched for a suitable tenant that had to meet the CDOT criteria of being a law enforcement entity.
- After two years of negotiations, a new Lease Agreement was signed by the City, CDOC and CDOT, which allowed CDOC to lease approximately 24,000 square feet with the option to lease additional space in the future.
- In September, 2013, staff was approached by the Department of Corrections with a request to increase their leased space by an additional 1,850 square feet. Amendments to a previously approved leased property owned by the City must be approved by ordinance under Section 13.4 of the City Charter.

Expenditure Required: Tenant finish estimated not to exceed \$30,000

Source of Funds: General Capital Improvement Fund - Building Operations and Maintenance

Policy Issue

Should City Council approve a Lease Amendment with CDOC and CDOT to increase the office space at the former police department building?

Alternative

Council could choose not to authorize the signing of the lease amendment. Staff does not recommend this action based on the potential increase in revenue, while taking advantage of the available vacant space in the building.

Background Information

Originally, the former Police building was built in 1978 as a combined court and police facility on land owned by CDOT. This was land that CDOT acquired as right-of-way for the US 36 project in the 1950's. The original land lease between the City and CDOT required payment by the City of \$1.00 for every 25 year period. One of the terms in the land lease agreement stipulates that CDOT needs to approve any sublease of the facility or landscape improvements.

Shortly after the Municipal Court moved to its present location and the new Public Safety building was built, the City started investigating the potential leasing of the former Police facility. However, the facility would remain vacant for the next 4 years, only being used on occasion by the City's Fire and Police departments for training purposes. While the search for a suitable tenant continued, the building sustained fairly significant vandalism on a number of occasions.

In late 2004, the City was approached by the State Department of Corrections (CDOC), looking for office space to remain in Westminster. They had out grown their office space located at 72nd and Irving Street and their lease was expiring in September 2007. After two years of negotiations between the City, CDOT and CDOC, a long term lease agreement was reached by all parties. City Council approved the new lease agreement in June of 2007.

Under the terms of the 2007 lease agreement with CDOC, the City shared in the expense to remodel 24,000 square feet of the existing 33,000 square feet of the former Police building. In exchange for the City's contribution towards remodeling of the facility, the square foot price was adjusted accordingly to repay the City within the first 5 years of the lease. It is important to note, funds contributed by the City for the remodeling of the building in 2007 were paid back in December, 2012.

In September of 2013, with the Governor's office creation of a new Fugitive Division within the Department of Corrections, CDOC staff approached the City with a request to remodel and add an additional 1,850 square feet of office space to the existing lease. Under the terms of the new lease amendment, the City would contribute up to \$30,000 for tenant finish of the vacant space and adjust the total square foot price to pay the City back for their contribution. The previous or original lease agreement required the CDOC to make annual payments of \$375,871, which equates to \$15.88 per square foot. Under the payment terms of the new lease amendment, increasing the square footage by 1,850 square feet, the new annual lease payment will be increased to \$412,849, which reflects a square footage cost of \$16.21.

It is important to note that the increase in the square foot cost covers the City's estimated contribution, not to exceed \$30,000, towards tenant finish of the 1,850 square feet of vacant space. Under the terms of the new lease amendment, CDOC agrees to reimburse the City of its financial contribution by June 30, 2017.

The signing of a new lease amendment with CDOC, adding an additional 1,850 square feet of office space in the former police facility, creates an additional revenue source and helps to achieve City Council's goal in Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Councillor's Bill

BY AUTHORITY

ORDINANCE NO. _____

COUNCILLOR'S BILL NO. **2**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE APPROVING AN AMENDMENT TO THE SUBLEASE AND
OPTION AGREEMENT WITH THE COLORADO DEPARTMENT OF CORRECTIONS
AND CDOT FOR THE LEASE OF A PORTION OF THE FORMER CITY OF
WESTMINSTER POLICE DEPARTMENT BUILDING**

WHEREAS, the City of Westminster (“City”) is the owner of the building at 8800 Sheridan Boulevard, Westminster, Colorado (the “Property”); and

WHEREAS, portions of the Property have been leased to the State of Colorado Department of Corrections and to the Colorado Department of Transportation pursuant to that certain Sublease and Option Agreement, dated June 12th, 2007; and

WHEREAS, the City desires to lease additional portions of the Property to the State Department of Corrections; and

WHEREAS, the Colorado Department of Transportation has consented to this amendment; and

WHEREAS, the terms of the building lease amendment has been agreed to by the Colorado Department of Corrections; and

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Amendment to the Sublease and Option Agreement between the City and Colorado Department of Corrections and Colorado Department of Transportation for the lease of an additional approximately 1850 square feet of the building located at 8800 Sheridan Boulevard, Westminster, Colorado, is approved in substantially the same form as the First Amendment to Lease, attached as Exhibit A hereto, and the City Manager is authorized to execute all documents related thereto.

Section 2. This ordinance shall take effect upon its passage after second reading and will apply *nunc pro tunc* to January 1, 2014.

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 the 27th day of January, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of February, 2014.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

STATE OF COLORADO
DEPARTMENT OF PERSONNEL AND ADMINISTRATION
OFFICE OF THE STATE ARCHITECT
REAL ESTATE PROGRAMS



STANDARD
SUB-LEASE AMENDMENT [IMPROVED REAL PROPERTY]

LANDLORD City of Westminster

TENANT Colorado Department of Corrections – Adult Parole,
Community Corrections & Youth Offender Services

LOCATION 8800 Sheridian Boulevard | Westminster, Colorado

FIRST AMENDMENT TO LEASE

The printed portions of this form, except bold additions, have been approved by the State of Colorado Attorney General

THIS FIRST AMENDMENT TO THE SUB-LEASE, made and entered into this **11th** day of **November, 2013**, for the purpose of amending that certain **sub-lease** having Contract Routing No. **CMS 62713** and C. E. No. **07-CAA-00193** (the "Lease") dated **June 12th, 2012**, by and between **THE CITY OF WESTMINSTER, a Colorado municipal corporation**, as "Sub-Lessor," **THE STATE OF COLORADO**, acting by and through the **DEPARTMENT OF CORRECTIONS**, as "**Sub-Lessee**," and **THE STATE OF COLORADO**, acting by and through the **DEPARTMENT OF TRANSPORTATION ("CDOT")**, relating to the **sub-leasing** of a **an additional** portion of the **second floor of the** building located at **8800 Sheridan Boulevard, Westminster, Colorado** (the "Building"), comprised of **an additional one thousand eight hundred fifty (1,850)** rentable square feet **for a total of twenty-five thousand, five hundred twenty-four (25,524) rentable square feet.**

WHEREAS, as to Sub-Lessee, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number **100-**, G/B/L Account Number **030**, Contract Encumbrance Number - **14-CAA-00193** or in the Account(s) reflected on the attached COFRS printout.

WHEREAS, Sub-Lessor has additional space available to let on the second floor of the Building for use by Sub-Lessee; and

WHEREAS, Sub-Lessee desires to lease additional space on the second floor of the Building, amounting to an additional **one thousand eight hundred fifty (1,850)** rentable square feet.

NOW, THEREFORE, Sub-Lessor and Sub-Lessee, in consideration of the mutual promises contained herein, amend the Lease as follows, with prospective effect from the Effective Date:

Modify the Term rental table entries in Lease Section A.2.B beginning with the Term Date 07/01/13-6/30/14, and thereafter, as shown below (leaving unchanged the prior Term Dates and related lines) and as reflected in First Ammendment Exhibit E:

TERM DATE(S)	TERM RENT (\$)	MONTHLY RENT (\$)	APPROXIMATED MODIFIED GROSS ANNUALIZED SQ. FOOT COST (\$/RSF)
07/01/13-12/31/13	\$187,935.60	\$31,322.60	\$15.88
01/01/14-06/30/14	\$412,649.28	\$34,387.44	\$16.21
07/01/14-06/30/15	\$412,649.28	\$34,387.44	\$16.21
07/01/15-06/30/16	\$412,649.28	\$34,387.44	\$16.21
07/01/16-06/30/17	\$412,649.28	\$34,387.44	\$16.21
07/01/17-09/30/17	\$103,162.32	\$34,387.44	\$16.21
10/01/17-06/30/18	FTR*	MR*	
07/01/18-06/30/19	FTR*	MR*	
07/01/19-06/30/20	FTR*	MR*	
07/01/20-06/30/21	FTR*	MR*	
07/01/21-06/30/22	FTR*	MR*	
07/01/22-09/30/22	FTR*	MR*	

Per Sub-Lease Section 29A (Expansion Option) shall be as prescribed. Exhibit D is attached for reference. All First Lease Ammendment tenant improvements shall include new carpet, paint, new ceiling tiles, new light fixtures, window coverings, door repair and new door locksets into suite.

STATE OF COLORADO
John W. Hickenlooper, Governor
DEPARTMENT OF PERSONNEL & ADMINISTRATION
Office of State Architect, Real Estate Programs
For the Executive Director

SUB-LESSEE:
STATE OF COLORADO
John W. Hickenlooper, Governor
The Department of Corrections

Acting by and through

By: _____

By: _____
Executive Director

Date: _____

Date: _____

APPROVALS

ALL CONTRACTS MUST BE APPROVED BY
THE STATE CONTROLLER:

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

APPROVED:
DEPARTMENT OF LAW
John Suthers, Colorado Attorney General
ATTORNEY GENERAL (or authorized Delegate)

APPROVED:
STATE OF COLORADO
Robert Jaros, CPA, MBA, JD
STATE CONTROLLER'S OFFICE
State Controller (or authorized Delegate)

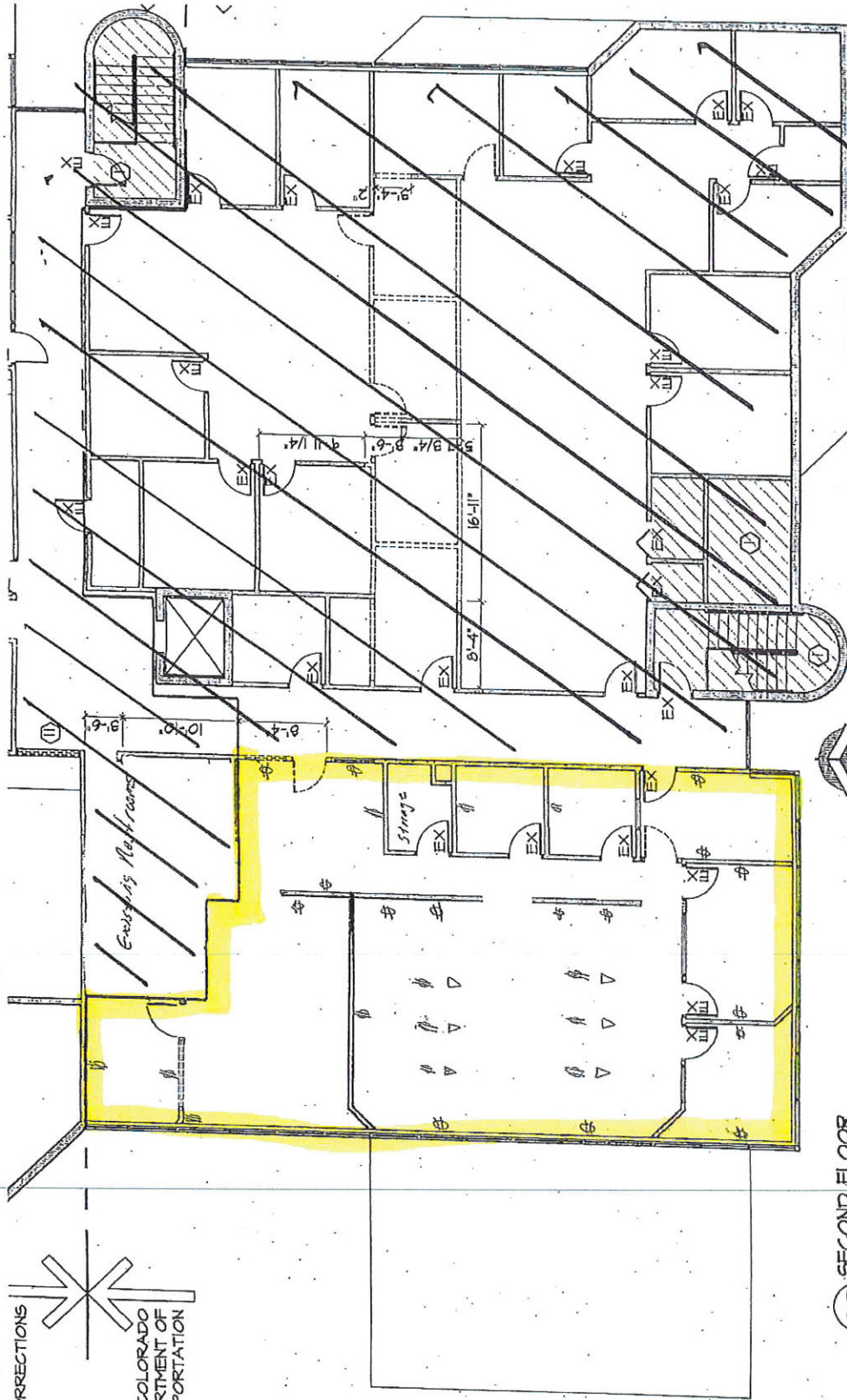
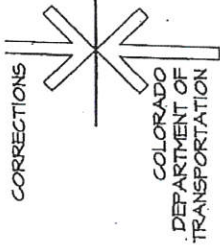
By: _____

By: _____

Date: _____

Date: _____

Electrical Plan



23 SECOND FLOOR
SCALE: 1/8" = 1'-0"

Westminster Parole Office Expansion (Fugitive Unit)

Exhibit E - Rent Analysis from 01 January 2014 Forward

November 2013

Lease Date	Square Footage	Tenant Improvement Allowance	Annual Rent	Monthly Rent	Cost/SF
Original Lease					
10/1/2007	23,674	TI Payback Complete	\$375,871.20	\$31,322.60	\$15.88
First Amendment to Lease					
1/1/2014	1,850	\$37,000 (per Lease Section 29.A - \$20.00 per square foot over 60 months)	\$7,400.04	\$616.67	\$0.33
1/1/2014	1,850	Base Rent	\$29,378.04	\$2,448.17	\$15.88
		First Amendment Sub-Total	\$36,778.08	\$3,064.84	\$16.21
		First Amendment to Lease Total	\$412,649.28	\$34,387.44	\$16.21



Agenda Item 10 C

Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Resolution No. 2 re Spring 2014 Adams County Grant Applications

Prepared By: Heather Cronenberg, Open Space Coordinator
Jacob Kasza, Open Space Technician
Steve Baumann, Assistant City Engineer

Recommended City Council Action

Adopt Resolution No. 2 authorizing Staff to pursue two grants from the Adams County Open Space grant program during the 2014 spring cycle in the amount of \$754,600 for the acquisition of the 4.09-acre Johnson property located at 11645 Federal Boulevard for open space and of \$513,817 for a trail along the McKay Drainage channel and a segment of the I-25 trail connecting to the Big Dry Creek and the Tanglewood Creek trail systems, located east of Huron Street and north and south of 136th Avenue.

Summary Statement

- Staff is recommending that a grant be pursued from the Adams County Open Space grant program for funding assistance with the acquisition of the 4.09-acre Johnson property located at 11645 Federal Boulevard, which is adjacent to the Big Dry Creek open space area between 112th Avenue and 120th Avenue and Federal Boulevard. An appraisal, commissioned by the City at the end of 2013, values the property at \$1,078,000 or \$ 6.05 per square foot. Staff has negotiated a purchase price of \$1,078,000 based on the appraisal that will be contingent upon the approval of Council and the award of an Adams County grant. Staff recommends requesting up to \$754,600 for the acquisition which represents a 70% grant request.
- Staff would also like to pursue a second grant from the Adams County Open Space program in the amount of \$513,817 for assistance with the construction of a trail along the McKay Drainage channel and a segment of the I-25 trail connecting to the Big Dry Creek and Tanglewood Creek trail systems. The I-25 trail is a regional trail that is included in the Adams County Open Space master plan. The City will use funds in the amount of \$770,726 as match that are already allocated to construct the McKay drainage way and trail. This represents a 40% grant request

Expenditure Required: Grant request for Johnson acquisition: \$754,600
Matching funds: \$323,400
Grant request for McKay Creek trail connection: \$513,817
Matching funds: \$770,726

Source of Funds: Parks, Open Space and Trails Land Acquisition Fund- 2012 carryover (\$323,400)
Utility Capital Improvements Fund - McKay Lake Outfall Drainage Improvements (\$770,726)

Policy Issue

Should the City attempt to seek assistance with the acquisition of the Johnson property and for the McKay Creek trail connection from the Adams County Open space Grant Program?

Alternative

Council could choose not to pursue additional funding for the acquisition and the McKay Creek trail connection project. This is not recommended because the City does not have the funds to purchase the Johnson property and to construct the trail connection without funding assistance from the Adams County Open Space program.

Background Information

The City has been successful in applying for and receiving grants from a variety of sources in the past. In recent years, the City has received grant money from the Adams County Open Space grant program for park and trail development projects as well as open space acquisitions. The City has developed a strong partnership with Adams County in its successful use of these grant funds. Since 2003, the City has been awarded more than \$6.6 million for open space acquisitions from Adams County.

The Department of Community Development staff wishes to pursue a grant from the Adams County Open Space grant program for funding assistance with the acquisition of approximately 4.09 acres from the Trustee of Kenneth H Johnson. The property is located at 11645 Federal Boulevard on the west side of the street (see attached map). The City currently owns the Big Dry Creek Open Space to the north and west of the property. This acquisition would help to complete the City's ownership of the Big Dry Creek valley in this area and would protect a view corridor of the Rocky Mountains for motorists and residents along Federal Boulevard. This acquisition would also allow for the future construction of trail connections adjacent to Federal Boulevard. If the City does not purchase this property for open space, the owner plans to place the property on the market for residential development. The City's Comprehensive Land Use Plan designates this property as single family residential allowing up to 3.5 dwelling units per acre. That would total approximately 14 houses on this property if it were to develop.

This property has been on the City's open space wish list for years and is listed as a number one priority acquisition. Staff commissioned an appraisal that values the property at \$1,078,000. Staff proposes using \$323,400 in 2012 open space carryover funds as match for the grant request if this use is approved by Council. The purchase will be contingent upon a grant award from Adams County and City Council approval.

The Department of Community Development staff would also like to pursue a second grant from the Adams County Open Space grant program for assistance with the construction of a trail adjacent to the future McKay drainage channel and a segment of the I-25 trail that will connect to the Big Dry Creek and Tanglewood Creek trail systems. The total cost of this trail project is \$1,284,544. The project includes constructing a ten-foot wide concrete trail along the proposed McKay drainage channel between Huron Street and I-25 and along a retention pond, linking to the existing I-25 trail located along the east side of Lowe's Home Improvement Store with a pre-fabricated pedestrian bridge over the Southwest Tributary (see attached map). A crusher fines trail will circle the retention pond. The trail will then pick up to the south of the existing I-25 trail south of Walmart and connect to the Big Dry

Creek trail. The last segment will be constructed south of the Big Dry Creek trail and will connect to the future Tanglewood Creek trail to be built by Century Communities. Once constructed, this trail will connect with the City's current trail construction project along Tanglewood Creek south of 128th Avenue. Century Communities has submitted a development plan that the City is currently reviewing that shows the construction of the trail to be built by the developer between approximately 128th Avenue and 132th Avenue.

The last two trail segments will be constructed on City Department of Public Works and Utilities property to the east of the Big Dry Creek Wastewater Facility. Staff has confirmed that the trail locations will not impact operations at the facility. The McKay Creek trail project would provide an off-street trail connection between the Huntington Trails and Lexington subdivisions and McKay Lake with the retail business at 136th Avenue near I-25. The project will connect the McKay Lake Open Space area and the Big Dry Creek Open Space area and trail system, furthering the recreational opportunities of Westminster and residents of surrounding jurisdictions. The trail construction project would also complete a segment of the I-25 trail.

The City proposes using funds from the McKay Lake Outfall Drainage Capital Improvements Project in the Utility Fund in the amount of \$770,726 as matching funds. These funds are available as part of the McKay Creek drainage way project.

These grant requests support the "Safe and Healthy Community," "Financially Sustainable City Government," and "Beautiful City" by providing more recreational opportunities, increasing revenues that support defined City projects and by providing the City with increased open space and trails.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Site Map for Johnson Property
- Site Map for McKay Creek Trail Connection Project

RESOLUTION

RESOLUTION NO. 2

INTRODUCED BY COUNCILLORS

SERIES OF 2014

**A RESOLUTION
TO PURSUE TWO GRANT REQUESTS FROM THE
SPRING 2014 ADAMS COUNTY OPEN SPACE GRANT PROGRAM
FOR THE JOHNSON PROPERTY ACQUISITION AND FOR THE MCKAY CREEK TRAIL
CONNECTION**

WHEREAS, Adams County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements and open space acquisitions; and

WHEREAS, the City of Westminster considers the acquisition of the Johnson property a high priority and has secured matching funds; and

WHEREAS, the City of Westminster considers the construction of the McKay Creek trail connection a high priority and has secured matching funds; and

WHEREAS, grant money received from Adams County will assist the City in securing this property for its open space and recreation programs and constructing trail connections for the McKay Creek trail and Big Dry Creek trail.

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

That Staff shall submit a grant application to the Adams County Open Space Grant program for the spring funding cycle of 2014, requesting funding not to exceed \$754,600 towards the purchase of the Johnson property. Staff will also submit a second grant application to the Adams County Open Space Grant program for the same funding cycle, requesting funding not to exceed \$513,817 towards the construction of trail connections between the McKay Creek trail and the Big Dry Creek trail.

PASSED AND ADOPTED this 27th day of January, 2014.

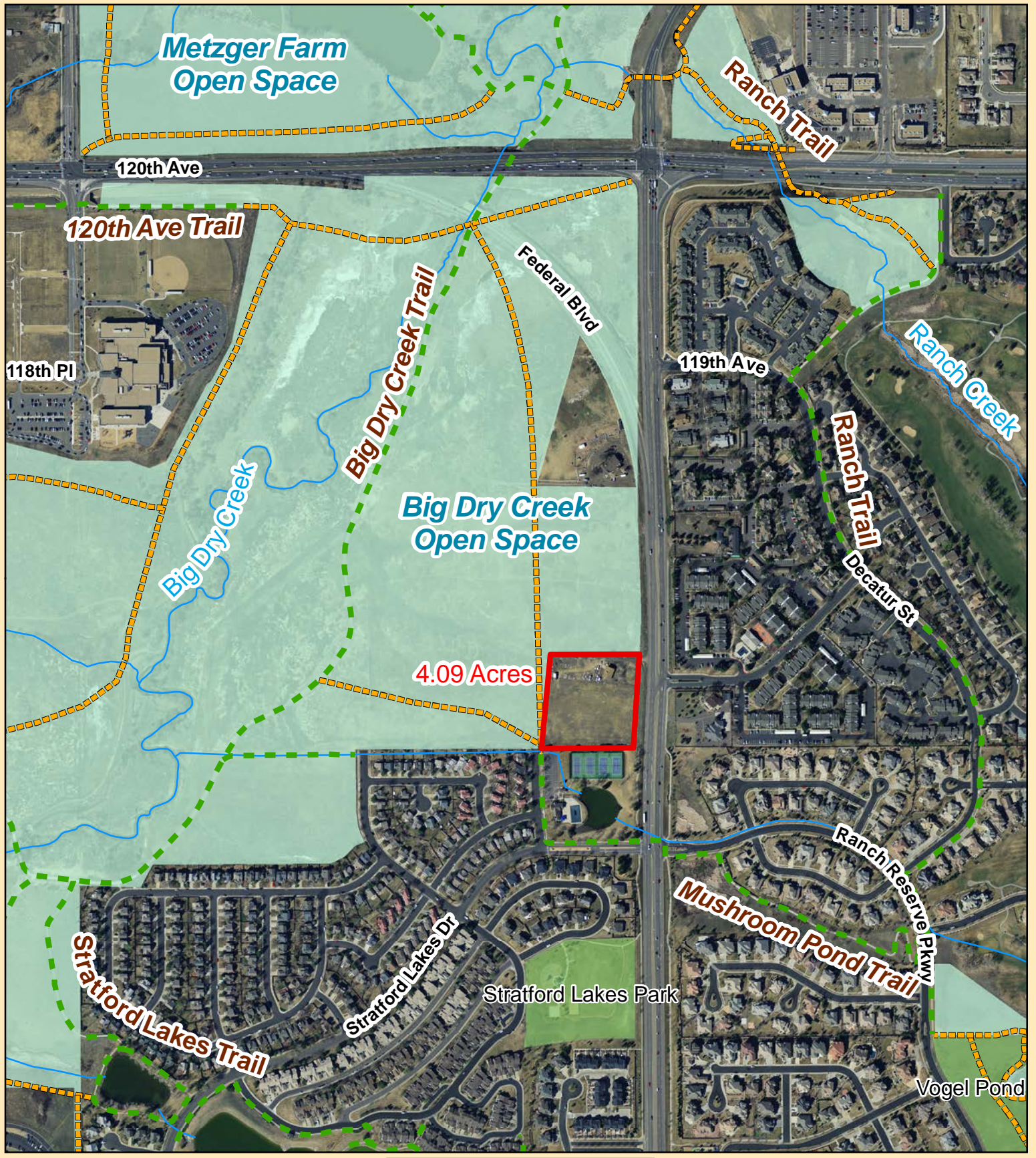
Mayor

ATTEST:





APPROVED AS TO LEGAL FORM:

City Clerk


City Attorney



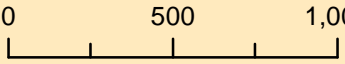
Johnson Property
 Proposed Open Space
 Acquisition
 City of Westminister, 2014

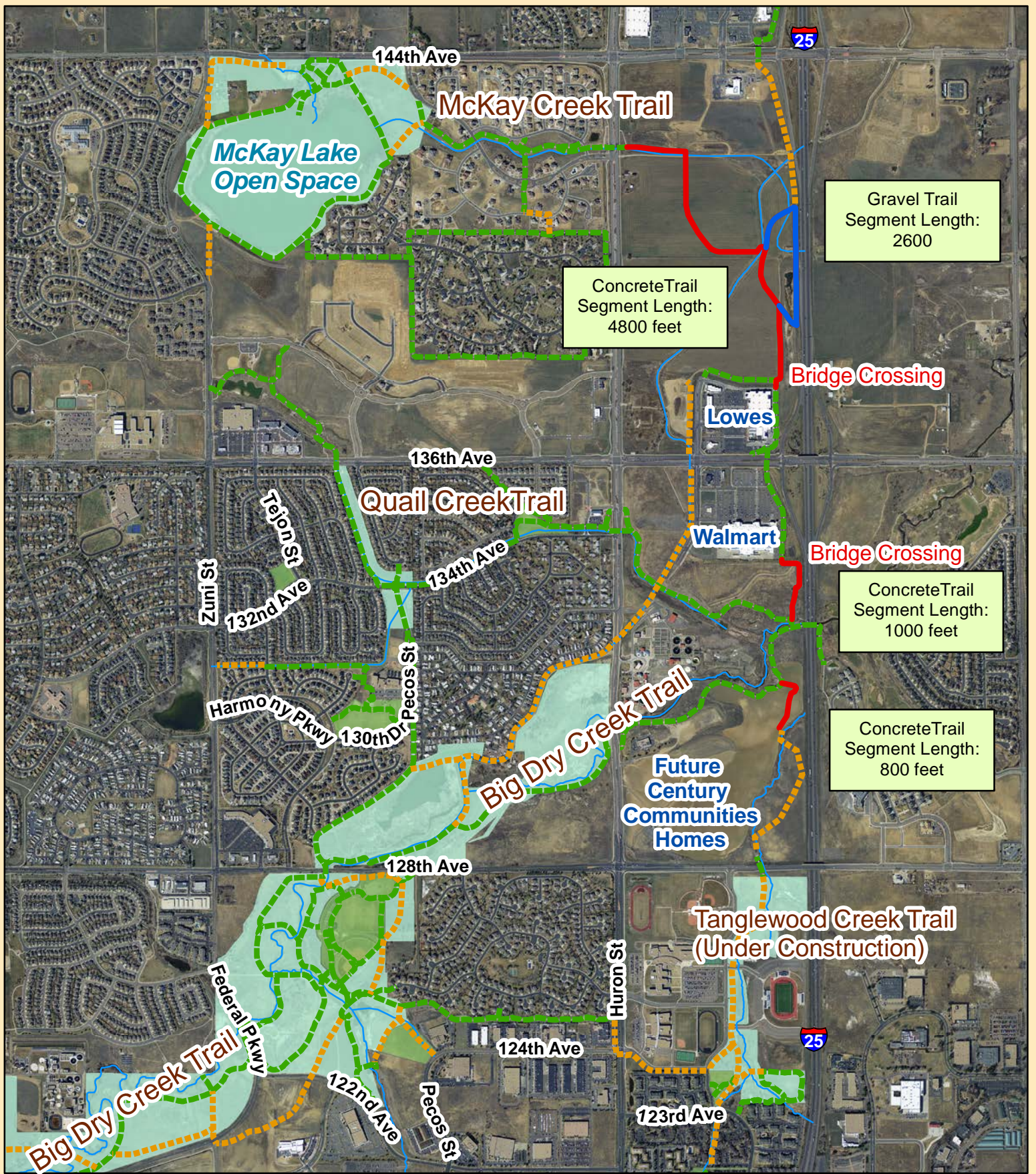
	Johnson Property
	Proposed Trails
	Open Space
	Parks

N



0 500 1,000 Feet





Concrete Trail Segment Length: 4800 feet

Gravel Trail Segment Length: 2600

Concrete Trail Segment Length: 1000 feet

Concrete Trail Segment Length: 800 feet

Proposed McKay Creek, Tanglewood Creek, I-25, and Big Dry Creek Trail Connections
City of Westminister,

- Proposed Gravel Trail
- Proposed Concrete Trail
- - - Proposed Trails
- - - City Trails



0 625 1,250 2,500 Feet



Agenda Item 10 D-E

Agenda Memorandum

City Council Meeting
January 27, 2014



SUBJECT: Resolution No. 3 re IGA with the Colorado Department of Transportation for the 72nd Avenue/Raleigh Street Bridge Replacement and Councillor's Bill No. 4 re Supplemental Appropriation of Federal Grant Funds.

Prepared By: Steve Baumann, Assistant City Engineer

Recommended City Council Action

1. Adopt Resolution No. 3 authorizing the City Manager to execute an Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to a Federal grant for the replacement of the structure carrying 72nd Avenue and Raleigh Street over Little Dry Creek.
2. Pass Councillor's Bill No. 4 on first reading appropriating grant monies to be received from the Colorado Department of Transportation for the 72nd Avenue/Raleigh Street Bridge Replacement Project.

Summary Statement

- In 2009 and again in 2010, City Council authorized the submission of an application for a Federal grant for the replacement of the concrete box culvert at 72nd Avenue and Raleigh Street through the Colorado Off-System Bridge Program. A total amount of \$1,843,400 in Federal funding was awarded for bridge construction costs. Plan approval and administration of the Federal funding is performed by the Colorado Department of Transportation (CDOT) through an intergovernmental agreement, which is the subject of the attached Resolution.
- Local matching funds of \$460,850 are required to secure the Federal grant and will be augmented by General Capital Improvement Fund and Utility Fund monies to cover the estimated \$5 million project construction cost. The project includes replacement of utilities in streets and other areas that adjoin the 72nd Avenue and Raleigh Street intersection.
- The Federal funding is received in the form of reimbursements after the City makes payments to the project contractor. City Council action is necessary to appropriate the grant funds in advance through the attached ordinance. Construction is expected to get underway in the first half of 2014 and extend into mid-2015.

Expenditure Required: \$2,304,250

Source of Funds: Federal Grant through the Colorado Off-System Bridge Program (\$1,834,400)
General Capital Improvement Fund – 72nd Ave and Raleigh Street Bridge Replacement Project (\$460,850)

Policy Issue

Should the City enter into an Intergovernmental Agreement (IGA) with CDOT to receive Federal funding through the Colorado Off-System Bridge Program to replace the structure at 72nd Avenue and Raleigh Street?

Alternative

Do not enter into an IGA with CDOT for the Federal grant funding. Staff does not recommend this alternative because the Federal funds will provide approximately 80% of the cost of the bridge construction portion of the project. This is a significant cost share and makes it possible to leverage City funding to replace a structure that is structurally deficient.

Background Information

In 2009 and again in 2010, City Council approved the submission of applications for Federal funding to assist in replacing the structurally deficient culvert carrying 72nd Avenue and Raleigh Street over Little Dry Creek. The funding was available through the Colorado Off-System Bridge program, managed by the Colorado Department of Transportation (CDOT). The program provides regular inspection and rating of bridges and culverts for local jurisdictions, and the structure at 72nd Avenue and Raleigh Street is in the poorest condition of all roadway structures in the City, having a sufficiency rating of only 8 on a scale of 100 points. While there are no immediate safety concerns for normal traffic use, the structure has been posted for reduced truck loading for several years and is due for replacement.

The Federal funding requests were approved for use starting in 2013 and total \$1,843,400, to be applied to the construction costs of the new bridge.

The City has been engaged in the process of designing the replacement structure and the street and utility improvements that will accompany it. The project extends along 72nd Avenue from approximately Stuart Street to Bradburn Boulevard and along Raleigh Street south of 72nd Avenue (see attached map). The bridge replacement provides an opportunity to improve the utility and aesthetic of the structure that spans Little Dry Creek and carries a high-use regional trail. Through the existing multi-cell box culvert, the trail sits low relative to the creek, resulting in inundation of the trail during relatively minor storm events. The new structure will be a single-span bridge that elevates the intersection several feet to provide improved hydraulic capacity through the bridge and raises the trail to reduce the frequency of its flooding. It also provides additional headroom, under-bridge lighting and a more open and safe environment for trail users. Architectural enhancements in the form of masonry and deck-level columns, signature features on Westminster's bridges, will also be incorporated.

The 72nd and Raleigh intersection, presently a tee intersection, is also being designed to receive in the future a new north leg in the form of a realigned Bradburn Boulevard. Presently Bradburn Boulevard intersects 72nd Avenue a short 200 feet east of Raleigh Street, causing operational problems and traffic safety concerns. Construction of the intersection in the near-term project will be a challenge, and because of the change in elevation described above, the intersection will be shut down for several months to more efficiently accomplish the bridge construction and new traffic signal installation. But, the finished product will make the future construction of the realignment of Bradburn Boulevard a fairly simple connection.

Because the water and sewer facilities in the area are also near the end of their service life or have operational problems, an estimated \$1.7 million of water and sewer system replacement work has been incorporated into the project. The street improvements and structure replacement bring the project construction cost to an estimated \$5 million. Construction is expected to get underway in the first half of 2014 and extend into mid-2015. The acquisition of public right-of-way from five private property owners was necessary for the slightly wider street and the utility work, and those rights-of-way have been secured such that construction can proceed.

The purpose of the proposed intergovernmental agreement (IGA) with CDOT is to obligate the Federal funds to the project, establish the Federal requirements associated with their expenditure, and secure the City’s commitment for matching funds at a 20% level (\$460,850). The matching funds were appropriated in the General Capital Improvement Fund 72nd Avenue Bridge Replacement project budget. CDOT requires that the local agency’s City Council approve a resolution (attached) that will authorize the signing of the IGA.

Since the Federal funds are actually reimbursed after the City makes payments to a contractor as construction proceeds, it is also necessary to appropriate the amount of the Federal funds, adding them to the project budget. This will be done by ordinance (attached).

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	7500.40610.0000	\$0	\$1,843,400	\$1,843,400
Total Change to Revenues			<u>\$1,843,400</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
72 Ave/LDC Bridge Replacement	81275030962.80400.8888	\$0	<u>\$1,843,400</u>	\$1,843,400
Total Change to Expenses			<u>\$1,843,400</u>	

This project meets Council’s Strategic Plan goals of a Safe and Healthy Community and Financially Sustainable City Government by providing an improved transportation system utilizing outside funding sources.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- CDOT Intergovernmental Agreement
- Councillor’s Bill
- Location Map

RESOLUTION

RESOLUTION NO. 3

INTRODUCED BY COUNCILLORS

SERIES OF 2014

**A RESOLUTION
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)
DEFINING FEDERAL AND LOCAL FUNDING OBLIGATIONS RELATING TO THE 72ND
AVENUE/RALEIGH STREET BRIDGE REPLACEMENT**

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

WHEREAS, The Intergovernmental Agreement attached to this Resolution identifies local funding obligations of the City of Westminster and federal funding obligations administered by the Colorado Department of Transportation for the construction of a bridge to replace the deficient structure located at 72nd Avenue and Raleigh Street in the City of Westminster.

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

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to the local and federal funding obligations related to the construction of a bridge at 72nd Avenue and Raleigh Street is hereby approved.
2. The City manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached.

PASSED AND ADOPTED this 27th day of January, 2014.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO
Department of Transportation
Intergovernmental Agreement
with
CITY OF WESTMINSTER

TABLE OF CONTENTS

1. PARTIES	2
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY	2
3. RECITALS	2
4. DEFINITIONS	2
5. TERM and EARLY TERMINATION	3
6. SCOPE OF WORK	3
7. OPTION LETTER MODIFICATION	7
8. PAYMENTS	7
9. ACCOUNTING	10
10. REPORTING - NOTIFICATION	11
11. LOCAL AGENCY RECORDS	11
12. CONFIDENTIAL INFORMATION-STATE RECORDS	12
13. CONFLICT OF INTEREST	12
14. REPRESENTATIONS AND WARRANTIES	12
15. INSURANCE	13
16. DEFAULT-BREACH	14
17. REMEDIES	15
18. NOTICES and REPRESENTATIVES	17
19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE	17
20. GOVERNMENTAL IMMUNITY	17
21. STATEWIDE CONTRACT MANAGEMENT SYSTEM	17
22. FEDERAL REQUIREMENTS	18
23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)	18
24. DISPUTES	19
25. GENERAL PROVISIONS	19
26. COLORADO SPECIAL PROVISIONS	22
27. SIGNATURE PAGE	24
28. EXHIBIT A – SCOPE OF WORK	1
29. EXHIBIT B – LOCAL AGENCY RESOLUTION	1
30. EXHIBIT C – FUNDING PROVISIONS	1
31. EXHIBIT D – OPTION LETTER	1
32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST	1
33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS	1
34. EXHIBIT G – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	1
35. EXHIBIT H – FEDERAL-AID CONTRACT PROVISIONS	1
36. EXHIBIT I – FEDERAL REQUIREMENTS	1
37. EXHIBIT J – SUPPLEMENTAL FEDERAL PROVISIONS	1

1. PARTIES

THIS AGREEMENT is entered into by and between the City of Westminster CDOT Vendor # 2000053, ("Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation ("State" or "CDOT").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee ("Effective Date"). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

Pursuant to § 1007(a) of TEA-21, at 23 U.S.C. § 133(d)(2), certain Surface Transportation project funds are made available only for eligible "Transportation Enhancement Activities", as defined in § 23 U.S.C. § 101(a), and this contract provides for the performance by the Local Agency of a project for an eligible Transportation Enhancement Activity. Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21st Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS § 23 U.S.C. § 101(a), CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

"Agreement" or "Contract" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future

modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

“Agreement Funds” means funds payable by the State to Local Agency pursuant to this Agreement.

C. Budget

“Budget” means the budget for the Work described in Project Payment Provisions in **Exhibit C**.

D. Consultant and Contractor

“Consultant” means a professional engineer or designer hired by Local Agency to design the Work and “Contractor” means the general construction contractor hired by Local Agency to construct the Work.

E. Evaluation

“Evaluation” means the process of examining the Local Agency’s Work and rating it based on criteria established in **§6** and **Exhibits A** and **E**.

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Local Agency Procedures), **Exhibit H** (Federal-Aid Contract Provisions), **Exhibit I** (Federal Requirements) and **Exhibit J** (Supplemental Federal Provisions).

G. Goods

“Goods” means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

H. Oversight

“Oversight” means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration (“FHWA”) and as it is defined in the Local Agency Manual.

I. Party or Parties

“Party” means the State or the Local Agency and “Parties” means both the State and the Local Agency

J. Work Budget

Work Budget means the budget described in Project Funding Provisions in **Exhibit C**.

K. Services

“Services” means the required services to be performed by the Local Agency pursuant to this Contract.

L. Work

“Work” means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A** and **E**, including the performance of the Services and delivery of the Goods.

M. Work Product

“Work Product” means the tangible or intangible results of the Local Agency’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION

The Parties’ respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate five (5) years from date of contract execution (Controller’s signature), unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in

Exhibits A and E. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed hereunder by the Local Agency, or any Consultants or Contractor shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a)** Perform or provide the Plans to the extent required by the nature of the Work.
- b)** Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c)** Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d)** Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e)** Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f)** Provide final assembly of Plans and all other necessary documents.
- g)** Be responsible for the Plans' accuracy and completeness.
- h)** Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

- a)** Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b)** Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c)** Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit G**. If the Local Agency enters into a contract with a Consultant for the Work:
 - (1)** Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
 - (2)** Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

(3) Local Agency shall require that all billings under the consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit G** to administer the Consultant contract.

(5) Local Agency may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit G** and 23 C.F.R. 172.5(b) and (d).

(6) Local Agency shall ensure that the Consultant agreement complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

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

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

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

d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

a) If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with the **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq.

Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit H**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).

(b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

(c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

(4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.

(a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.

(d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

iv. State's Commitments

a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**,

v. ROW and Acquisition/Relocation

a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation

Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.

d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:

- (1)** Right of way acquisition (3111) for federal participation and non-participation;
- (2)** Relocation activities, if applicable (3109);
- (3)** Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

vi. Utilities

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

vii. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:

- a)** Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b)** Obtain the railroad's detailed estimate of the cost of the Work.
- c)** Establish future maintenance responsibilities for the proposed installation.
- d)** Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e)** Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

viii. Environmental Obligations

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

ix. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to begin a phase and/or increase or decrease the encumbrance amount

The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

B. Option to transfer funds from one phase to another phase

The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

C. Option to do both Options A and B

The State may authorize the Local Agency to begin a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

8. PAYMENTS

The State shall, in accordance with the provisions of this **§8**, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit.

The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute.

The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C.** The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8.** The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency

for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred);

9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency, for which it seeks reimbursement; the dates such costs were incurred; and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds, shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail

the reimbursable costs incurred, the dates incurred; and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§10** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this **§10** may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS

A. Maintenance

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: **(i)** a period of three years after the date this Agreement is completed or terminated, or **(ii)** three years after final payment is made hereunder, whichever is later, or **(iii)** for such further period as may be necessary to resolve any pending matters, or **(iv)** if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and exercise the remedies available under this Agreement, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities

conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

B. Notification

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents.

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

B. Legal Authority – The Local Agency and the Local Agency’s Signatory

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency’s authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in **§15(B)** with respect to sub-contractors that are not "public entities".

B. Contractors

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Agreemental liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

16. DEFAULT-BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt

of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§17**.

Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis..

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this **§17** in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in **§16(B)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or

services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by **§17(A)** or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify the Local Agency of the termination in accordance with **§17**, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in **§17(A)(i)**.

iii. Payments

If this Agreement is terminated by the State pursuant to this **§17(B)**, the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to the Local Agency's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State's option **(a)** obtain for the State or the Local Agency the right to

use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Gary Huber
CDOT Region 1
2000 South Holly Street
Denver, Colorado 80222
(303) 398-6768

B. Local Agency:

Steve Baumann
City of Westminster
4800 West 92 nd Avenue
Westminster, Colorado 80031
(303) 658-2122

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, by the State or the Local Agency, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§21** applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in **Exhibit I**.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. Assurance. DRCOG shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of the DBE program or the requirements of 49 CFR Part 26. DRCOG shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. Incorporation of CDOT's DBE Program Plan. CDOT's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of CDOT's DBE program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.
3. Local Agency Procedures for Goal-Setting and Award. DRCOG shall follow the processes for DBE goal-setting as set forth in Chapter 6 of the CDOT Local Agency Manual. Additionally, the Disadvantaged Business Enterprise Definitions and Requirements for consultant contracts and the CDOT Disadvantaged Business Enterprise Standard Special Provision must be incorporated in all contracts as applicable.
4. Contractor Assurance. Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance without modification:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement, shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein.

Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§25(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local

Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect, notwithstanding the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., limitations noted in §20 herein. This includes, but is not necessarily limited to, limitations on **(i)** the types of liabilities, **(ii)** the types of damages, **(iii)** the amount of damages, and **(iv)** the source of payment for damages.

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Agreement,
- iii. Exhibit A** (Scope of Work),
- iv. Exhibit B** (Local Agency Resolution),
- v. Exhibit C** (Funding Provisions),
- vi. Exhibit D** (Option Letter),
- vii. Exhibit E** (Local Agency Contract Administration Checklist),
- viii.** Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the

State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in *italics*.

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

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

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

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

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR.

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

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

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

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

The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to Intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, Intergovernmental Agreements, or information technology services or products and services] The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

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27. SIGNATURE PAGE
Agreement Routing Number 13 HA6 50011

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>THE LOCAL AGENCY CITY OF WESTMINSTER CDOT Vendor # 2000053</p> <p>Print: _____ Title: _____</p> <p>_____</p> <p>*Signature</p>	<p>STATE OF COLORADO JOHN W. HICKENLOOPER, GOVERNOR</p> <p>_____</p> <p>by: Timothy J. Harris, P.E., Chief Engineer for Donald E. Hunt, Executive Director Colorado Department of Transportation</p>
<p>2nd The Local Agency Signature (if needed)</p> <p>Print: _____ Title: _____</p> <p>_____</p> <p>*Signature</p>	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____</p> <p>Signature - Assistant Attorney General</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Colorado Department of Transportation</p> <p>Date: _____</p>

28. EXHIBIT A – SCOPE OF WORK

BRO M356-025 72nd Avenue and Raleigh Street Bridge Replacement Subaccount 18882

This project removes and replaces the existing concrete box culvert structure (WST 11-7-R) on 72nd Avenue over Little Dry Creek at Raleigh Street in the City of Westminster. The new bridge structure will be a pre-stressed concrete box girder structure clear spanning over the existing creek. The project adjoins the England Park recreation area. Extensive Utility improvements and ROW acquisitions are required with the project but, utility improvements and ROW acquisitions will be paid for separately from City of Westminster funds. The CDOT Staff Bridge Colorado Off-System Bridge Program guidelines for rehabilitation and replacement funding apply on the project.

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29. EXHIBIT B – LOCAL AGENCY RESOLUTION

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION**

30. EXHIBIT C – FUNDING PROVISIONS

BRO M356-025 (18882)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$2,304,250.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (FY 13 Bridge Off System @ 80%)				\$1,843,400.00
b. Local Agency Matching Funds (FY 13 Bridge Off System @ 20%)				\$460,850.00
TOTAL BUDGETED FUNDS				\$2,304,250.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
(80% of Participating Costs)				
b. Local Share				
Local Agency Share of Participating Costs		\$0.00		
Non-Participating Costs (Including Non-Participating Indirects)		\$0.00		
Estimated to be Billed to Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$1,843,400.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$1,843,400.00
FOR CDOT ENCUMBRANCE PURPOSES				
Federal Funds (1a)				\$1,843,400.00
Local Agency Matching Funds (1b)				\$460,850.00
Total Estimated Encumbrance Amount				\$2,304,250.00
Construction funds are currently not available. Construction funds will be encumbered by an option letter or formal amendment when they become available.				
Less ROW Acquisition 3111 and/or ROW Relocation 3109				(\$0.00)
Net to be encumbered as follows:				
	WBS Element <<<<<>>>>	Design	3020	\$0.00
	WBS Element 18882.20.10	Const	3301	\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds (CFDA #20 2050) to 20% Local Agency funds, it being understood that such ratio applies only to the \$2,304,250.00 (\$1,843,400.00 Federal Funds and \$460,850.00 Local Agency Funds) that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$2,304,250.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$2,304,250.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$1,843,400.00 (For CDOT accounting purposes, the federal funds of \$1,843,400.00 and the Local Agency matching funds of \$460,850.00 will be encumbered for a total encumbrance of \$2,304,250.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***Construction funds are currently not available. Construction funds will be encumbered by an option letter or formal amendment when they become available.*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

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

i. Expenditure less than \$500,000

If the Sub-The Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding than \$500,000-Highway Funds Only

If the Sub-The Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding than \$500,000-Multiple Funding Sources

If the Sub-The Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below

AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

- A. Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(*a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.*).
- B. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- C. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labled as follows: C-2, C-3, C-4, etc.*).

Option B (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be*

made using an formal amendment)..

Option C (Insert the following language for use with Option C):

In accordance with the terms of the original Agreement (insert CMS routing # of original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (describe phase from which funds will be moved) to (describe phase to which funds will be moved) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment).

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now (insert total encumbrance amount), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (indicate total budgeted funds) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

Form Updated: December 19, 2012

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

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

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

COLORADO DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No. BRO M356-025	STIP No. SDR 6738	Project Code 18882	Region 06
Project Location 72 nd Avenue at Raleigh Street & Bradburn Blvd. in the City of Westminster			Date 9/19/12
Project Description Remove and replace existing Off-System Bridge (WST11-7-R) with new bridge structure at the intersection of Raleigh Street and 72 nd Ave.			
Local Agency Westminster CDOT Resident Engineer Neil Lacey	Local Agency Project Manager Steve Baumann CDOT Project Manager Tim Frazier		

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

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

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

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

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5.9	Obtain Utility and Railroad Agreements	X	#
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Local Agency		X
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		X
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Neil Lacey _____ 01/18/12 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDDE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Stephen C. Baumann, P.E. _____ 303-658-2122 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	#
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	#
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.		
	Steve Baumann _____ 303-658-2122 _____ Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		X
	Provide the name and phone number of the person responsible for this task.		
	Neil Lacey _____ 303-757-6766 _____ CDOT Resident Engineer Phone number		
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record		X
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project		
	• Update the form as work progresses	X	
	• Complete and distribute form after work is completed	X	
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products	X	
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components	X	
	• Bridge modular expansion devices (0" to 6" or greater)	X	
	• Fabrication of bearing devices	X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		X
	• Generate IAT schedule	X	
	• Schedule and provide notification	X	
	• Conduct IAT	X	
9.8	Approve mix designs		
	• Concrete	X	
	• Hot mix asphalt	X	
9.9	Check Final Materials Documentation	X	#
9.10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

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

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

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

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

Required by 23 CFR 635.112

34. EXHIBIT G – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

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

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

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

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

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

Evaluation factors for final selection are the consultant's:

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

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

35. EXHIBIT H – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 Electronic version -- March 10, 1994

FHWA Form 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

I. General	1
II. Nondiscrimination.....	1
III. Non-segregated Facilities.....	3
IV. Payment of Predetermined Minimum Wage	3
V. Statements and Payrolls	6
VI. Record of Materials, Supplies, and Labor.....	6
VII. Subletting or Assigning the Contract	7
VIII. Safety: Accident Prevention	7
IX. False Statements Concerning Highway Projects.....	7
X. Implementation of Clean Air Act and Federal Water Pollution Control Act	8
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.....	8
XII. Certification Regarding Use of Contract Funds for Lobbying	9

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

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

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

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

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

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

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

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

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

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

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

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor

either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Agreement.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this Agreement. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

a. By submission of this bid, the execution of this Agreement or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Agreement. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this Agreement.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this Agreement or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this Agreement.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this Agreement the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this Agreement, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency

entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

2. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

36. EXHIBIT I – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation:

- i. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
- ii. the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
- iii. the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements;
- iv. to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable;
- v. the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or sub-the Local Agencies).

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and sub-the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agencies and sub-the Local Agencies in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

M. Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance.

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. Incorporation of Provisions§22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

37. EXHIBIT J – SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. **“Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
 - 1.1.1. Grants;
 - 1.1.2. Contracts;
 - 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4. Loans;
 - 1.1.5. Loan Guarantees;
 - 1.1.6. Subsidies;
 - 1.1.7. Insurance;
 - 1.1.8. Food commodities;
 - 1.1.9. Direct appropriations;
 - 1.1.10. Assessed and voluntary contributions; and
 - 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

 - 1.1.12. Technical assistance, which provides services in lieu of money;
 - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14. Any award classified for security purposes; or
 - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
 - 1.2. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
 - 1.3. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
 - 1.4. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
 - 1.5. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;
 - 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.5.2. A foreign public entity;
 - 1.5.3. A domestic or foreign non-profit organization;
 - 1.5.4. A domestic or foreign for-profit organization; and
 - 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal

entity.

- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
 - 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
 - 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
 - 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
 - 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
 - 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
 - 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
 - 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
 - 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
 - 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
 - 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
 - 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any

revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.

- 3.1. SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 3.2. DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. Total Compensation. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

- 4.1.** The total Federal funding authorized to date under the Award is \$25,000 or more; and
- 4.2.** In the preceding fiscal year, Contractor received:
 - 4.2.1.** 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2.** \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.3.** The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

5. Reporting. Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.

6. Effective Date and Dollar Threshold for Reporting. The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

7. Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

- 7.1 ToSAM.** A Subrecipient shall register in SAM and report the following data elements in SAM **for each** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 7.1.1** Subrecipient DUNS Number;
 - 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3** Subrecipient Parent DUNS Number;

- 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1 Subrecipient's DUNS Number as registered in **SAM**.
- 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **3**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2014 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2014 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2014 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3655 is hereby increased by \$1,843,400. This appropriation is due to the receipt of federal grant funds from the Colorado Department of Transportation for the replacement of the bridge at 72nd Avenue and Raleigh Street.

Section 2. The \$1,843,400 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 D-E , dated January 27, 2014 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$1,843,400</u>
Total	<u>\$1,843,400</u>

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

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

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of January, 2014.

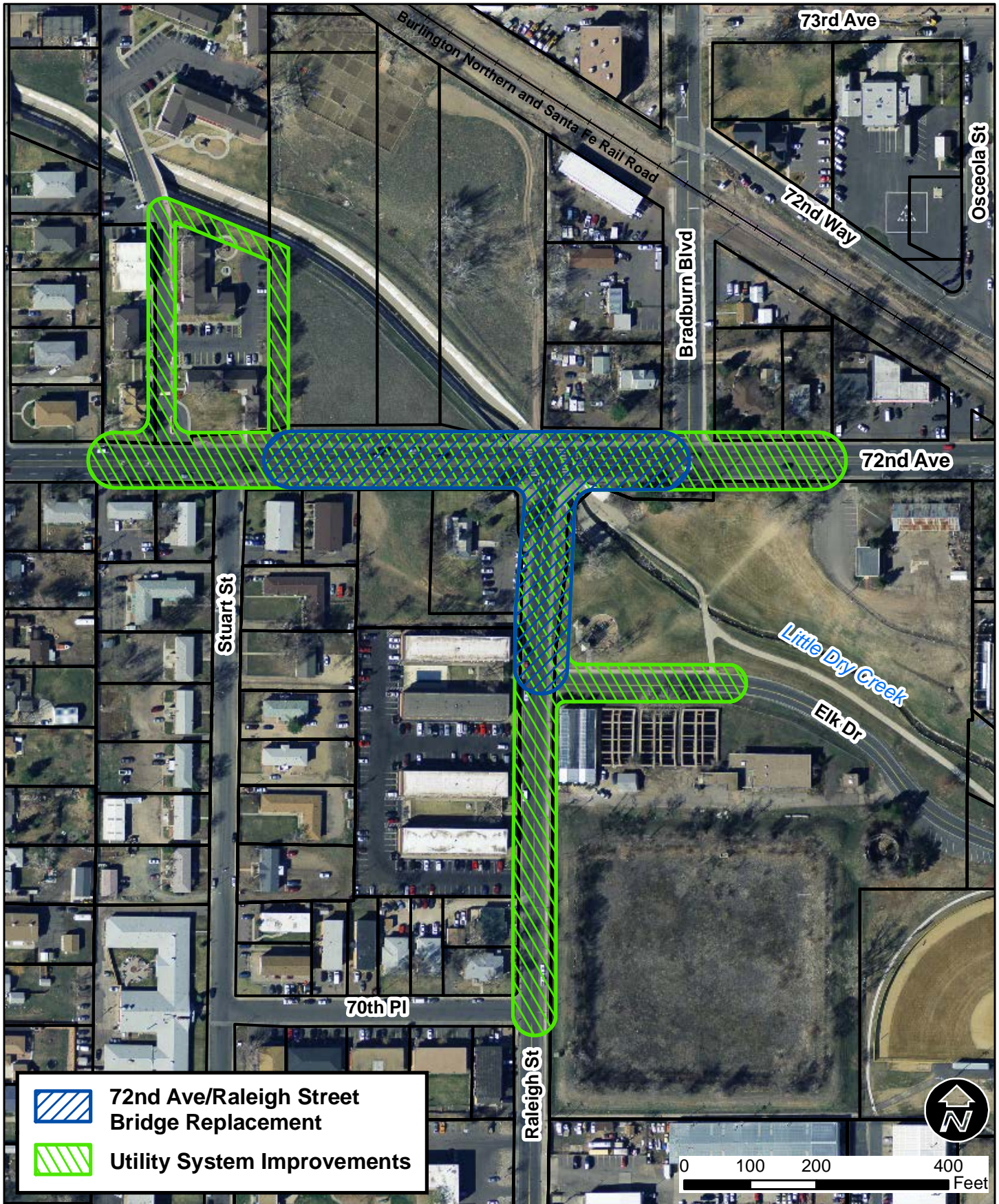
PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of February, 2014

ATTEST:

Mayor

City Clerk

72nd Avenue/Raleigh Street -Project Area-



AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, JANUARY 27, 2014

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (December 9, 2013)
- 3. Public Hearings and New Business**
 - A.** Westminster Center Urban Reinvestment Project Consultant Contracts
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, DECEMBER 9, 2013, AT 7:58 P.M.

ROLL CALL

Present at roll call were Chairperson Atchison, Vice Chairperson Winter and Board Members Baker, Briggs, Garcia, Pinter, and Seitz. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Garcia, to approve the minutes of the meeting of August 26, 2013, as written. The motion carried unanimously.

ICA BETWEEN CITY/WEDA RE REIMBURSEMENT OF COSTS – NORTH HURON URA & WURP

Board Member Briggs moved, seconded by Vice Chairperson Winter, to authorize the Executive Director to execute two Intergovernmental Cooperation Agreements between the City of Westminster and the Westminster Economic Development Authority, in substantially the same form as distributed in the agenda packet, providing payment to the City by WEDA for reimbursement of costs incurred by the City associated with maintenance of improvements and other contractual obligations in the North Huron Urban Renewal Area and Westminster Center Urban Reinvestment Plan Area. The motion passed on a 5:1:1 vote with Board Member Baker voting no and Board Member Seitz abstaining.

ADJOURNMENT

There was no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 8:00 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority
January 27, 2014



SUBJECT: Westminster Center Urban Reinvestment Project Consultant Contracts

Prepared By: Susan Grafton, Economic Development Director

Recommended WEDA Board Action

Authorize the Executive Director to enter into one-year agreements with the Laramie Company and John M Mullins and Associates, Inc. to provide consultant services regarding the redevelopment of the Westminster Center Urban Reinvestment Project (WURP) property.

Summary Statement

- The WURP is gaining significant momentum as the commercial real estate market continues to revive. Specialized consulting services are needed to facilitate the project.
- The Laramie Company provides special project support as a retail consultant with over 30 years of retail leasing and development experience.
- John M Mullins and Associates specializes in financial structuring of projects, strategy and economic development with years of experience at the state and local level as well with special districts and commercial development.
- WEDA approval of the contracts is required since the fees exceed staff approval authority.
- Adequate funds have been budgeted and were anticipated for this purpose.

Expenditure Required: \$182,500

Source of Funds: WEDA – WURP City Center Participation

Policy Issue

Should the WEDA continue to work with highly respected consultants to assist with moving forward on the redevelopment of the WURP site?

Alternative

Do not hire experts to assist with and provide advice concerning the redevelopment of the WURP site. This is not recommended, as this is a highly complex and critically important project to Westminster's future. The two consultants recommended by Staff have an excellent track record working on various redevelopment projects in the Denver metropolitan area, as well as throughout Colorado and the western United States.

Background Information

The team assembled for the Westminster Center Urban Reinvestment Project is highly skilled, with years of relevant public and private sector experience. Both The Laramie Company (Mary Beth Jenkins) and John M Mullins and Associates were key contributors to the successful Orchard project that involved developer recruiting, land acquisition, detailed financial analysis and projection and development negotiations. John Mullins background with finance districts, financial pro forma and development strategy will be key in the months ahead as the WURP team works to facilitate the development of Phase 1 this fall. Mary Beth Jenkins will be key in helping prepare the concept plan for the retail area, attracting retail users and development to the site as well as with all real estate negotiations.

Contracts with John M Mullins and Associates, Inc. and The Laramie Company need WEDA authorization since the amount of both contracts exceed the Executive Director's approval authority. The work of these individuals will be critical to achieving the broad vision WEDA has for the WURP site.

The Westminster Center Urban Reinvestment Project supports the City's Strategic Plan goals by facilitating a Strong, Balanced Local Economy and Vibrant Neighborhoods in One Livable Community

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- The Laramie Company Contract
- John M Mullins and Associates, Inc. Contract

AGREEMENT WITH THE LARAMIE COMPANY TO FURNISH CONSULTING SERVICES
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR REDEVELOPMENT
OF THE WESTMINSTER CENTER URBAN REINVESTMENT PROJECT PROPERTY

THIS AGREEMENT, made and entered into this 1st day of January, 2014, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the “WEDA,” and **THE LARAMIE COMPANY, LLC**, a limited liability company organized pursuant to the laws of the State of Colorado hereinafter called the “Consultant,” is as follows:

WHEREAS, WEDA wishes to wishes to redevelop the Westminster Center Urban Reinvestment Project (“WURP”) area, located at approximately 88th and Sheridan; and

WHEREAS, WEDA desires to engage the Consultant to render the professional retail consulting services described in this Agreement and the Consultant is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, WEDA and the Consultant agree as follows:

This Agreement is expressly contingent upon the approval by WEDA of all the terms set forth herein. In the event this Agreement is not approved in its entirety by WEDA, neither Party shall be bound to the terms of this Agreement.

I. THE PROJECT

The project consists of providing consulting services to the City of Westminster staff, acting on behalf of WEDA, to support redevelopment of the WURP site (hereinafter referred to as the “Project”).

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant shall provide general retail consulting services, including the following tasks:

- Providing feedback and input to WEDA concerning planning for retail and other uses;
- Assisting in identifying, qualifying, selecting and negotiating terms for developers, end users and anchor tenants;
- Assisting with negotiation for pre-development and final development agreements;
- Assisting with creation of a Phase I finance agreement (as defined by WEDA) and in Phase I land transfer;
- Providing and coordinating competitive market data and retail demographic information;
- Assisting with ongoing communications and negotiations with JCPenney, Brunswick and other existing onsite users; and
- Assisting with branding and marketing the site.

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical services necessary to complete the Project.

III. ADDITIONAL SERVICES

When authorized in writing by WEDA, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written agreement between WEDA and Consultant as to additional compensation for additional services.

IV. CONSULTANT'S FEE

Monthly Retainer. As compensation for the basic services described in this Agreement, the Consultant shall be paid a lump sum monthly fee of twelve thousand five hundred dollars (\$12,500) over the twelve (12) month term of the Project. The Consultant shall submit invoices to WEDA for its monthly fee, such invoices to be in the form and detail reasonably required by WEDA. Reimbursable expenses (as defined below) shall be itemized on such invoices. WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

Transfer Fee. Upon transfer of land in Phase I (as defined by WEDA) a five percent (5%) transfer fee will be paid to Consultant at closing with said fee to be no less than \$25,000 per incident.

Finance Agreement Bonus. Immediately following execution of a Phase I finance agreement (as defined by WEDA, or such similar agreement, as determined by WEDA), or at such later time as may be determined by WEDA, WEDA shall pay Consultant a fee of Twenty-five Thousand Dollars (\$25,000).

Reimbursable Expenses. WEDA will reimburse Consultant for a maximum of seven thousand five hundred dollars (\$7,500) in reasonable travel costs and other approved consulting expenses.

Consultant's total fee under this Agreement, including reimbursable expenses, shall not exceed one hundred eighty two thousand five hundred dollars (\$182,500.00), exclusive of the Transfer Fee referenced above. Said fees shall constitute full and complete payment for services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

V. COMMENCEMENT & COMPLETION OF PROJECT

The Project shall begin on January 1, 2014, and shall terminate on December 31, 2014.

VI. TERMINATION

This Agreement terminates on December 31, 2014, unless agreed otherwise by the parties. This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon either the consultant or WEDA providing sixty (60) days advance written notice, whichever occurs first. In the event the Agreement is terminated by WEDA issuance of said written notice of intent to terminate, WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services WEDA deems

necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Professional Liability Insurance in the minimum amount of \$1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. The Consultant's Automobile and Commercial General Liability policies shall be endorsed to name WEDA as an additional insured and to provide that such insurance is primary with respect to claims made by WEDA. Consultant's Automobile and Commercial General Liability policies shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees.

The Consultant shall provide certificates of insurance to WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify WEDA in writing within two days of the cancellation of or substantive change to any of the insurance policies set out herein, and failure to do so shall constitute a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the performance of this Agreement.

IX. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of WEDA shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Project, the Consultant shall act as an independent contractor and not as agent of WEDA except to the extent the Consultant is specifically authorized to act as agent of WEDA.

B. Books and Records. The Consultant's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for WEDA's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Project.

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of WEDA and Consultant. Upon completion of the Project, or at such other time as WEDA may require, the Consultant shall deliver to WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to WEDA and such additional copies thereof as WEDA may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to WEDA for any loss, damages or costs incurred by WEDA for the repair, replacement or correction of any part of the Project that is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Consultant shall indemnify, defend, and hold harmless WEDA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless WEDA and its agents and employees from and against all professional liability claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph D.2. WEDA may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify WEDA on account of such injuries.

In any and all claims against WEDA or any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of WEDA and the Consultant.

**Project Representative for the
City of Westminster, acting on behalf of
WEDA:**

Name: Susan Grafton
Address: 4800 W. 92nd Avenue
Westminster, CO 80031
Phone: 303-658-2113
email: sgrafton@cityofwestminster.us

Project Representative for Consultant:

Name: Mary Beth Jenkins
Address: 730 17th Street, Suite 840
Denver, CO 80202
Phone: 303-573-4811
email: mb@laramiecompany.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of WEDA and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices shall be effective three (3) days after mailing.

F. Assignment. The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of WEDA; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the City's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Consultant may not employ subcontractors to perform work on the Project without WEDA's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this

Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

M. Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with any entity that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that an entity performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall notify the entity and WEDA within three (3) days that Consultant has actual knowledge that the entity is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such contract with the entity if, within three (3) days of receiving the notice required pursuant to this paragraph, the entity does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the entity if during such three (3) days the entity provides information to establish that the entity has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO CITY MANAGERS OFFICE, ATTENTION: SUSAN GRAFTON.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

THE LARAMIE COMPANY, LLC

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

By: _____

Printed Name: Mary Beth Jenkins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

730 Seventeenth St., Ste. 840
Denver, CO 80202

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

Secretary

APPROVED AS TO LEGAL FORM

By: _____

Authority Attorney

I certify that either an appropriation has been made by the WEDA Board or that sufficient funds have otherwise been made available for the payment of this Agreement.

Executive Director

Account No. 80968005952

Rev. 05/13

AGREEMENT WITH JOHN M. MULLINS AND ASSOCIATES, INC., TO FURNISH CONSULTING SERVICES TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR REDEVELOPMENT OF THE WESTMINSTER CENTER URBAN REINVESTMENT PROJECT PROPERTY

THIS AGREEMENT, made and entered into this 1st day of January, 2014, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the “WEDA,” and **JOHN M. MULLINS & ASSOCIATES, INC.**, a corporation organized pursuant to the laws of the State of Colorado hereinafter called the “Consultant,” is as follows:

WHEREAS, WEDA wishes to wishes to redevelop the Westminster Center Urban Reinvestment Project (“WURP”), located at approximately 88th and Sheridan; and

WHEREAS, WEDA desires to engage the Consultant to render the professional retail consulting services described in this Agreement and the Consultant is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, WEDA and the Consultant agree as follows:

This Agreement is expressly contingent upon the approval by WEDA of all the terms set forth herein. In the event this Agreement is not approved in its entirety by WEDA, neither Party shall be bound to the terms of this Agreement.

I. THE PROJECT

The project consists of providing retail consulting services, initiating developer contacts, financial strategies, district development strategies, consultation on operation and maintenance of the ultimate project and other similar advisory services to the City of Westminster staff acting on behalf of WEDA to support redevelopment of the WURP site (hereinafter referred to as the “Project”).

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant shall provide general consulting services, including the following tasks:

- Initiating developer contacts as well as contacts with potential end users;
- Providing financial strategy services, strategy concerning districts and operation and maintenance strategies;
- Establishing a detailed finance plan for phase 1 of the WURP;
- Establishing a general finance plan for the overall site (considering operation and maintenance);
- Assisting with negotiation of pre-development and final development agreements;

- Providing competitive market data and retail demographic information; and
- Assisting in drafting terms for specific development on site.

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical services necessary to complete the Project.

III. ADDITIONAL SERVICES

When authorized in writing by WEDA, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written agreement between WEDA and Consultant as to additional compensation for additional services.

IV. CONSULTANT'S FEE

Monthly Retainer. As compensation for the basic services described in this Agreement, the Consultant shall be paid a lump sum monthly fee of six thousand dollars (\$6,000) over the twelve (12) month term of the Project. The Consultant shall submit invoices to WEDA for its monthly fee, such invoices to be in the form and detail reasonably required by WEDA. Reimbursable expenses (as defined below) shall be itemized on such invoices. WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

Finance Plan Bonus. Immediately following establishment of a detailed finance plan for phase 1 of the WURP (as defined by WEDA) and a general finance plan for the overall site (considering operation and maintenance or at a later time as may be determined by WEDA, WEDA shall pay Consultant a fee of Twenty-five Thousand Dollars (\$25,000)..

Reimbursable Expenses: WEDA shall cover Consultant's reimbursable expenses up to a maximum of seven thousand five hundred dollars (\$7,500) for reasonable travel expenditures and other approved project-related expenses.

Consultant's total fee under this Agreement, including reimbursable expenses, shall not exceed one hundred four thousand five hundred dollars (\$104,500.00.) Said fees shall constitute full and complete payment for the Project and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

V. COMMENCEMENT & COMPLETION OF PROJECT

The Project shall begin on January 1, 2014, and shall terminate on December 31, 2014.

VI. TERMINATION

This Agreement terminates on December 31, 2014, unless agreed otherwise by the parties. This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon either the consultant or WEDA providing sixty (60) days advance

written notice, whichever occurs first. In the event the Agreement is terminated by WEDA issuance of said written notice of intent to terminate, WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Professional Liability Insurance in the minimum amount of \$1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. The Consultant's Automobile and Commercial General Liability policies shall be endorsed to name WEDA as an additional insured and to provide that such insurance is primary with respect to claims made by WEDA. Consultant's Automobile and Commercial General Liability policies shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees.

The Consultant shall provide certificates of insurance to WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify WEDA in writing within two days of the cancellation of or substantive change to any of the insurance policies set out herein, and failure to do so shall constitute a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the performance of this Agreement.

IX. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of WEDA shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Project, the Consultant shall act as an independent contractor and not as agent of WEDA except to the extent the Consultant is specifically authorized to act as agent of WEDA.

B. Books and Records. The Consultant's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for WEDA's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Project.

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of WEDA and Consultant. Upon completion of the Project, or at such other time as WEDA may require, the Consultant shall deliver to WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to WEDA and such additional copies thereof as WEDA may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to WEDA for any loss, damages or costs incurred by WEDA for the repair, replacement or correction of any part of the Project that is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Consultant shall indemnify, defend, and hold harmless WEDA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless WEDA and its agents and employees from and against all professional liability claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph D.2. WEDA may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify WEDA on account of such injuries.

In any and all claims against WEDA or any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or

benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of WEDA and the Consultant.

**Project Representative for the
City of Westminster, acting on behalf of
WEDA:**

Name: Susan Grafton
Address: 4800 W. 92nd Avenue
Westminster, CO 80031
Phone: 303-658-2113
email: sgrafton@cityofwestminster.us

Project Representative for Consultant:

Name: John M. Mullins
Address: 1988 E. Ross Lane
Highlands Ranch, CO 80126
Phone: 303-683-9382
email: jmmworld@aol.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of WEDA and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices shall be effective three (3) days after mailing.

F. Assignment. The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of WEDA; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the City's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Consultant may not employ subcontractors to perform work on the Project without WEDA's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

M. Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with any entity that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that an entity performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall notify the entity and WEDA within three (3) days that Consultant has actual knowledge that the entity is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such contract with the entity if, within three (3) days of receiving the notice required pursuant to this paragraph, the entity does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the entity if during such three (3) days the entity provides information to establish that the entity has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO
CITY MANAGERS OFFICE, ATTENTION: SUSAN GRAFTON.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

JOHN M MULLINS & ASSOCIATES, INC.

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

By: _____

Printed Name: John M. Mullins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

1988 E. Ross Lane
Highlands Ranch, CO 80126

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

Secretary

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: _____

Authority Attorney

I certify that either an appropriation has been made by the WEDA Board or that sufficient funds have otherwise been made available for the payment of this Agreement.

Executive Director

Account No. 80968005952

Rev. 05/13