



CITY COUNCIL AGENDA
(Revised)

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Employee Service Awards
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda
 - A. Financial Report for December 2012
 - B. Quarterly Insurance Claims Report – October through December 2012
 - C. 2013 Deicing Salt Purchase
 - D. 2013 Water Treatment Chemicals Purchase
 - E. 2013 Asphalt and Crackseal Materials Purchase
 - F. 2013 Foothills Animal Shelter Construction Debt Assessment
 - G. 2013 Storage Area Network Purchase and Data Backup/Recovery System Purchase
 - H. Westminster Station Design Services Contract
 - I. Small Government Enterprise Software License Agreement with ESRI
 - J. Little Dry Creek Regional Detention Pond Third Amended IGA with UDFCD and Adams County
 - K. Second Reading of Councillor's Bill No. 1 re CLUP Amendment for The Registry (LongsView) Development
 - L. Second Reading of Councillor's Bill No. 2 re Ranch Barn and Pasture Lease Agreement
 - M. Second Reading of Councillor's Bill No. 4 re Amend Title XI re Land Development and Growth Management
 - N. Second Reading of Councillor's Bill No. 5 re Amend WMC re Councillor Election Conformance with the Code

9. Appointments and Resignations
 - A. 2013 Appointments to the Rocky Flats Stewardship Council
 - B. Resolution No. 3 re Reappointing Members to Boards and Commissions and Filling Vacancies

10. Public Hearings and Other New Business
 - A. Resolution No. 4 re Revision of the City of Westminster's Investment Policy
 - B. Resolution No. 5 re Spring 2013 Adams County Open Space Grant Application for the Tanglewood Creek Trail
 - C. Resolution No. 6 re Spring 2013 Adams County Open Space Acquisition Grant Application
 - D. Resolution No. 7 re Award Category B Residential Service Commitments
 - E. Resolution No. 8 re Award Category E Senior Housing Service Commitments
 - F. Councillor's Bill No. 7 re Amend WMC Titles V, VI and XI to Address the Legalization of Marijuana
 - G. Councillor's Bill No. 8 re Transfer of Funds for the Citywide Radio P25 Digital Radio System and Equipment
 - H. Reallocation of Funds for the Citywide Radio P25 Digital Radio Communications System and Equipment
 - I. Citywide Radio P25 Digital Radio Communications Backbone System and Equipment Agreements and Contract

11. Old Business and Passage of Ordinances on Second Reading
 - A. Second Reading of Councillor's Bill No.6 re Amend WMC re Percentage of Votes Cast for the Election of Mayor

- B. TABLED to 2/25/13 - Continued Public Hearing and Action on the Second Amended Preliminary Development Plan and the Eighth Amended Official Development Plan for the Hyland Village Subdivision

12. Miscellaneous Business and Executive Session

- A. City Council
- B. Executive Session - Receive legal advice from the City Attorney's office concerning the City's rights and obligations under Colorado Constitution Amendment 64 pursuant to WMC 1-11-3(C) (8) and CRS 24-6-402(4)(b).

13. Adjournment

WESTMINSTER HOUSING AUTHORITY MEETING (separate agenda)

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
2012-2017
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



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
- Institutionalize the core services process in budgeting and decision making
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



SAFE AND SECURE COMMUNITY

- Citizens are 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 stormwater management program



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 greenspace (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 14, 2013, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor McNally called upon Cub Scouts from Pack 667 to led the City Council, Staff and audience in the Pledge of Allegiance and to introduce themselves and explain the badge each was working toward.

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Faith Winter, and Councillors Herb Atchison, Bob Briggs, Mark Kaiser, Mary Lindsey, and Scott Major were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, were also present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Councillor Kaiser, to approve the minutes of the regular meeting of December 17, 2012, as presented. The motion carried by a 6:1 margin with Councillor Atchison abstaining since he had not attended the meeting.

CITY MANAGER'S REPORT

Mr. McFall reported that next Monday, January 21, was Martin Luther King Day. City offices would be closed in observation of the holiday and there would be no City Council Study Session.

After tonight's meeting, the Westminster Housing Authority Board of Directors would meet. Upon adjournment of that meeting, the Council would hold a post-meeting in the Council Board Room to discuss a Citywide radio system replacement program.

There were two public hearings on this meeting's agenda. Members of the public in attendance to speak at either hearing should reserve their testimony until such time as the Mayor opened the podium for public participation. The Mayor would invite other citizens in attendance to address any other issue on the agenda or of general concern during Citizen Communication.

CITIZEN COMMUNICATION

Joseph Hein, 1785 West 130th Place; Chris Dittman, 7440 Lowell Boulevard; Tim Kauffman, 11220 Fenton Street; Richard Mayo, 5130 West 69th Place; A. J. Elserougi, 7260 Winona Court; Nancy Thompson, 7080 Beacon Way; Myron Treber, 11105 Osceola; Patricia Femrite, 3595 West 110th Place; Walt Blankenship, 8680 Cherry Lane; Emma Pinter, 6313 West 93rd Avenue; and Mary Tuneberg, 11363 Grove Street, voiced opposition to Councillor's Bill No. 6 that would change the percentage of votes needed to be elected Mayor. In a community of Westminster's size where all candidates for City Council were elected at large, the elected Mayor should be elected by at least a 40% majority. Councillors were asked to: vote against the measure; submit the ordinance to a vote of the people; delay the effective date of the ordinance until after this year's election; or consider making a change during a non-election year. The cost of conducting a run-off election between the two highest vote getters, if the 40% margin was not obtained by a single candidate, was the price of democracy. If Councillor's Bill No. 6 was passed, currently seated City Councillors should not seek election to the office of Mayor in 2013. Mayor McNally read email that she and Mayor Pro Tem Winter had received from citizens who were unable to attend the meeting but were opposed to this measure. The names of those citizens were: Susan Herrick, Betty Whorton, Rich Cooster, Donna Alengi, Dennis White, Carole Pool, Jan Platte, Linda Scott, Ernest Merkel, Chuck and Rae Duff, Stephanie Bingham, Helen Pittman, Laura Israelson, Leroy Shaffer, Tom Bruchmann, Ron (no last name provided), Mike Litzau, and Alberto Garcia.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: designate the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the City Council, the Westminster Housing Authority, the Westminster Economic Development Authority, Special and General Improvement Districts, and the City's Boards and Commissions pursuant to Section 24-6-402 (2)(c), C.R.S. of the Colorado Open Meetings Act; ratify the 2013 contracted purchase for 192,000 gallons of unleaded, E-10 gasoline from Hill Petroleum to be delivered to City sites for a cost not to exceed \$553,232, and ratify the 2013 purchase for 93,000 gallons of #2 ultra low sulfur diesel from Hill Petroleum to be delivered to City sites for a cost not to exceed \$293,777; determine that the public interest would be best served by approving Fleet Maintenance cumulative purchases in 2013 with Chief Petroleum, Gray Oil and Hill Petroleum for total fuel purchases not to exceed \$1,117,250 total among the three vendors; authorize the City Manager to sign a third amendment to the landscape maintenance services contract with CoCal Landscape Services, Inc. to increase, on a one-time basis, the current maintenance contract for median plant replacement at a cost not to exceed \$177,000; authorize the Mayor to sign the Memorandum of Understanding with the Regional Transportation District defining commitments and understandings between the District and Northwest Corridor Stakeholders regarding preparation and implementation of the Northwest Area Mobility Study; and final passage on second reading of Councillor's Bill No. 50 authorizing the City Manager to sign a lease agreement between the City of Westminster, Hyland Hills Park and Recreation District (through its Recreational Facilities enterprise) and Citylife Church d/b/a Redemption City Church for the lease of approximately 1,375 square feet of space in the Ice Centre at the Promenade.

It was moved by Councillor Lindsey, seconded by Councillor Kaiser, to approve the consent agenda with exception of agenda item 8E. The motion carried with all Council members voting favorably.

MOU WITH RTD AND STAKEHOLDERS REGARDING NORTHWEST AREA MOBILITY STUDY

It was moved by Councillor Major, seconded by Mayor Pro Tem Winter, to authorize the Mayor to sign the Memorandum of Understanding with the Regional Transportation District defining commitments and understandings between the District and Northwest Corridor Stakeholders regarding preparation and implementation of the Northwest Area Mobility Study. The motion passed by a 6:1 margin with Councillor Atchison voting no with reasons stated.

PUBLIC HEARING ON MARION-WILKINS-WARD BARN/WINDMILL LANDMARK DESIGNATION

At 7:50 p.m., Mayor McNally opened a public hearing to consider the application for local historic landmark designation of the Marion-Wilkins-Ward Barn and Windmill site. Patrick Caldwell, staff liaison to the Historic Landmark Board, summarized background information and entered the agenda memorandum, its attachments, and a copy of the published notice of public hearing into the record. The structures were located on the Ranch Open Space Property at the southwest corner of Pecos Street and 120th Avenue. The barn and windmill exemplified: 1) a style and type of farm accessory structure that were popular and functional at the time of original construction; 2) the economic and social heritage of the community; 3) notable persons in the history of Westminster; and 4) the agricultural history of the north Westminster area where agricultural success was reliant on canals and ditches. Mr. Caldwell responded to questions from Council that provided more information about the historic significance of the structures. The Historic Preservation Board had reviewed the application and recommended approval.

Mayor McNally opened the hearing for public comment. Michael Keaveny of the Historic Landmark Board voiced the Board's support of the nomination. No others wished to speak and the Mayor closed the hearing at 8:03 p.m.

RESOLUTION NO. 1 DESIGNATING MARION-WILKINS-WARD BARN/WINDMILL AS LANDMARKS

It was moved by Councillor Briggs, seconded by Councillor Major, to adopt Resolution No. 1 designating the Marion-Wilkins-Ward Bard and Windmill property as a local historic landmark pursuant to Section 11-13-17 of the Westminster Municipal Code. The motion carried unanimously on roll call vote.

PUBLIC HEARING ON THE REGISTRY DEVELOPMENT AND NORTHRIDGE AT PARK CENTRE

At 8:04 p.m. the Mayor opened a public hearing to consider the Registry (LongsView) development, Comprehensive Land Use Plan (CLUP) amendment, Third Amended Preliminary Development Plan (PDP), Planned Unit Development and Official Development Plan (ODP), the Northridge at Park Center Third Replat Fourth Amended Preliminary Development Plan (PDP) and Third Replat Third Amended Official Development Plan (ODP). Mac Cummins, Planning Manager, entered the agenda memorandum and attachments, and email from Gary Blanc dated January 14, and the published notice of public hearing into the record. The proposed development was of 25.37 acres located on the east side of Zuni Street and Federal Parkway, south of 122nd Avenue and generally north of the Cornerstone Christian Academy property. A for-rent, multi-family development containing 312 dwelling units was proposed. Parking for the complex would be provided largely in 272 spaces underneath the units. Additionally, 44 standard garage, 42 carport and 208 surface-level parking spaces would be provided for residents and guests. Buildings would range in height from three to four stories on the sloped site, resulting in many of the units having mountain views. The project was proposed to be developed in one phase. The entire public land dedication area of 8.4 acres located at the southeast corner of 122nd Avenue and Federal Parkway would be in the form of a sledding area and would be dedicated to the City.

Mike Komppa of Corum Real Estate Group and Todd Johnson, John Payne and Bob Eck of the development team addressed City Council to embellish on the information furnished by Mr. Cummins. Photos of the site plan, the planned building design, and the landscaping were provided.

In conclusion, Mr. Cummins advised that the Planning Commission had reviewed this proposal and voted to recommend approval.

Once all questions from Council were answered, the Mayor closed the public hearing at 8:34 p.m.

COUNCILLOR'S BILL NO. 1 – CLUP AMENDMENT FOR PORTIONS OF REGISTRY/NORTHRIDGE

It was moved by Mayor Pro Tem Winter, seconded by Councillor Atchison, to pass on first reading Councillor's Bill No. 1 amending the Comprehensive Land Use Plan by changing the designation on a portion of the Registry site and a portion of the Northridge at Park Centre Third Replat site from Business Park to R-18 and City-Owned Open Space based on finding that the proposed amendment would be in the public good; that there was justification for the proposed change and the Plan was in need of revision as proposed; that the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan; that the proposed amendment was compatible with existing and planned surrounding land uses; and that the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. The motion passed unanimously on roll call vote.

NORTHRIDGE AT PARK CENTRE THIRD REPLAT FOURTH AMENDED PDP

It was moved by Mayor Pro Tem Winter, seconded by Councillor Atchison, to approve the Northridge at Park Centre Third Replat Fourth Amended Preliminary Development Plan based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code had been met. The motion passed unanimously.

NORTHRIDGE AT PARK CENTRE THIRD REPLAT THIRD AMENDED ODP

Upon a motion by Mayor Pro Tem Winter, seconded by Councillor Atchison, the Council voted unanimously to approve the Northridge at Park Centre Third Replat Third Amended Official Development Plan based on a finding that the criteria set forth in Section 11-5-15 of the Westminster Municipal Code had been met.

THE REGISTRY THIRD AMENDED PDP

Mayor Pro Tem Winter moved, seconded by Councillor Atchison, to approve The Registry Third Amended Preliminary Development Plan based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code had been met. The motion carried with all Council members voting favorably.

THE REGISTRY ODP

Mayor Pro Tem Winter moved to approve The Registry Official Development Plan subject to the following conditions: 1) Prior to recording the final plat an administrative amendment to the Official Development Plan had to be approved by the City and must address (a) the design of the public art requirement, not shown on this Official Development Plan, and related landscape would be shown in an Official Development Plan amendment, (b) if the public art was not shown on an approved Official Development Plan amendment prior to recording the final plat then the public art requirement would be fulfilled by a cash-in-lieu payment of \$2,000 per acre, said amount to be \$50,740 for 25.37 acres, and payment had to be provided to the City prior to the issuance of a building permit and included in the Landscape Private Improvements Agreement, and should the property owner obtain approval of an amendment to this Official Development Plan that showed the installation of public art within one year from the date of this Official Development Plan approval by the City Council, but after issuance of a building permit, then the cash-in-lieu payment for public art had to be returned to the property owner per the Landscape Private Improvements Agreement; and 2) Prior to receipt of the Land Disturbance Permit offsite grading had to be confirmed (a) in a number of locations at the south and east edges of the site, offsite grading was required for this grading plan to function properly, notarized letters had to be provided from the affected property owners and the letters had to state that the affected property owners agreed to the proposed grading on their property and that they would grant permanent slope and temporary construction easements for the work shown on their property, and the letters had to be provided prior to the January 14, 2013, hearing of the City Council, and the easements had to then be recorded prior to the issuance of the Land Disturbance Permit, (b) if the notarized letters for permanent slope easements and temporary construction easements were not obtained by January 14, 2013, then these Official Development Plan plans had to be revised with an Official Development Plan amendment to show revised grading at those locations and the Official Development Plan amendment had to be completed prior to the issuance of the Land Disturbance Permit; and that the conditioned approval was based on a finding that the criteria set forth in Section 11-5-15 of the Westminster Municipal Code had been met. Councillor Atchison seconded the motion, which passed unanimously.

RESOLUTION NO. 2 ALLOCATING 2013 HOME FUNDING

Upon a motion by Councillor Major, seconded by Mayor Pro Tem Winter, the Council voted unanimously on roll call vote to adopt Resolution No. 2 allocating the balance of 2013 HOME funds being administered on behalf of the City by Adams County.

COUNCILLOR'S BILL NO. 2 AUTHORIZING RANCH BARN AND PASTURE LEASE AGREEMENT

It was moved by Councillor Briggs, seconded by Councillor Kaiser, to pass on first reading Councillor's Bill No. 2 authorizing the City Manager to sign a lease agreement between the City of Westminster and Two Horse Run, LLC for the lease of the Ranch Barn and Pasture located at 1600 West 120th Avenue in the City of Westminster. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 3 TO REFUND COPS, SERIES 2005, (144TH AVE INTERCHANGE PROJECTS)

Councillor Major moved, seconded by Councillor Kaiser, to pass, as an emergency ordinance, Councillor's Bill No. 3 to refund the 2005 Certificates of Participation (COPS) originally issued for the construction of the 144th Avenue Interchange Projects, in an amount not to exceed \$12,500,000. The motion passed unanimously at roll call.

COUNCILLOR’S BILL NO. 4 AUTHORIZING HOUSEKEEPING AMENDMENTS TO TITLE XI

It was moved by Councillor Briggs, seconded by Councillor Major, to pass on first reading Councillor’s Bill No. 4 making housekeeping amendments to specific Chapter Sections in Title XI of the Westminster Municipal Code. At roll call, the motion passed unanimously.

COUNCILLOR’S BILL NO. 5 AMENDING SECTION 1-10-1, WMC., TO CONFORM TO SECTION 1-11-4

Councillor Lindsey moved, seconded by Councillor Atchison, to pass on first reading Councillor’s Bill No. 5 amending Westminster Municipal Code Section 1-10-1(C) to ensure conformance with Section 1-11-4 of the Code and with City Charter requirements for seating a new Councillor if a current Councillor whose term had not expired was elected Mayor. The motion passed unanimously at roll call.

COUNCILLOR’S BILL NO. 6 TO AMEND WMC PERCENTAGE OF VOTES NEEDED TO ELECT MAYOR

After voicing opposition to the proposed legislation, Mayor Pro Tem Winter moved to table Councillor’s Bill No. 6 in order to send the question of its adoption to the electorate in November 2013. At roll call, the motion failed by a 3:4 margin with Councillors Atchison, Briggs, Kaiser, and Lindsey voting no.

It was moved by Councillor Lindsey, seconded by Councillor Atchison, to pass on first reading Councillor’s Bill No. 6 amending Westminster Municipal Code Section 1-10-1(A) by removing the requirement that a candidate secure an excess of 40% of the voter margin to be elected to the Office of the Mayor. Mayor McNally and Councillor Major voiced opposition to the proposed ordinance; Councillor Lindsey voiced support for the measure. At roll call, the motion passed by a 4:3 margin with Mayor McNally, Mayor Pro Tem Winter, and Councillor Major casting no votes.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser and seconded by Mayor Pro Tem Winter to adjourn. The motion passed and the Mayor adjourned the meeting at 8:55 p.m.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, General Service 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 2013, employees with 20, 25, 35 and 40 years of service will be celebrated tonight.
 - Presentation of 20-year certificates and pins - Councillor Bob Briggs
 - Presentation of 25-year certificate, pin and check - Mayor Nancy McNally
 - Presentation of 35-year certificate and pin - Councillor Mark Kaiser
 - Presentation of 40-year certificate and pin - Councillor Mary Lindsey

Expenditure Required: \$2,500

Source of Funds: General Fund – Parks, Recreation & Libraries

Policy Issue

None identified

Alternative

None identified

Background Information

The following 20-year employees will be presented with a certificate and service pin:

Patti Bippus	Facility Assistant	Parks, Recreation & Libraries
Dan Bradford	General Building Inspector	Community Development
Steve Grabarek	Mechanic II	General Services Department
Mark Zukas	Senior Systems Analyst III	Information Technology

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

Kate Amack	Recreation Supervisor/MAC Center	Parks, Recreation & Libraries
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The following 35-year employee will be presented with a certificate and service pin:

Vicky Sisto	Library Services Coordinator	Parks, Recreation & Libraries
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The following 40-year employee will be presented with a certificate and service pin:

Charles Johnson	Police Commander	Police Department
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On January 30, 2013, the City Manager will host an employee awards luncheon. During this time, 3 employees will receive their 15-year service pin, 4 employees will receive their 10-year service pin, and 4 employees will receive their 5-year service pin. Recognition will also be given to those celebrating their 20th, 25th, 35th and 40th anniversaries. This is the first luncheon in 2013 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 285 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.

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

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Financial Report for December 2012
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

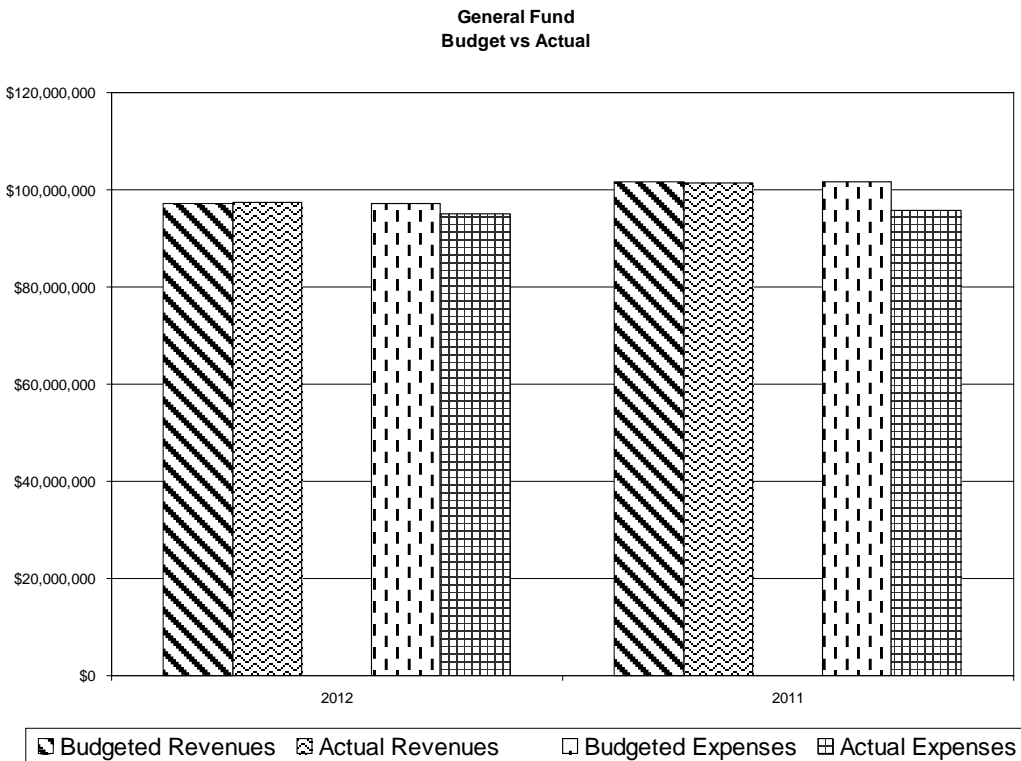
Accept the Financial Report for December as presented.

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 adopted 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 2012 but not received until 2013, in particular intergovernmental revenue, and all expenses incurred in 2012 but paid in 2013.

The General Fund revenues and carryover exceed expenditures by \$2,415,838. The following graph represents Budget vs. Actual for 2011-2012.

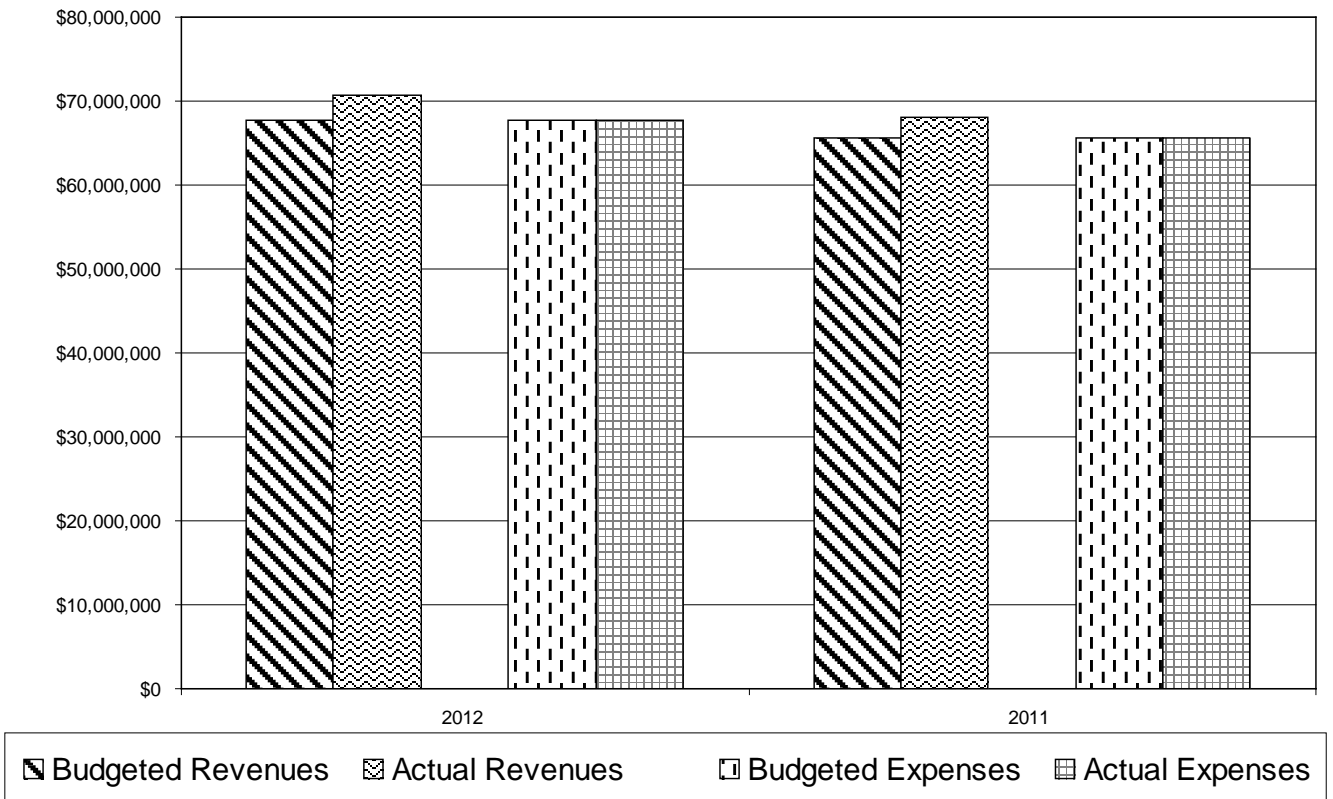


When compared to 2011, 2012 reflects roughly \$4.8 million less in carryover revenue and \$6.7 million less in inter-fund transfers expenditures.

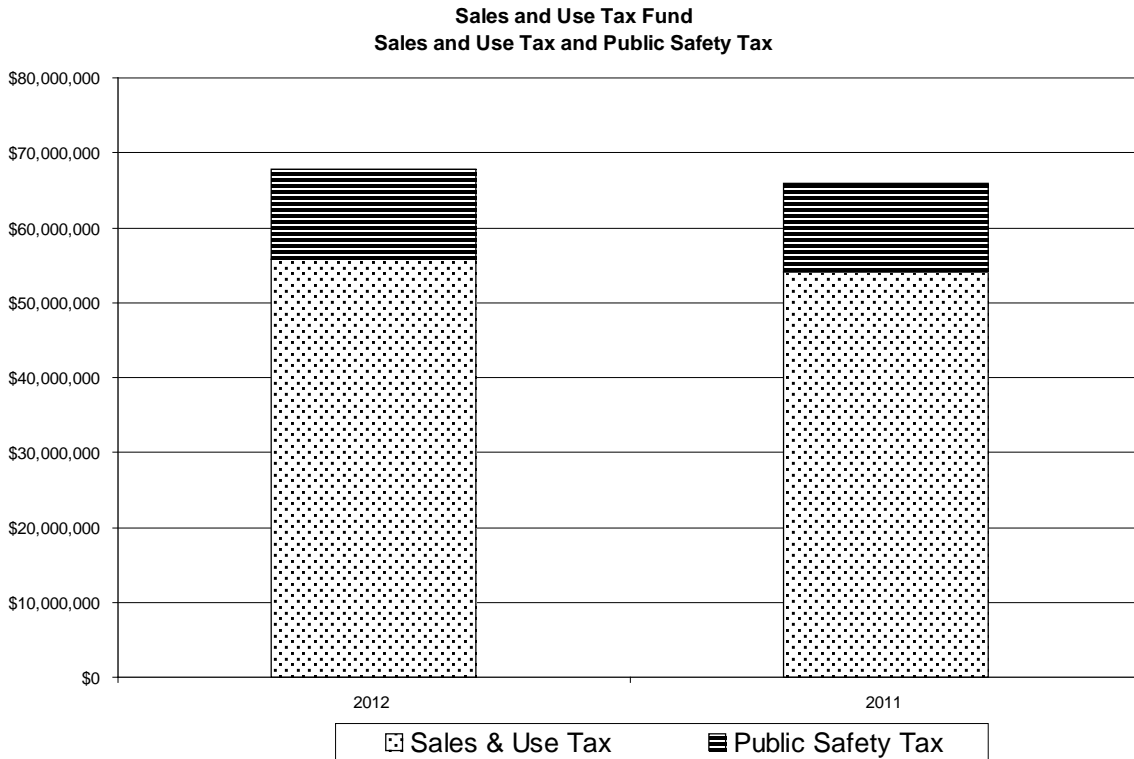
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$3,052,150. On a year-to-date cash basis, total sales and use tax is up 1.9% from 2011. Key components are listed below:

- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 2.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 62.7% of all collections, are down 0.8% for the month.
- Urban renewal areas make up 41.3% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 83.0% of this money is being retained for General Fund use.

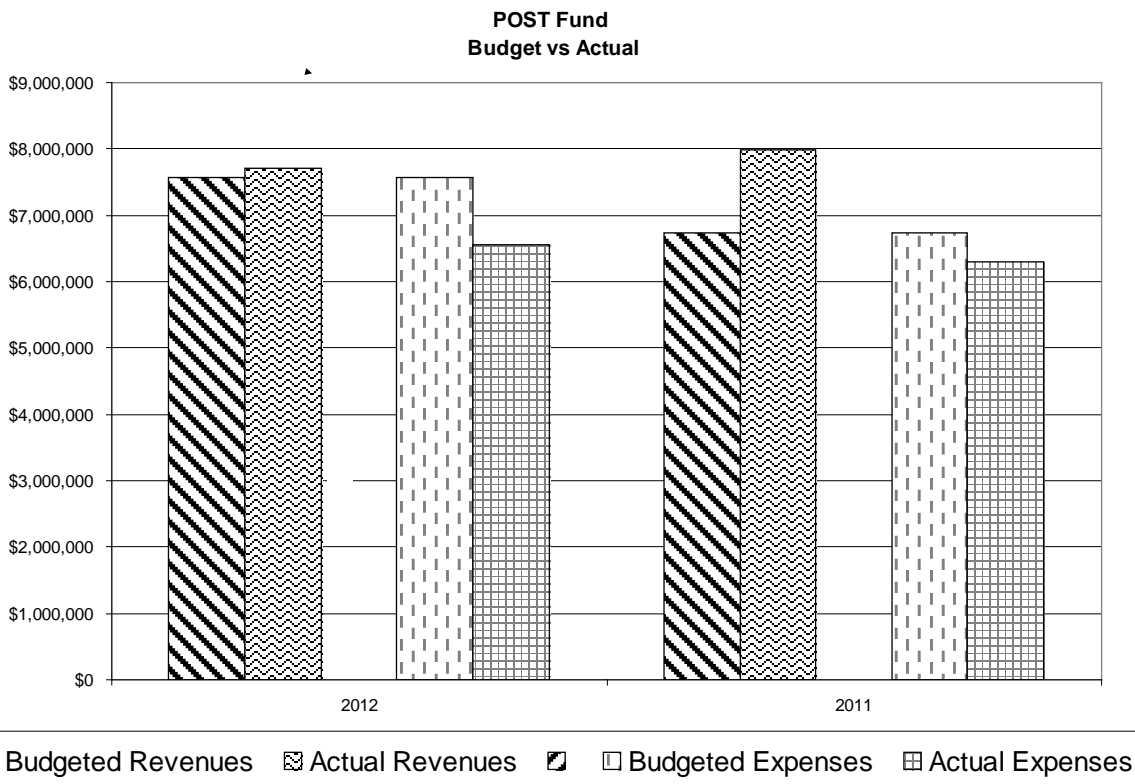
**Sales & Use Tax Fund
Budget vs Actual**



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



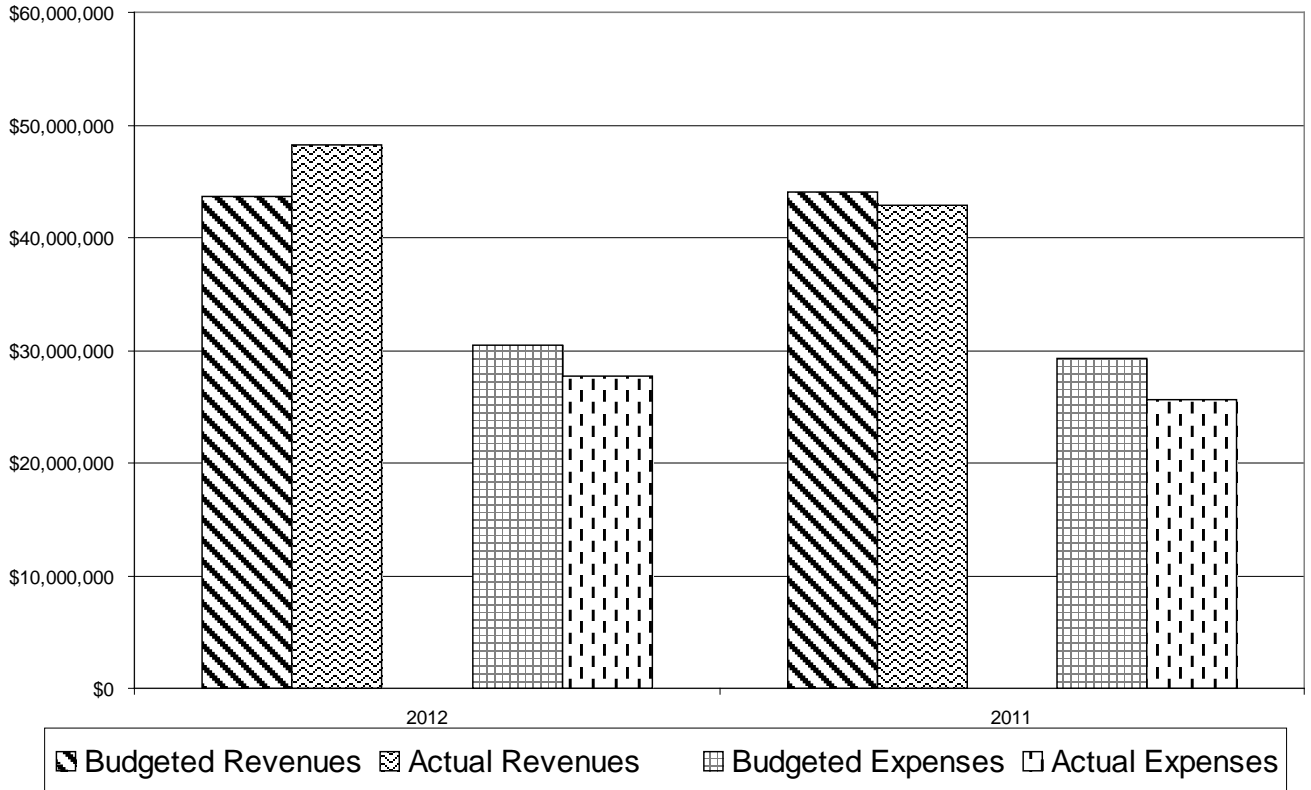
The Parks Open Space and Trails Fund revenues and carryover exceed expenditures by \$1,158,964. \$2,341 is budgeted for capital projects.



2012 revenues include \$1.4 million of carryover funds. 2011 revenues reflect the receipt of a significant grant that was appropriated in the prior year.

The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$21,522,897. Operating revenues exceed operating expenses by \$20,563,974. \$12,435,927 is budgeted for capital projects and reserves.

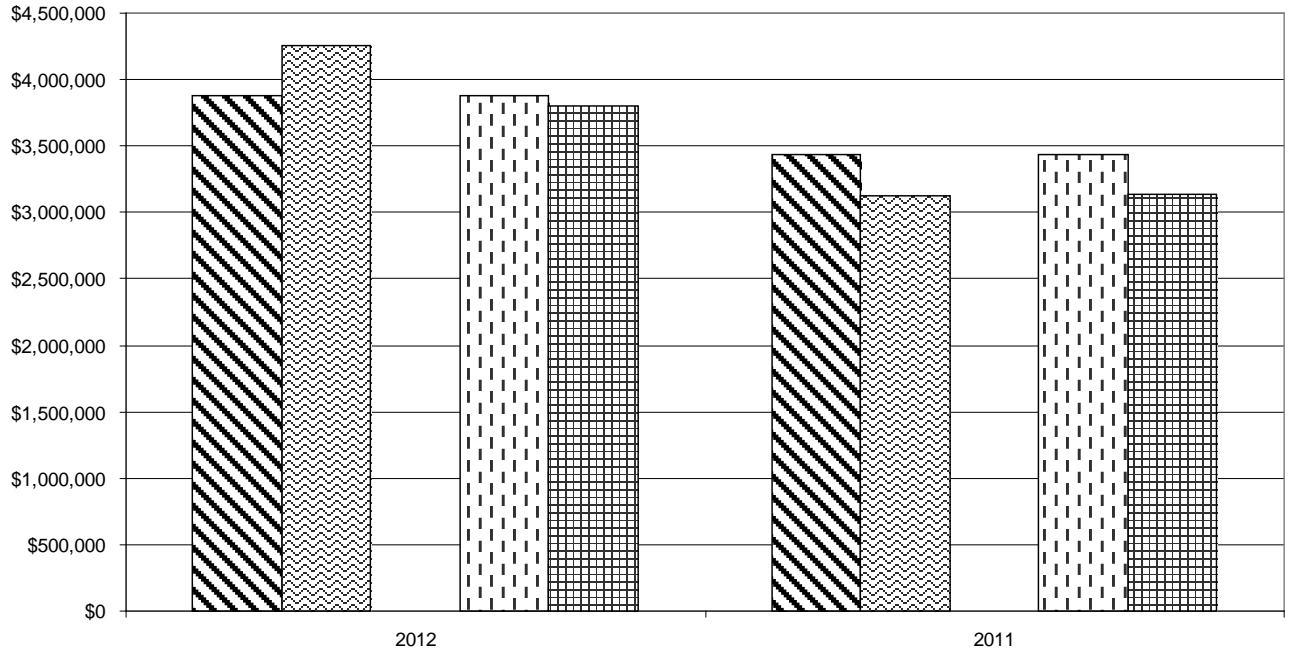
**Combined Water and Wastewater Funds
Operating Budget vs Actual**



The 2012 budget to actual revenue variance is primarily due to the effect of climatic variations on water consumption and changes to billing rates, tap fees, and intergovernmental revenue, which is the interest rate subsidy from the Federal government for the Build America Bonds issued in 2010.

The combined Golf Course Fund revenues and carryover exceed expenditures by \$464,453.

**Golf Course Enterprise
Operating Budget vs Actual**



■ Budgeted Revenues ■ Actual Revenues ■ Budgeted Expenses ■ Actual Expenses

On a combined basis, golf course revenues are up by \$385,351 over prorated budget. This is attributable to increased play and primarily corporate memberships.

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

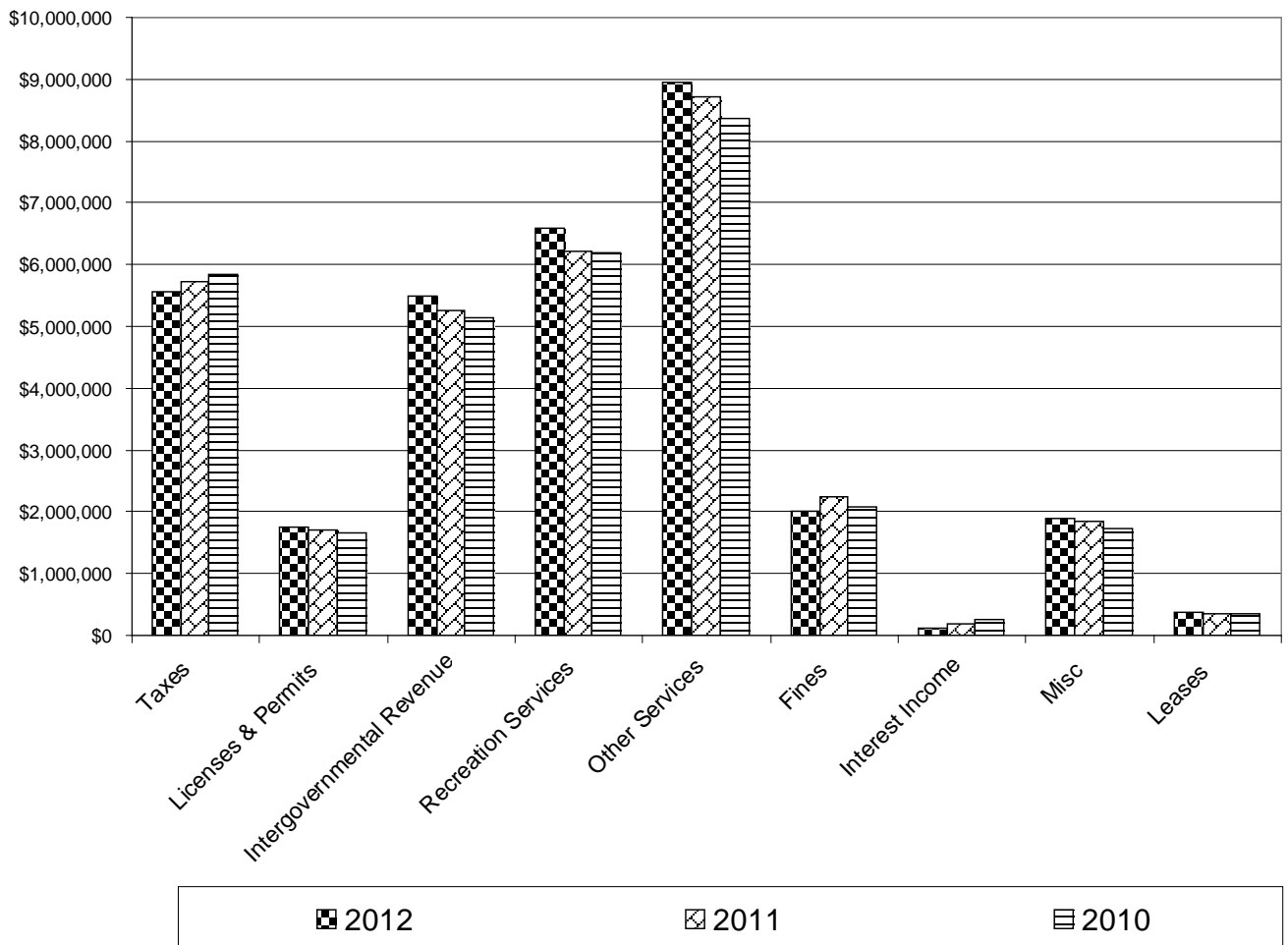
This section includes a discussion of highlights of each fund presented.

General Fund

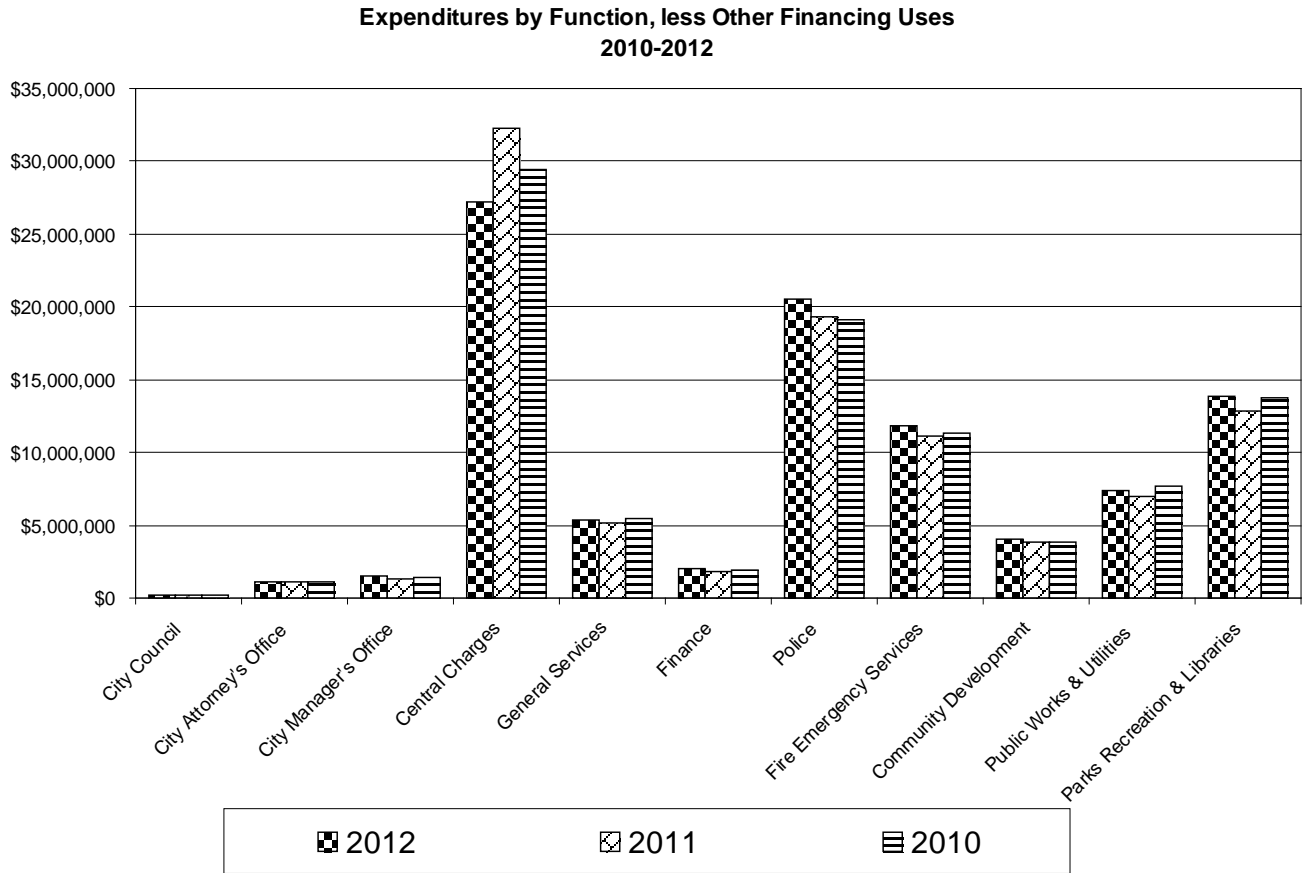
This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

The following chart represents the trend in actual revenues from 2010-2012 year-to-date.

**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2010-2012**



The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2010-2012.



The large increase in Central Charges in 2011 was primarily due to a transfer to WEDA of \$4 million for WURP as well as a larger transfer budgeted for the General Capital Improvement Fund in 2011 when compared to 2012.

2010 Central Charges expenditures reflect \$4.9 million more in transfers than in 2012, primarily to WEDA and the General Capital Improvement Fund, and an adjustment to eliminate the skewing effect of the 2001 COP debt refinancing.

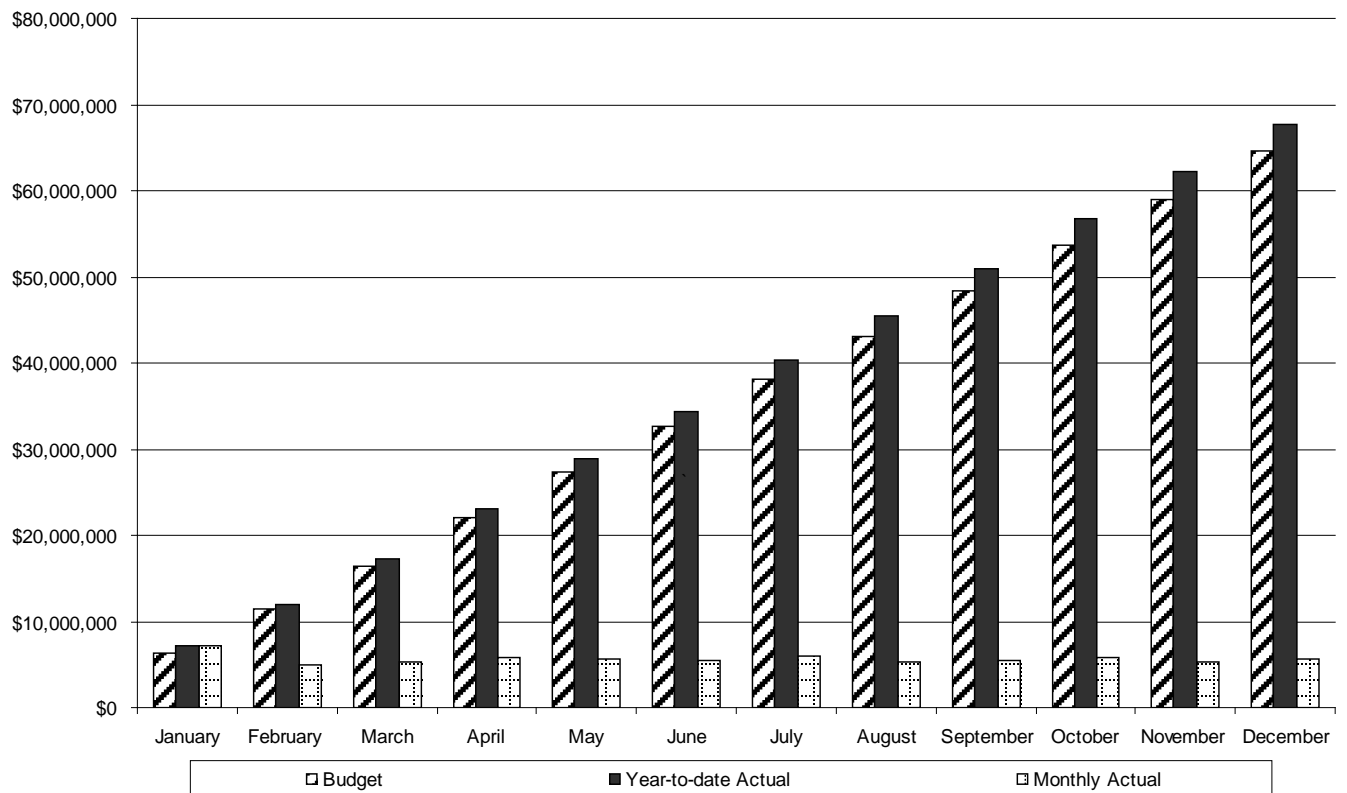
Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)

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 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.

**Sales & Use Tax - excluding Interest,
Transfers and Carryover
2012**

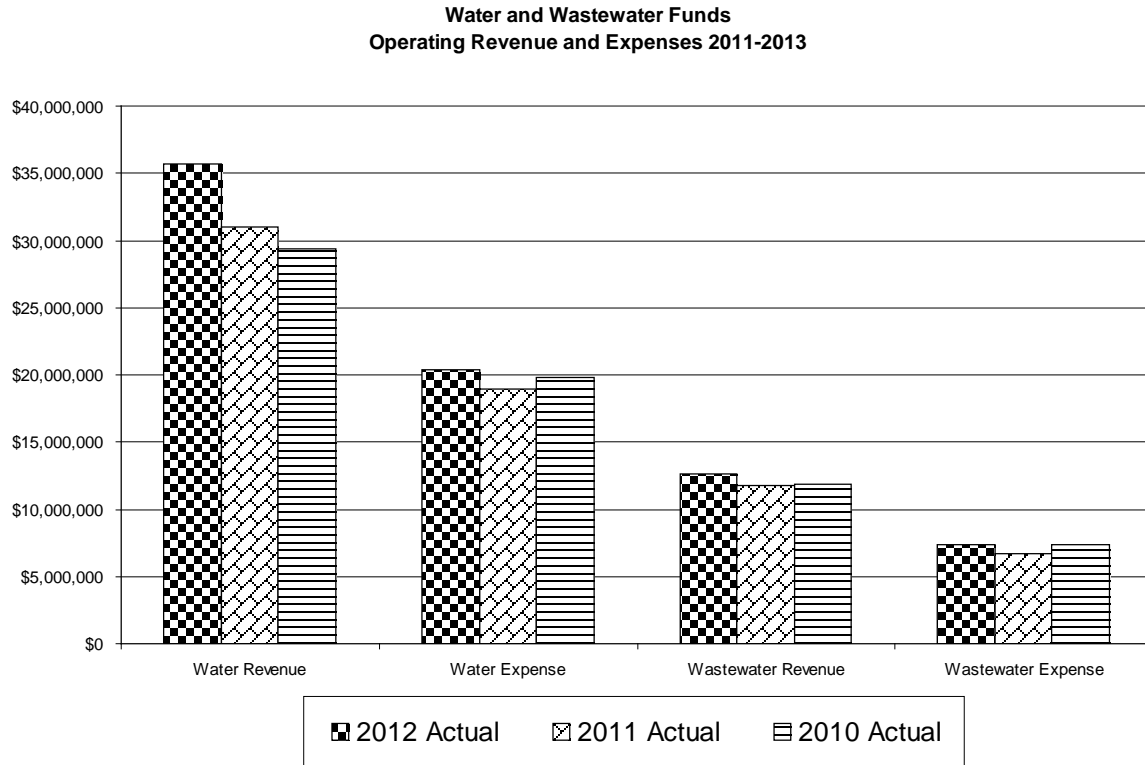
Budget = \$64,660,872



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

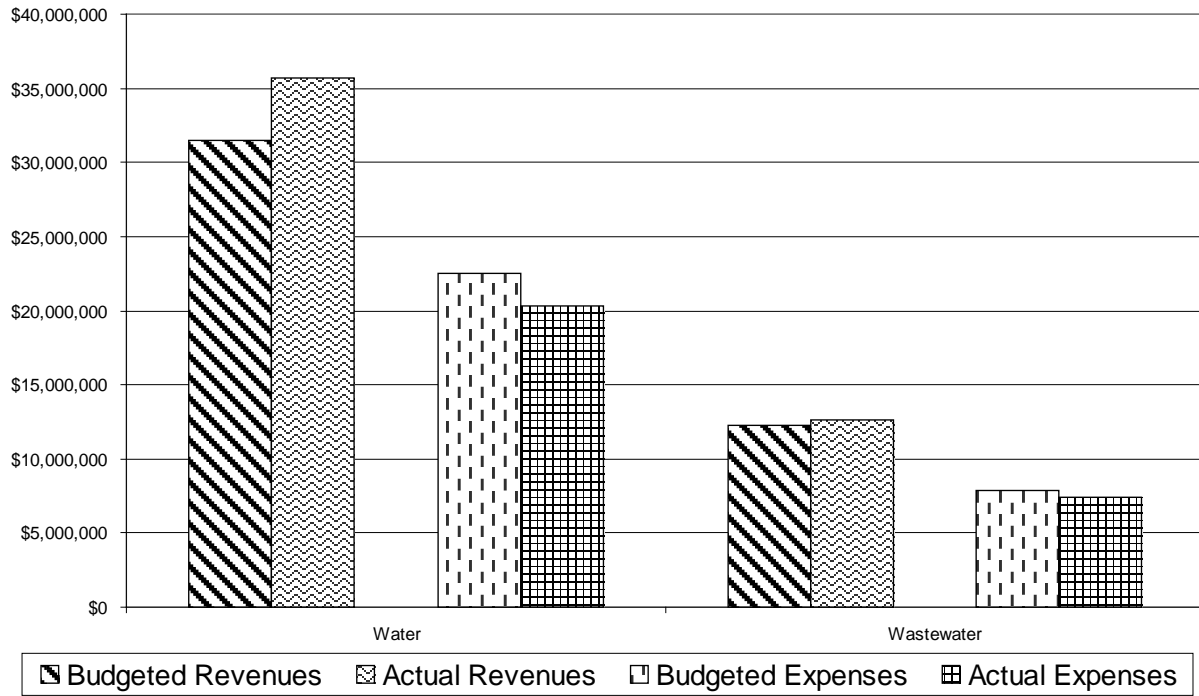
This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects and reserves.

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



The water revenue variance is primarily due to the effect of climatic variations on water consumption, 2012 changes to billing rates, and an increase in tap fees.

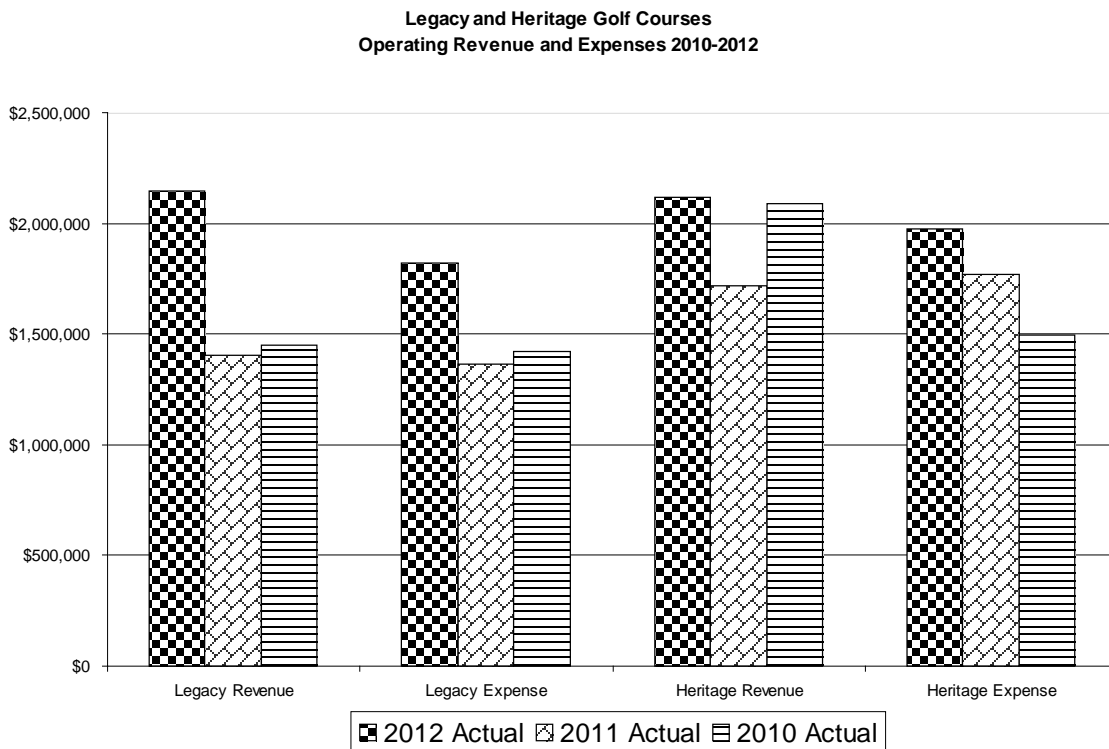
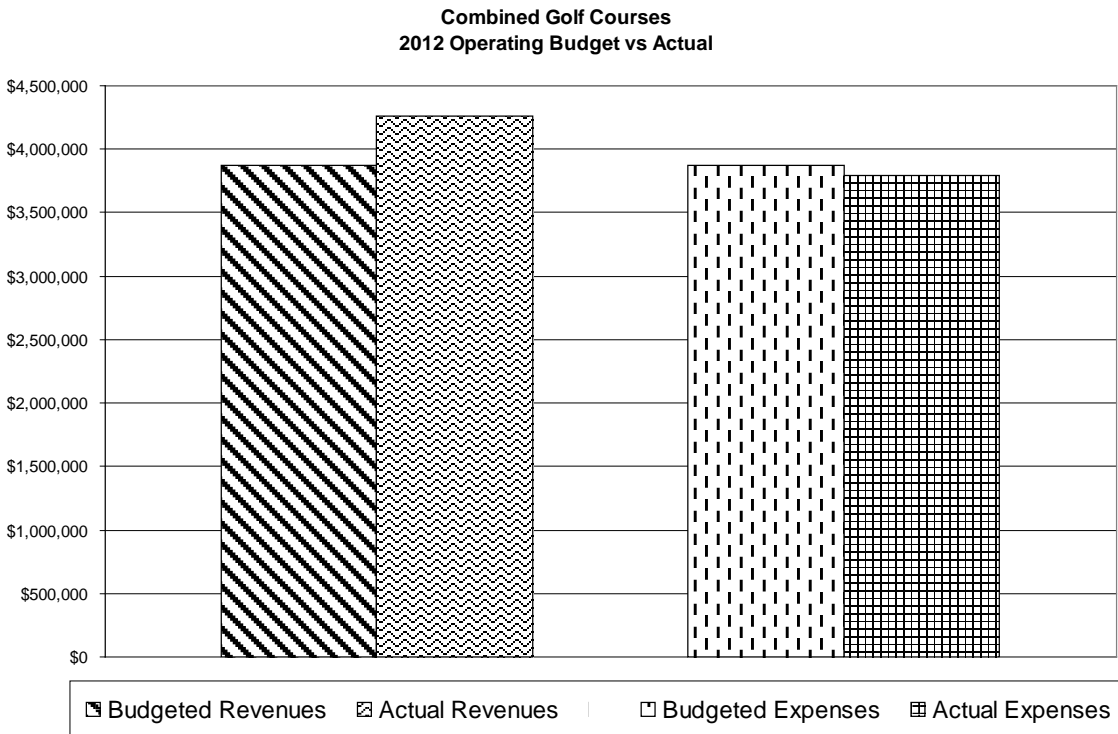
**Water and Wastewater Funds
2012 Operating Budget vs Actual**



The water revenue variance is primarily due to the effect of climatic variations on water consumption, 2012 changes to billing rates, and an increase in tap fees.

Golf Course Enterprise (Legacy and Heritage Golf Courses)

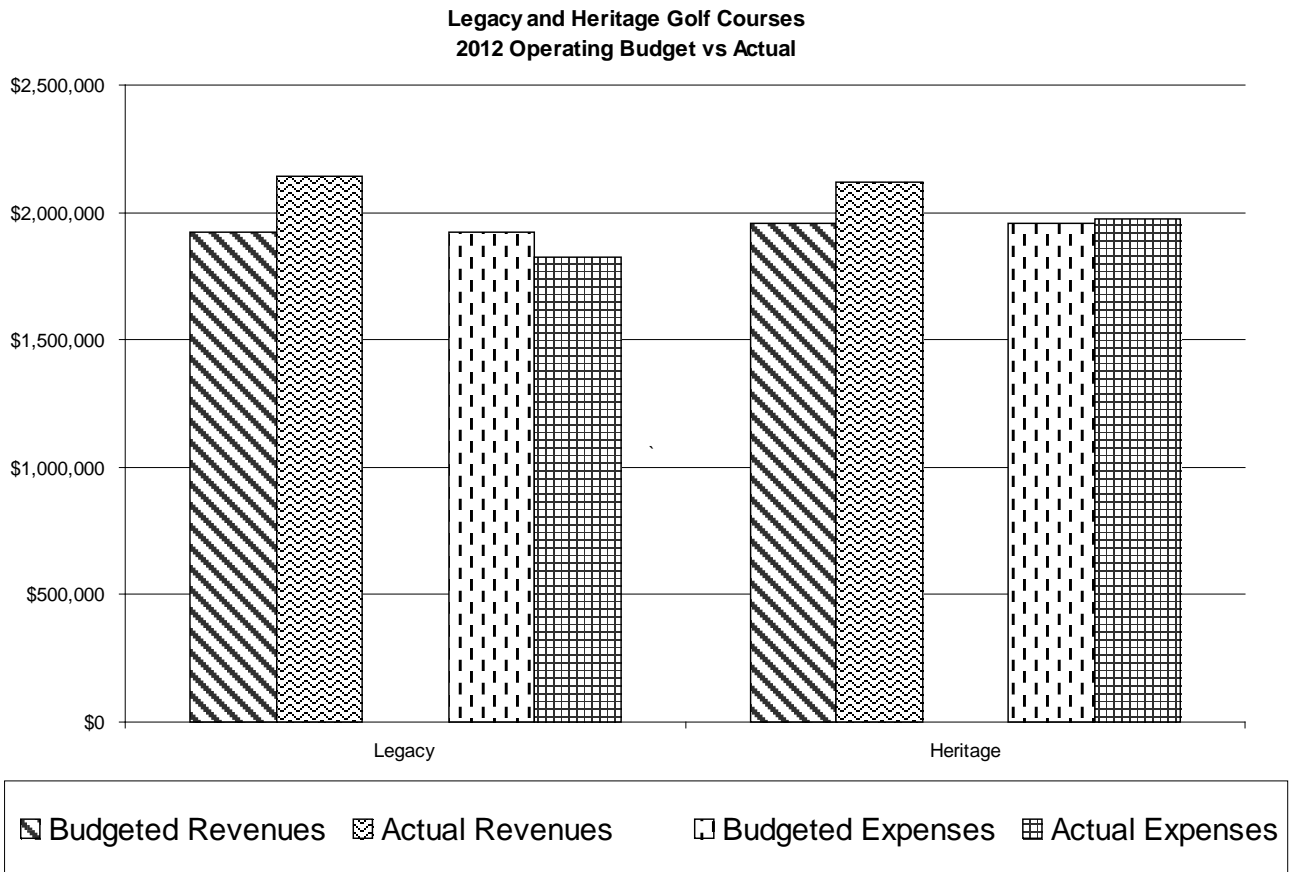
This enterprise reflects the operations of the City's two municipal golf courses.



For Legacy, a \$380,000 carryover appropriation, and for both courses driving range and green fee service charges and transfers account for increased revenues. Transfers from other funds decreased in 2011 as a result of savings from refunding of the bonds.

A transfer of \$380,000 to the General Capital Improvement Fund for the Heritage Golf Course back nine land acquisition is reflected in 2012 Legacy Ridge expenses.

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



Charges for services, including cart and green fees, account for the large budget to actual revenue variances at both courses. The budget to actual expenditure variance is due primarily to personnel services.

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, 2012**

Description General Fund	Budget	Notes	Actual	(Under) Over Budget	% Budget
Revenues					
Taxes	5,575,590		5,567,452	(8,138)	99.9%
Licenses & Permits	1,415,000		1,753,695	338,695	123.9%
Intergovernmental Revenue	5,134,711		5,497,803	363,092	107.1%
Charges for Services					
Recreation Services	6,418,338		6,590,108	171,770	102.7%
Other Services	9,532,068		8,948,974	(583,094)	93.9%
Fines	2,110,000		2,010,447	(99,553)	95.3%
Interest Income	180,000		110,501	(69,499)	61.4%
Miscellaneous	1,765,344		1,884,792	119,448	106.8%
Leases	386,208		378,600	(7,608)	98.0%
Interfund Transfers	61,684,647		61,684,647	0	100.0%
Other Financing Sources	1,124,144		1,124,144	0	100.0%
Sub-total Revenues	<u>95,326,050</u>		<u>95,551,163</u>	225,113	100.2%
Carryover	1,926,631		1,926,631	0	100.0%
Total Revenues	<u>97,252,681</u>		<u>97,477,794</u>	225,113	100.2%
Expenditures					
City Council	240,119		194,167	(45,952)	80.9%
City Attorney's Office	1,198,314		1,161,638	(36,676)	96.9%
City Manager's Office	1,533,760		1,502,023	(31,737)	97.9%
Central Charges	28,033,910		27,243,932	(789,978)	97.2%
General Services	5,828,493		5,317,538	(510,955)	91.2%
Finance	1,994,706		1,975,818	(18,888)	99.1%
Police	20,452,150		20,543,393	91,243	100.4%
Fire Emergency Services	11,816,179		11,812,657	(3,522)	100.0%
Community Development	4,125,271		4,040,901	(84,370)	98.0%
Public Works & Utilities	7,767,854		7,402,799	(365,055)	95.3%
Parks, Recreation & Libraries	14,261,925		13,867,090	(394,835)	97.2%
Total Expenditures	<u>97,252,681</u>		<u>95,061,956</u>	(2,190,725)	97.7%
Revenues Over(Under)					
Expenditures	<u>0</u>		<u>2,415,838</u>	<u>2,415,838</u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund					
Revenues					
Sales Tax					
Sales Tax Returns	44,669,579		46,290,997	1,621,418	103.6%
Sales Tx Audit Revenues	719,000		525,044	(193,956)	73.0%
S-T Rev. STX	<u>45,388,579</u>		<u>46,816,041</u>	<u>1,427,462</u>	103.1%
Use Tax					
Use Tax Returns	7,193,750		8,204,565	1,010,815	114.1%
Use Tax Audit Revenues	785,000		689,136	(95,864)	87.8%
S-T Rev. UTX	<u>7,978,750</u>		<u>8,893,701</u>	<u>914,951</u>	111.5%
Total STX and UTX	<u>53,367,329</u>		<u>55,709,742</u>	<u>2,342,413</u>	104.4%
Public Safety Tax					
PST Tax Returns	10,985,043		11,785,065	800,022	107.3%
PST Audit Revenues	308,500		242,745	(65,755)	78.7%
Total Rev. PST	<u>11,293,543</u>		<u>12,027,810</u>	<u>734,267</u>	106.5%
Interest Income	95,000		70,470	(24,530)	74.2%
Interfund Transfers	257,000		257,000	0	100.0%
Carryover	2,693,412		2,693,412	0	100.0%
Total Revenues and Carryover	<u>67,706,284</u>		<u>70,758,434</u>	<u>3,052,150</u>	104.5%
Expenditures					
Central Charges	<u>67,706,284</u>		<u>67,706,284</u>	0	100.0%
Revenues Over(Under) Expenditures	<u>0</u>		<u>3,052,150</u>	<u>3,052,150</u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
POST Fund					
Revenues					
Sales & Use Tax	4,814,510		5,010,301	195,791	104.1%
Intergovernmental Revenue	1,138,493		1,130,793	(7,700)	99.3%
Interest Income	3,816		21,309	17,493	558.4%
Miscellaneous	199,260		126,480	(72,780)	63.5%
Interfund Transfers	20,925		20,925	0	100.0%
Sub-total Revenues	<u>6,177,004</u>		<u>6,309,808</u>	132,804	102.1%
Carryover	1,400,000		1,400,000	0	100.0%
Total Revenues	<u>7,577,004</u>		<u>7,709,808</u>	132,804	101.8%
Expenditures					
Central Charges	7,296,823		6,338,864	(957,959)	86.9%
Park Services	277,840		211,980	(65,860)	76.3%
	<u>7,574,663</u>		<u>6,550,844</u>	(1,023,819)	86.5%
Revenues Over(Under)					
Expenditures	<u>2,341</u>		<u>1,158,964</u>	1,156,623	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined					
Operating Revenues					
License & Permits	75,000		99,480	24,480	132.6%
Intergovernmental Revenue	0		517,259	517,259	
Rates and Charges	43,163,597		47,144,881	3,981,284	109.2%
Miscellaneous	474,896		538,946	64,050	113.5%
Total Operating Revenues	<u>43,713,493</u>		<u>48,300,566</u>	<u>4,587,073</u>	110.5%
Operating Expenses					
Central Charges	5,893,555		5,916,586	23,031	100.4%
Finance	669,344		589,065	(80,279)	88.0%
Public Works & Utilities	20,929,205		18,515,982	(2,413,223)	88.5%
Parks, Recreation & Libraries	132,272		104,489	(27,783)	79.0%
Information Technology	2,784,438		2,610,470	(173,968)	93.8%
Total Operating Expenses	<u>30,408,814</u>		<u>27,736,592</u>	<u>(2,672,222)</u>	91.2%
Operating Income (Loss)	<u>13,304,679</u>		<u>20,563,974</u>	<u>7,259,295</u>	
Other Revenue and Expenses					
Tap Fees	3,700,000		5,596,513	1,896,513	151.3%
Interest Income	553,600		331,414	(222,186)	59.9%
Interfund Transfers	3,967,501		3,967,501	0	100.0%
Sale of Assets	0		124,458	124,458	
Carryover	4,591,155		4,591,155	0	100.0%
Debt Service	(7,219,424)		(7,190,534)	28,890	99.6%
Reserve Transfer	(6,461,584)		(6,461,584)	0	100.0%
Total Other Revenue (Expenses)	<u>(868,752)</u>		<u>958,923</u>	<u>1,827,675</u>	
Increase (Decrease) in Net Assets	<u>12,435,927</u>		<u>21,522,897</u>	<u>9,086,970</u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Water Fund					
Operating Revenues					
License & Permits	75,000		99,480	24,480	132.6%
Intergovernmental Revenue	0		517,259	517,259	
Rates and Charges	30,902,097		34,541,944	3,639,847	111.8%
Miscellaneous	464,896		504,410	39,514	108.5%
Total Operating Revenues	<u>31,441,993</u>		<u>35,663,093</u>	<u>4,221,100</u>	113.4%
Operating Expenses					
Central Charges	4,170,645		4,177,342	6,697	100.2%
Finance	669,344		589,065	(80,279)	88.0%
Public Works & Utilities	14,750,754		12,875,170	(1,875,584)	87.3%
PR&L Standley Lake	132,272		104,489	(27,783)	79.0%
Information Technology	2,784,438		2,610,470	(173,968)	93.8%
Total Operating Expenses	<u>22,507,453</u>		<u>20,356,536</u>	<u>(2,150,917)</u>	90.4%
Operating Income (Loss)	<u>8,934,540</u>		<u>15,306,557</u>	<u>6,372,017</u>	
Other Revenue and Expenses					
Tap Fees	3,000,000		4,170,666	1,170,666	139.0%
Interest Income	365,600		232,682	(132,918)	63.6%
Interfund Transfers	2,984,511		2,984,511	0	100.0%
Sale of Assets	0		124,458	124,458	
Carryover	3,746,765		3,746,765	0	100.0%
Debt Service	(5,715,075)		(5,686,185)	28,890	99.5%
Reserve Transfer	(5,692,414)		(5,692,414)	0	100.0%
Total Other Revenues (Expenses)	<u>(1,310,613)</u>		<u>(119,517)</u>	<u>1,191,096</u>	
Increase (Decrease) in Net Assets	<u>7,623,927</u>		<u>15,187,040</u>	<u>7,563,113</u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund					
Operating Revenues					
Rates and Charges	12,261,500		12,602,937	341,437	102.8%
Miscellaneous	10,000		34,536	24,536	345.4%
Total Operating Revenues	<u>12,271,500</u>		<u>12,637,473</u>	<u>365,973</u>	103.0%
Operating Expenses					
Central Charges	1,722,910		1,739,244	16,334	100.9%
Public Works & Utilities	6,178,451		5,640,812	(537,639)	91.3%
Total Operating Expenses	<u>7,901,361</u>		<u>7,380,056</u>	<u>(521,305)</u>	93.4%
Operating Income (Loss)	<u>4,370,139</u>		<u>5,257,417</u>	<u>887,278</u>	
Other Revenue and Expenses					
Tap Fees	700,000		1,425,847	725,847	203.7%
Interest Income	188,000		98,732	(89,268)	52.5%
Interfund Transfers	982,990		982,990	0	100.0%
Carryover	844,390		844,390	0	100.0%
Debt Service	(1,504,349)		(1,504,349)	0	100.0%
Reserve Transfer	(769,170)		(769,170)	0	100.0%
Total Other Revenues (Expenses)	<u>441,861</u>		<u>1,078,440</u>	<u>636,579</u>	
Increase (Decrease) in Net Assets	<u><u>4,812,000</u></u>		<u><u>6,335,857</u></u>	<u><u>1,523,857</u></u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund					
Revenues					
Charges for Services	2,050,000		1,998,201	(51,799)	97.5%
Interest Income	82,000		47,017	(34,983)	57.3%
Miscellaneous	0		470	470	
Carryover	418,574		418,574	0	100.0%
Total Revenues	<u>2,550,574</u>		<u>2,464,262</u>	<u>(86,312)</u>	96.6%
Expenses					
General Services	86,200		65,434	(20,766)	75.9%
Community Development	169,090		165,414	(3,676)	97.8%
PR&L Park Services	200,000		167,720	(32,280)	83.9%
Public Works & Utilities	359,710		271,874	(87,836)	75.6%
Total Expenses	<u>815,000</u>		<u>670,442</u>	<u>(144,558)</u>	82.3%
Increase (Decrease) in Net Assets	<u>1,735,574</u>		<u>1,793,820</u>	<u>58,246</u>	

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Golf Course Funds - Combined					
Revenues					
Carryover	380,000		380,000	0	100.0%
Charges for Services	2,745,022		3,124,636	379,614	113.8%
Interest Income	0		5,737	5,737	
Interfund Transfers	751,143		751,143	0	100.0%
Total Revenues	<u>3,876,165</u>		<u>4,261,516</u>	<u>385,351</u>	109.9%
Expenses					
Central Charges	588,427		564,836	(23,591)	96.0%
Recreation Facilities	3,287,738		3,232,227	(55,511)	98.3%
Total Expenses	<u>3,876,165</u>		<u>3,797,063</u>	<u>(79,102)</u>	98.0%
Operating Income (Loss)	<u>0</u>		<u>464,453</u>	<u>464,453</u>	
Other Revenues and Expenses					
Other Financing Sources	132,222	(1)	132,222	0	100.0%
Other Financing Use	(132,222)	(1)	(132,222)	0	100.0%
Total Other Revenues and (Expenses)	<u>0</u>		<u>0</u>	<u>0</u>	
Increase (Decrease) in Net Assets	<u>0</u>		<u>464,453</u>	<u>464,453</u>	

(1) Other Financing Sources and Uses reflect a refinancing of equipment leases.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund					
Revenues					
Carryover	380,000		380,000	0	100.0%
Charges for Services	1,456,167		1,673,180	217,013	114.9%
Interest Income	0		5,737	5,737	
Interfund Transfers	85,000		85,000	0	100.0%
Total Revenues	<u>1,921,167</u>		<u>2,143,917</u>	<u>222,750</u>	111.6%
Expenses					
Central Charges	489,383		472,132	(17,251)	96.5%
Recreation Facilities	1,431,784		1,350,563	(81,221)	94.3%
Total Expenses	<u>1,921,167</u>		<u>1,822,695</u>	<u>(98,472)</u>	94.9%
Operating Income (Loss)	<u>0</u>		<u>321,222</u>	<u>321,222</u>	
Other Revenue/Expense					
Other Financing Sources	132,222	(1)	132,222	0	100.0%
Other Financing Use	(132,222)	(1)	(132,222)	0	100.0%
Total Other Revenue/Expense	<u>0</u>		<u>0</u>	<u>0</u>	
Increase (Decrease) in Net Assets	<u>0</u>		<u>321,222</u>	<u>321,222</u>	

(1) Other Financing Sources and Uses reflect a refinancing of equipment leases.

**City of Westminster
Financial Report
For Twelve Months Ending December 31, 2012**

Description	Budget	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund					
Revenues					
Charges for Services	1,288,855		1,451,456	162,601	112.6%
Interfund Transfers	666,143		666,143	0	100.0%
Total Revenues	<u>1,954,998</u>		<u>2,117,599</u>	<u>162,601</u>	108.3%
Expenses					
Central Charges	99,044		92,704	(6,340)	93.6%
Recreation Facilities	1,855,954		1,881,664	25,710	101.4%
Total Expenses	<u>1,954,998</u>		<u>1,974,368</u>	<u>19,370</u>	101.0%
Increase (Decrease) in Net Assets	<u>0</u>		<u>143,231</u>	<u>143,231</u>	

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH OF DECEMBER 2012

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	425,442	109,554	534,997	393,199	10,461	403,660	8	947	33
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	371,346	1,025	372,371	372,199	1,105	373,303	0	-7	0
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	228,952	1,423	230,375	205,558	2,072	207,629	11	-31	11
SHOPS AT WALNUT CREEK 104TH & REED TARGET	218,033	1,536	219,570	220,396	1,853	222,249	-1	-17	-1
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	202,536	3,050	205,585	204,820	4,021	208,841	-1	-24	-2
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	201,076	1,434	202,510	160,904	1,158	162,062	25	24	25
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	179,948	567	180,515	172,731	550	173,281	4	3	4
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	172,847	440	173,287	164,630	490	165,120	5	-10	5
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	122,360	24,300	146,660	104,260	21,967	126,228	17	11	16
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	112,130	667	112,797	105,294	607	105,901	6	10	7
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	99,199	396	99,595	105,458	349	105,807	-6	13	-6
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	83,694	354	84,049	78,296	513	78,809	7	-31	7
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	75,569	256	75,825	72,983	1,126	74,109	4	-77	2
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	63,253	85	63,338	61,055	154	61,209	4	-45	3
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	59,773	914	60,687	122,806	1,818	124,623	-51	-50	-51

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH OF DECEMBER 2012

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	55,631	1,739	57,370	48,687	126	48,814	14	1276	18
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	52,938	855	53,794	49,392	909	50,300	7	-6	7
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	43,357	178	43,535	42,788	246	43,035	1	-28	1
PAVILION COURT 122ND & PECOS WESTERN ELECTRONICS	5,340	38,029	43,369	3,148	1,478	4,625	70	2473	838
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	39,645	291	39,936	38,903	452	39,355	2	-36	1
WILLOW RUN 128TH & ZUNI SAFEWAY	32,770	164	32,934	32,920	272	33,192	0	-40	-1
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	28,401	460	28,861	23,501	441	23,942	21	4	21
WESTMINSTER GATEWAY CHURCH RANCH BOULEVARD SPRINGHILL/LA QUINTA	8,993	18,938	27,931	7,619	12,066	19,685	18	57	42
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	26,151	41	26,193	23,678	650	24,327	10	-94	8
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	25,230	0	25,230	29,392	39	29,431	-14	*****	-14
	2,934,616	206,697	3,141,313	2,844,615	64,923	2,909,538	3	218	8

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
DECEMBER 2012 YEAR-TO-DATE

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	4,703,282	259,768	4,963,049	4,395,559	171,887	4,567,446	7	51	9
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	4,129,814	23,213	4,153,026	4,043,444	22,537	4,065,981	2	3	2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,808,657	20,988	2,829,645	2,705,396	54,131	2,759,527	4	-61	3
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,745,366	12,078	2,757,445	2,550,209	16,140	2,566,349	8	-25	7
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	2,339,758	9,121	2,348,879	2,318,405	9,892	2,328,297	1	-8	1
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	2,289,834	21,789	2,311,623	2,111,098	13,706	2,124,804	8	59	9
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	2,049,861	37,485	2,087,346	1,908,509	13,159	1,921,668	7	185	9
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,993,860	6,868	2,000,728	1,938,359	11,724	1,950,083	3	-41	3
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,512,614	219,143	1,731,757	1,420,125	280,710	1,700,835	7	-22	2
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,420,172	9,338	1,429,511	1,301,222	41,949	1,343,171	9	-78	6
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,405,323	8,518	1,413,842	1,419,288	8,224	1,427,512	-1	4	-1
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	954,460	2,324	956,784	970,095	9,191	979,286	-2	-75	-2
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	901,179	7,014	908,193	930,585	4,777	935,362	-3	47	-3
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	863,793	20,629	884,422	1,359,290	26,434	1,385,724	-36	-22	-36
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	749,453	7,355	756,808	731,834	2,672	734,507	2	175	3

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 DECEMBER 2012 YEAR-TO-DATE

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	732,912	2,970	735,882	756,437	2,450	758,887	-3	21	-3
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	664,329	9,042	673,371	643,816	4,484	648,300	3	102	4
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	539,875	7,787	547,662	561,483	2,267	563,750	-4	243	-3
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	517,802	22,536	540,338	481,929	8,865	490,794	7	154	10
WILLOW RUN 128TH & ZUNI SAFEWAY	416,934	3,640	420,574	404,529	3,944	408,472	3	-8	3
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	368,665	7,458	376,123	345,183	6,529	351,712	7	14	7
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	326,955	1,290	328,245	323,632	13,272	336,904	1	-90	-3
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	318,410	3,236	321,646	289,115	3,651	292,767	10	-11	10
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	309,282	9,299	318,581	290,496	8,205	298,701	6	13	7
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	296,115	5,013	301,129	297,222	2,398	299,620	0	109	1
	35,358,706	737,902	36,096,608	34,497,259	743,198	35,240,458	3	-1	2



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Quarterly Insurance Claims Report – October through December 2012

Prepared By: Martee Erichson, Risk Manager

Recommended City Council Action

Accept the Fourth Quarter 2012 Insurance Claims Report.

Summary Statement

- The attached report provides detailed information on each 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 2012 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 2012, Staff has noted the following summary information:

- Three of the six claims reported in the fourth quarter of 2012 are closed at this time.
- Total claims for the quarter and year-to-date are broken down by department as follows:

Department	4th Qtr 2012			YTD
	Total Claims	Open	Closed	Total
City Attorney's Office (CAO)	0	0	0	1
Community Development (CD)	1	0	1	3
Fire	0	0	0	2
Police (PD)	1	1	0	12
Parks, Recreation and Libraries (PRL)	2	0	2	15
Public Works and Utilities (PWU) – Street Maintenance	0	0	0	11
Public Works and Utilities (PWU) – Utility Operations	2	2	0	21
Public Works and Utilities (PWU) – Utilities Planning & Engineering	0	0	0	1
TOTAL	6	3	3	66

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Quarterly Insurance Report

**Quarterly Insurance Report
October - December 2012**

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2012-339	10/12/2012	CD	Miranda Ortega	8194 Everett St, Arvada CO 80005	Employee driving a city vehicle ran into claimant's vehicle while trying to make a u-turn.	\$ 1,615.93	Closed	
2012-352	10/14/2012	PRL	Nellie Dones	12100 Huron St #301, Westminster CO 80234	Claimant alleges she was injured while walking along a trail path when she tripped and fell.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-351	10/21/2012	PWU - Util	Melanie Vigil	2301 W 59th St, Denver CO 80221	Claimant alleges she was injured when she fell into a meter pit.	\$ -	Open	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-372	11/16/2012	PRL	Annie Huynh	11738 Keough Dr, Northglenn CO 80233	Employee driving a city vehicle backed into claimant's parked vehicle.	\$ 939.17	Closed	
2012-397	12/11/2012	PWU - Util	Lawrence Novissimo	545 Jackson St, Lafayette CO 80026	Employee driving a city vehicle, rear-ended claimant's vehicle.	\$ -	Open	CIRSA investigating
CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 4th QUARTER 2012:								
2012-368	8/8/2012	PD	Sheri Carter	8601 Zuni St #124, Westminster CO 80260	Claimant alleges she was assaulted by a Westminster police officer while her son was being arrested.	\$ -	Open	CIRSA investigating
					TOTAL	\$ 2,555.10		



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: 2013 Deicing Salt Purchase

Prepared By: Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the purchase of rock salt from the two low bid vendors, Independent Salt Company and Envirotech Services, Inc. in an amount not to exceed \$315,000.

Summary Statement

- Deicing salt is purchased to ensure safer winter storm travel for the motoring public.
- 2013 bids for rock salt were obtained through the Multiple Assembly of Procurement Officials (MAPO). Independent Salt Company is the low MAPO Bidder for 2013 at \$66.14/ton.
- The 2013 State of Colorado low bid for deicing salt (ice slicer) with Envirotech Services, Inc. has been quoted at \$94.90/ton.
- Staff estimates that 3,900 tons of deicing salt will be utilized during 2013.
Envirotech Services, Inc. – approximately 1,924 tons
Independent Salt Company – approximately 2,002 tons
- The \$315,000 authorization requested will allow for the purchase of 3,926 tons of deicing salt. If the City experiences significant snow and ice conditions and these materials are used up, Staff will need to request additional spending authority.
- Splitting this purchase between the two vendors, utilizing both the MAPO and State bids, has proven to expand available resources and when delivery can be synchronized closely, the two products are mixed at an approximate ratio of 50/50 to decrease the overall price per ton (\$80.52).
- Adequate funds were budgeted and are available for this purchase.

Expenditure Required: \$ 315,000

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 the motoring public during the winter months is of the highest priority.

A second alternative is to re-bid the salt purchase. This alternative is not recommended since Staff believes the unit cost of salt and the vendors will remain the same. Locking into one vendor increases the chance for non-delivery and running out of the product.

Background Information

The City has successfully purchased salt through the MAPO and CDOT bids in past years. These expenditures are within the approved 2013 Public Works and Utilities Street Operations Division budgeted amount for these items. Envirotech pricing increased 1.62% over 2012 pricing, and Independent Salt prices increased .89% over 2012 prices. The increases are due to increased freight and fuel costs.

Once the entire 2013 budgeted allotment of \$315,000 for deicing salt is depleted, depending on the severity of the remaining winter season, additional funding in 2013 may be required. At this time, Westminster's stockpile is at 80% 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 Secure" community by meeting the objective of safe citizen travel throughout the City.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 D

Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: 2013 Water Treatment Chemicals Purchase

Prepared By: Tom Settle, Utilities Operations Manager (acting)
Tim Woodard, Wastewater Treatment Superintendent

Recommended City Council Action

Award the bids for the purchase of Ferric Chloride to PVS Technologies up to \$290,000, Lime to Mississippi Lime Company up to \$92,000, Sodium Hypochlorite and Caustic Soda to DPC Industries up to \$175,000, Permanganate to Harcross Chemical Co. up to \$52,500, Aluminum Chloro-Hydrate (ACH), Sodium Hypochlorite and Ferric Chloride to Thatcher Company up to \$150,000, and Polymer to Polydyne Inc up to \$52,500.

Summary Statement

- Adequate funds for the purchase of water treatment chemicals were included in the approved 2013 Utilities Operations Division Budget.
- Six chemicals will be purchased in large quantities in 2013. They are Ferric Chloride, Lime, Sodium Hypochlorite, Permanganate, ACH and Polymer.
- The unit prices indicated on the bid tabulation for the six chemicals are for purchases on an as-needed basis.
- In January 2009, the Multiple Assembly of Procurement Officials (MAPO) issued a bid for water treatment chemicals. Pricing was updated in December 2012. This pricing is being recommended for the purchase of Ferric Chloride, Lime, Sodium Hypochlorite, and polymer.
- Additional chemical purchases through Thatcher Company are included as a strategic, secondary supplier to help ensure that the City has alternative supply for critical chemicals.

Expenditure Required: Not to exceed \$812,000

Source of Funds: Utility Fund – Utilities Operations Division Budgets

Policy Issue

Should the City accept the MAPO bids for water treatment chemicals?

Alternative

Reject the MAPO bids and re-bid the chemicals. This is not recommended as the bids received through MAPO are valid bids that the City would most likely not to be able to improve upon.

Background Information

As part of the 2013 Budget, City Council approved the purchase of treatment chemicals for the City’s water and wastewater treatment facilities. Information regarding each of the major chemicals and its approximate annual usage and bid price for 2013 follows:

CHEMICAL	APPROXIMATE QUANTITY	PRICE	EXTENDED PRICE	VENDOR
Ferric Chloride	450 Tons	\$648.00 Ton	\$290,000	PVS Technologies
Lime	375 Tons	\$244.44 Ton	\$92,000	Mississippi Lime
10-12.5% Sodium Hypochlorite	60 Tons	\$2,360.00 Ton	\$141,600	DPC Industries
10-12.5% Sodium Hypochlorite	30 Tons	\$2,360.00 Ton	\$70,800	Thatcher Company
ACH	75 Tons	\$666.66 Ton	\$50,000	Thatcher Company
Permanganate	7 Tons	\$7,500.00 Ton	\$52,500	Harcross Chemical Co.
Polymer	15 Tons	\$3,500.00 Ton	\$52,500	Polydyne, Inc.
		Total	\$749,400	

The final amounts shown in the Council recommendation reflect higher totals for DPC and Thatcher, which reflects Staff’s updates or additional purchases under \$50,000 from these vendors. Ferric Chloride and ACH are used for coagulation/clarification in the treatment process at the Semper and Northwest Potable Water Treatment Facilities (WTF). Lime is used at the Semper WTF for control of pH and alkalinity in the water to minimize corrosion of distribution system pipes and home plumbing. Sodium Hypochlorite is used for disinfection in all four treatment facilities. Permanganate is used to remove contaminant metals such as iron and manganese and to control taste and odor at both potable WTFs. Polymer is utilized in processing biosolids at the Big Dry Creek wastewater treatment facility. The usage numbers for all the chemicals are approximate since this is for the whole year, and factors such as weather and water demand are unpredictable. The estimated figures are based on 2012 actual usage and are for the chemicals that will exceed \$50,000 in annual purchases in 2013.

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

Forty-eight chemicals were put out on the MAPO bid. Ten water chemical vendors responded to the bid notification. They were Dimmit Sulfur Products LTD, DPC Industries, Inc., General Chemical, Industrial Chemical Corp., Peak Polymer Performance, Inc., Polydyne Inc., Prominent Systems Inc., PVS Technologies, Inc., SNR Enterprises, and Thatcher Company.

There was only a single bid for Lime in the original January 2009 MAPO bid. The vendor was contacted to ascertain the source of the chemical and confirm quality specifications. The Lime to be supplied under the bid will contain an unacceptable level of sand-type inert material that provides no benefit in the treatment process and will foul the chemical feed equipment. The City of Westminster sought additional bids for material meeting the specifications in January 2009. Mississippi Lime provided the sole bid meeting the material requirements. The pricing for this material was updated in December 2012.

The low bids for the four primary chemicals; Ferric Chloride to PVS Technologies in the annual approximate amount of \$290,000, Lime to Mississippi Lime Company in the annual approximate amount of \$92,000, Sodium Hypochlorite to DPC Industries for \$141,600 and Thatcher Company for \$70,800 and polymer to Polydyne, Inc. in the annual approximate amount of \$52,500 meets all specifications and requirements set by the City. The 2013 Sodium Hypochlorite bids are essentially identical in cost. The purchases will be split between the two vendors in a 2/3 and 1/3 fashion based on the delivery constraints of Thatcher Company delivering from Salt Lake City.

Though not part of the MAPO bidding process, the ACH and Permanganate products are proprietary and must be purchased directly from the manufacturer or their local agent. The pricing of these two chemicals follows; ACH to Thatcher Company in the annual approximate amount of \$50,000, Permanganate products to Harcross Chemical Company in the annual approximate amount of \$52,500.

Caustic Soda is also utilized for pH and alkalinity control, similar to Lime. Purchases of this chemical of approximately \$30,000 will be made through the low bidder, DPC Industries, bringing the total potential expenditures to DPC Industries of approximately \$175,000 for the year.

Additional purchase authorizations through Thatcher Chemical are included as a strategic, secondary supplier to help ensure that the City has alternative supply for critical chemicals. Thatcher is currently the low bidder for ACH but is also a supplier of all of the other major categories of chemicals that the four facilities use. They are the only company that provides this important cross-section of available chemicals. This situation makes them the most-logical backup supplier in situations where the primary supplier has had a failure in their delivery chain and is unable to meet City needs in the short term.

The estimated cost of the chemicals is within the amount previously approved by City Council in the 2013 Annual Budget for this expense. In addition to the specific chemicals included within this agenda memorandum, a variety of other chemicals are utilized by the treatment facilities during the year that are purchased in smaller quantities and below the \$50,000 bid approval threshold. All of these chemical purchases contribute to the total annual chemical expenditure of \$852,859 authorized in the Utilities Division operating budget.

This project meets Council's Strategic Plan goals of Safe and Secure Community, Financially Sustainable City Government, and Beautiful and Environmentally Sensitive City by keeping the City's water supply clean and safe and improving the service level of the treatment plants at the best possible price.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: 2013 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 2013 in an amount not to exceed \$590,613 for asphalt and \$80,000 for crackseal materials.

Summary Statement

- City Council approved adequate funds for these expenses in the 2013 Department of Public Works & Utilities, Street Operations Division, and Utilities' Field Operations Division budgets.
- The vendors bidding asphalt on the 2013 MAPO bid are: Premier Paving (first quarter low bidder), Brannan Companies, Aggregate Industries, 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 2013 and 2014 improvements (Street Operations Budget), also included is 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: \$670,613

Source of Funds: \$620,613 – General Fund, Street Operations Division Budget
\$ 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 2013 MAPO bids?

Alternative

Council could choose to execute a bid for just the City of Westminster’s materials requirements, rather than join the MAPO bid. This alternative is not recommended because the smaller quantities would increase the costs.

Background Information

City Crews will need an estimated 14,970 tons of hot mix asphalt material (13,703 tons for Street Division related work and 1,267 tons for Utilities related work), and 162,932 lbs. of rubberized crackseal material to be purchased on an as-needed basis throughout 2013.

2013 MAPO Hot Mix Asphalt Material Bid

	Premier Paving	Brannan Companies	Aggregate Industries	Asphalt Specialties Company	APC Construction	Colorado Asphalt Services, Inc.
Grading “SX” ½” material per ton	\$39.45	\$39.61	\$44.00	\$44.50	\$46.00	\$46.50

Premier Paving is the 2013 low bidder for hot mix asphalt material and Staff has confirmed that they will guarantee pricing through first quarter 2013. 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 2013, Staff will purchase asphalt from the vendor with lowest pricing. In 2012 switching to the lowest price vendor during the second quarter resulted in a modest savings to the City of \$1,677. Asphalt pricing did not increase the third and fourth quarters of 2012.

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.

2013 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 2013 MAPO low bidder for crackseal material. Staff has confirmed that they will guarantee pricing through first quarter 2013. 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 2013, 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 thirteen years on roadways throughout the City.

The 2013 asphalt materials bid reflects a 3.76% increase above 2012 first quarter pricing and the crackseal materials bid did not increase above 2012 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 Memorandum

City Council Meeting
January 28, 2013



SUBJECT: 2013 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 \$89,242.97 to Jefferson County for the City's 2013 assessment for construction debt repayment.

Summary Statement

- The City of Westminster has been party to an Intergovernmental Agreement (IGA) governing animal sheltering operations with Jefferson County, and a number of cities in Jefferson County, since November of 1996. The Agreement covers Westminster residents who live in Adams County as well as Jefferson County. This IGA has been modified several times over the years. The current shelter is the Foothills Animal Shelter (FAS) located at 580 McIntyre Street in Golden.
- In August of 2012, Council approved the current IGA with Jefferson County and the cities of Lakewood, Wheat Ridge, Arvada Edgewater and Golden. This new IGA restructured the Foothills Animal Shelter (FAS) construction debt repayment and the Countywide Dog Licensing Program agreements that had been in effect.
- The IGA provides for the dog licensing revenue to cover FAS operational costs and the agency annual assessments will now be applied towards the construction debt repayment by Jefferson County. Previously, the funding formula was reversed and the annual agency assessments were applied towards FAS operational costs.
- The amount requested for the annual assessment is within the funds authorized by City Council for this item in the 2013 Police Department budget.

Expenditure Required: \$89,242.97

Source of Funds: 2013 General Fund – Police Department Operating Budget

Policy Issue

Should the City expend funds for the 2013 assessment for Foothills Animal Shelter construction debt repayment?

Alternative

Council could decide to not authorize this expenditure. 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.

Background Information

The City of Westminster has been party to an Intergovernmental Agreement (IGA) governing animal sheltering operations with Jefferson County, and a number of cities in Jefferson County, since November of 1996. This IGA has been modified several times over the years. The Agreement covers Westminster residents who live in Adams County, as well as Jefferson County. The current shelter is the Foothills Animal Shelter (FAS) located at 580 McIntyre Street in Golden.

In August of 2012, Council approved the current IGA with Jefferson County and the cities of Lakewood, Wheat Ridge, Arvada, Edgewater and Golden. This new IGA restructured the Foothills Animal Shelter (FAS) construction debt repayment and the Countywide Dog Licensing Program agreements that had been in effect. The IGA provides for the dog licensing revenue to cover FAS operational costs and the agency annual assessments will now be applied towards the construction debt repayment by Jefferson County. Previously, the funding formula was reversed and the annual agency assessments were applied towards FAS operational costs. The annual assessment for participating agencies is based upon the number of households and dog population.

The construction debt assessment for 2013 represents a 2.7% decrease from the 2012 assessment of \$91,718. This decrease is due to the change in distribution of funds in dog licensing and debt repayment. Adequate funds are budgeted in the Police Department's 2013 General Fund Operating Budget for this expense.

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

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: 2013 Storage Area Network Purchase and Data Backup/Recovery System Purchase

Prepared By: David Puntenney, Information Technology Director
Scott Rope, Information Systems Manager
Dave Cotton, Systems Analyst Supervisor

Recommended City Council Action

Find that the Western States Contracting Alliance pricing meets City Charter bidding requirements and authorize Staff to proceed with the purchase of a storage area network and data backup/recovery system through Dell in the amount not to exceed \$256,000.

Summary Statement

- The project involves the replacement of the City’s existing storage area network (SAN) (Equal Logic), purchased in 2009, with a new SAN (Compellent) that offers centralized storage, reduced administrative overhead, expanded capacity, enhanced performance, redundancy and protection of critical data.
- The proposed SAN will be used to meet requirements for two Capital Improvement Projects (CIPs) included in the Adopted 2013 and 2014 Budgets – the “Storage Area Network (SAN) Replacement” and “Data Backup and Recovery System” respectively. The existing Equal Logic SAN provides 40 terabytes of disk storage for application data from email, enterprise resource planning (ERP), geographic information systems (GIS), utility maintenance management, utility billing, sales tax, departmental files and more. The proposed Compellent SAN will include 302 terabytes of disk storage located at City Hall and 96 terabytes of disk storage to be located at the City’s disaster recovery facility. In the event of a disaster, this configuration will provide for rapid recovery of the City’s data and computer operations.
- Staff is recommending proceeding with completing the two CIPs in 2013 due to the excellent cost proposal from Dell to purchase top of the line SAN and data backup/recovery technology. Staff is proposing to use \$100,000 in funds currently available and earmarked in the 2013 Major Software Upgrades GCIF for a 2014 upgrade to Microsoft Exchange to fund the SAN purchase, and then replenish that \$100,000 in 2014 with those funds originally approved for the 2014 backup data/recovery system SAN replacement.

Expenditure Required: \$256,000

Source of Funds: General, Public Safety and Utility Fund Capital Improvement Project Budgets and the Major Software Upgrade capital project in the GCIF

Policy Issue

Should the City replace the current storage area network and data backup/recovery system to ensure high availability, performance and capacity to support City data storage needs and server consolidation?

Alternative

Forgo the 2013 replacement of the storage area network. This alternative is not recommended for the following reasons:

- Vendor maintenance and support on the existing SAN system expires after April 2013, and will no longer be eligible for extended maintenance after 2013;
- Replacing the existing storage area network is critical to ensure the City has the capacity to meet the ever growing data storage needs;
- Additional disk storage is required to ensure adequate capacity for City applications, files and services;
- Performance and reliability of the existing storage area network will soon become unacceptable for the City's critical applications; and
- The City would not recognize the benefits associated with performance enhancement, redundancy of critical data and additional storage capacity.

Background Information

The existing SAN was purchased in 2009, with additional disks added in 2010. In order to maximize the useful life of the original equipment, Staff extended the warranty through the April of 2013. Further warranty extensions on the existing SAN are not available after 2013.

Data storage requirements for systems such as JD Edwards ERP, Geographic Information System, CIS Utility Billing, Fleet, Laserfiche, Fire Records Management, Accela maintenance management, email, voicemail and others have pushed disk usage from eight terabytes in 2008 to over 40 terabytes in 2013. Disk usage is near capacity and upgrading the existing system is essential for continued operations. The new system will provide 302 terabytes of capacity at City Hall and 96 terabytes at our disaster recovery facility. The proposed SAN will not only provide the necessary capacity to meet today's storage requirements, but will also provide the scalability and flexibility needed to add additional disks to address any additional storage requirements in the future. The new storage arrays will be installed at both City Hall and the City's disaster recovery facility. Separating the location of the disks between the two locations further enhances the City's ability to provide rapid recovery of critical City systems in the event of a disaster at the primary data center at City Hall.

Replacement of the SAN for the City's production data and backup data was originally planned and approved in the budget as two CIP projects, with the production data SAN scheduled for 2013 at a cost of \$150,000 and the backup data SAN scheduled for 2014 at a cost of \$100,000. Additionally, Staff included \$16,000 in the 2013 CIP budget to extend maintenance on the existing SAN through 2013 until a replacement backup data SAN could be installed in 2014. Total funds available in 2013 and 2014 for this project is \$266,000. Funds requested were adequate to purchase a replacement EqualLogic SAN. However, through negotiations with Dell and with their year-end coming up at the end of January, Staff was able to achieve very attractive pricing on Dell's highest rated, most efficient feature rich Compellent SAN at a cost comparable to the mid-line EqualLogic SAN. However, in order to move to this more advanced technology and reduce future expansion and replacement costs, the City must replace the entire Equal Logic SAN with the new Compellent SAN, and is unable to split the project into two years as originally proposed. Therefore, Staff is proposing to use \$100,000 in funds currently available and earmarked in the 2013 Major Software Upgrades GCIF for a 2014 upgrade to Microsoft Exchange to fund the SAN purchase, and then replenish that \$100,000 in 2014 with those funds originally approved for the 2014 backup data/recovery system SAN replacement. This is clearly the right technology and the right time to upgrade the SAN from the current EqualLogic solution to the high end Compellent solution.

Additionally, replacement of the system is recommended for the following reasons:

- The proposed SAN will meet the City's current and projected data storage requirements for the next four years.
- The proposed SAN will enhance the City's ability to recover from a disaster by performing real-time fail over of critical systems to the disaster recovery facility. The current system only provides the ability to copy data on a nightly basis.
- The proposed SAN offers tiered data storage, which basically moves the most frequently used files and programs to the faster (more expensive) disk drives and the less frequently used files to lower speed (lower cost) disk drives, thereby reducing overall cost while increasing performance for users accessing frequently used files.
- The proposed SAN offers a perpetual software license model in which the software license for the SAN is tied to the customer, not hardware. As a result, the City will not be required to repurchase software every four years when the SAN is scheduled for replacement. This will significantly reduce replacement cost, with a projected ten year savings of \$500,000.
- The proposed SAN will increase the connection speed to the City's Disaster Recovery Center by tenfold resulting in a significant decrease in the time required to replicate data and provide the ability to perform more frequent data backups.
- The City purchases hardware through Dell using the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements. The retail price of the proposed solution is \$800,000. Staff was successful in negotiating additional discounts with Dell, and reduced the total SAN and data backup/recovery system replacement cost to \$256,000.
- In May 2012, Information Week gathered and evaluated data from users of six of the major storage vendors to assess which SAN solution was best. Dell/Compellent was the clear favorite, with Compellent receiving top scores for data protection, features, de-duplication, reliability, operation cost, virtualization support, high availability architecture, and more. Dell is also ranked as a leader in SAN technology by Gartner.

This project supports City Council's Strategic Plan goals of Financially Sustainable City Government Providing Exceptional Services by investing in technology to increase productivity and efficiency.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Westminster Station Design Services Contract

Prepared By: Stephen Baumann, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to execute a negotiated contract with Martin/Martin, Inc. in the amount of \$279,530 to provide design services for infrastructure improvements related to the Westminster Station project.

Summary Statement

- The Regional Transportation District's (RTD) Eagle P-3 project will provide the initial segment of the Northwest Rail Corridor commuter rail facilities to Westminster Station at approximately 70th Avenue and Irving Street, with service planned to start in early 2016. In June 2012, City Council approved an intergovernmental agreement with the RTD that identifies the City's responsibility for certain station infrastructure, including streets and utilities to support station access and operations.
- Analysis and preliminary design efforts in 2011 and 2012 have resulted in a recommended first phase of improvements that include Hooker Street south of 71st Avenue and a new east-west street named Westminster Station Drive that is intended to intersect Federal Boulevard at approximately the 69th Avenue alignment. These streets will provide access to the north plaza, a bus transfer facility and the future parking garage and are necessary for station operation.
- A scope of work and fees has been negotiated with Martin/Martin Inc., the engineering firm that prepared concept analyses and preliminary design of several options for the station area infrastructure under a previous contract. The new contract will cover final design and bidding services for the improvements and was negotiated to provide a seamless continuation of the design effort of the past two years. Martin/Martin's work to this point has been exceptional, and the proposed fees of \$279,530 are considered fair and competitive.

Expenditure Required: \$279,530

Source of Funds: General Capital Improvement Fund
-South Westminster TOD-AdCo Road Tax
-South Westminster TOD Project

Policy Issue

Should the City contract for engineering design services for Westminster Station under a negotiated contract with Martin/Martin, Inc?

Alternative

The alternative to this action is to request proposals from other engineering firms. Since the proposed contract is largely a continuation of preliminary services already provided by Martin/Martin under an agreement approved by City Council in 2011, significant continuity is achieved by negotiating the services for the next design assignment. Martin/Martin's work on Westminster Station to this point has been sound, and the pricing is fair for the tasks in the proposed scope of work. Soliciting proposals and familiarizing a new consultant with the project would add several months to the process, potentially jeopardizing the schedule committed to in the IGA with RTD. City staff is recommending that the scope and fees negotiated with Martin/Martin for the proposed contract are in the best interests of the public and the City's goals for the station.

Background Information

In June 2012, City Council approved an intergovernmental agreement (IGA) with the Regional Transportation District (RTD) that describes the parties' responsibilities for designing and building Westminster Station, the commuter rail station to be located at approximately 70th Avenue and Irving Street. Through their concessionaire, Denver Transit Partners, RTD will be responsible for all track work, the station platform and the pedestrian tunnel that will allow rail users to pass from one side of the tracks to the other. Rail service for this short portion of the Northwest Rail Line is intended to start in early 2016 as part of RTD's Eagle P-3 Program, which includes service along the East Corridor (to Denver International Airport) and the Gold Line (to Arvada and Wheat Ridge) as well.

Under the IGA, the City is responsible for providing streets and utility infrastructure sufficient to support the station operation. Over the past two years, various approaches to phasing the infrastructure plan and refining it to be compatible with RTD's needs and those of the planned transit-oriented-development (TOD) that is expected to grow around Westminster Station have been explored. That effort was necessary in shaping the terms of the IGA and defining the activities and schedule for the design and construction of the station.

The recommended first phase of the project will consist of street and utility improvements extending Hooker Street from south of 71st Avenue to the proposed north plaza and continuing east along proposed Westminster Station Drive to Federal Boulevard where a new traffic signal and access must be approved by the Colorado Department of Transportation. A bus transfer facility will be designed and built on the south side of Westminster Station Drive along with stormwater quality facilities serving the TOD area. The access to Federal Boulevard will be coordinated with CDOT's 2014 project to replace the bridge carrying Federal Boulevard over the Burlington Northern/Santa Fe track. Landscaping and architectural enhancements of the north plaza are intended to be part of the first phase improvements as well. The attached location map shows the primary elements of the project. Design and construction of parking facilities is a commitment of the first phase under the IGA, but design of the parking garage is not part of the scope of work being proposed with this contract.

A scope of work was developed for design services that will result in construction documents to put a first phase of the improvements out to bid in 2014. This design work will include street and utility improvements, the proposed traffic signal, lighting, landscaping and the coordination of approvals, as appropriate, from RTD and CDOT. Because they provided much of the preliminary design that formed the basis of the terms of the IGA and have also evaluated many of the alternatives for station infrastructure under a contract approved in 2011, Martin/Martin Inc. was asked to prepare a proposal for

the final design assignment. Martin/Martin was the choice from the seven firms that competitively proposed on the preliminary design assignment at that time. Staff believes that their fees for the final design assignment, totaling \$279,530, are appropriate for the tasks and reflect their familiarity with the Westminster Station project. Staff believes this fee proposal would be very competitive if proposals were requested from other consultants. The City will also benefit by not having to spend several months soliciting proposals and familiarizing another firm with this important and time-sensitive project.

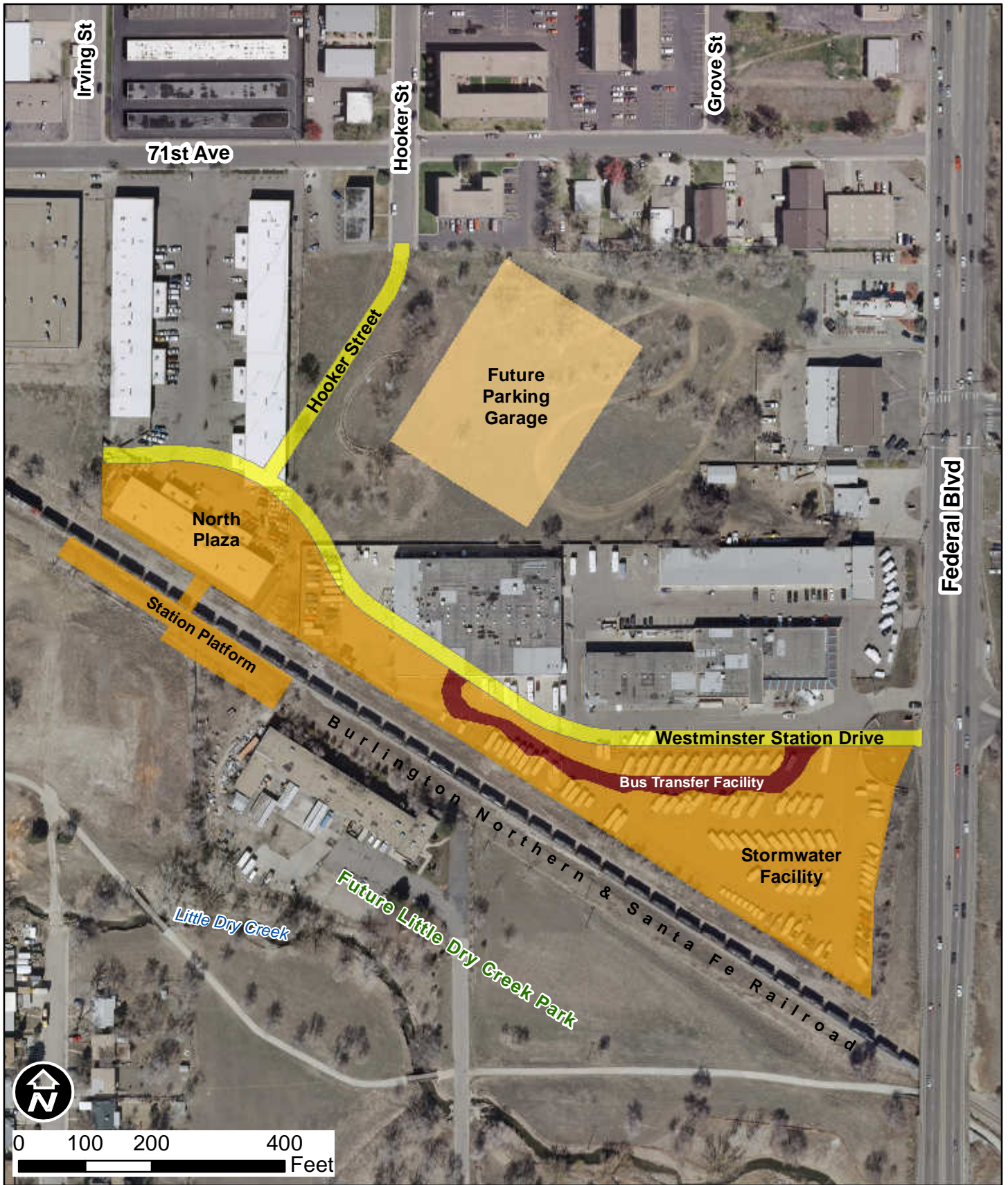
Staff is recommending that the contract for final design of the first phase infrastructure for Westminster Station be awarded to Martin/Martin, Inc at a cost of \$279,530. Funds are available in project accounts for the South Westminster TOD in the General Capital Improvement Fund.

Award of this contract meets several of City Council's strategic goals, including "Strong, Balanced Local Economy" by promoting multi-modal transportation facilities that will provide access to and from the future mixed-use development in the area. It also supports the goal of "Vibrant Neighborhoods in One Livable Community" since this is the first step in preparing for transit-oriented development around the proposed Westminster commuter rail station.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment—Location Map



1/15/2013

Location Map Westminster Station



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Small Government Enterprise Software License Agreement with ESRI

Prepared By: Dave Murray, GIS Coordinator
Steve Baumann, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with Environmental Systems Research Institute for software licensing in the amount of \$162,000 to be paid in three yearly payments of \$54,000. Fiscal years 2014 and 2015 are subject to annual appropriation.

Summary Statement

- The Geographic Information System (GIS) is a resource that is used widely throughout the City. For twenty years, the capabilities and number of users has grown along with the evolution of the City’s information technology infrastructure. Software vendors are now hosting online services that were previously only available within an organization. Savings in computer infrastructure and licensing can be provided by using hosted services.
- The City’s present GIS software vendor, Environmental Systems Research Institute (ESRI), has offered a new software licensing model that would give City Staff access to a wide range of desktop and web based products and services under a Small Government Enterprise Licensing Agreement (SGELA) that covers unlimited use of most of the ESRI products. The license is for a term of up to three years and provides for yearly payments of \$54,000 that can be cancelled at any time. The cost will be covered by several departments within the City organization.
- By agreeing to this licensing model, the City would significantly improve the access to GIS services and products by Staff. Staff would also be able to service a growing internal and external need for GIS mapping products and services.

Expenditure required: \$54,000 in 2013; \$54,000 in 2014; and \$54,000 in 2015 subject to annual appropriations

Source of Funds (Yearly): General Fund – Public Works & Utilities, Community Development, Fire, Police, and Parks Recreation & Libraries Operating Budgets \$30,050
General Capital Improvement Fund – GIS Project \$10,000
Water Fund – Public Works & Utilities Operating Budget \$13,950

Policy Issue

Should the City contract with Environmental Systems Research Institute (ESRI) for one year, renewable for up to two additional years (for a total of three years) though their Small Government Enterprise Licensing Agreement?

Alternatives

1. Continue to pay the current yearly support payment of \$29,800 and contract for custom programming work to replace the current ArcGIS Online secured web maps. The cost to complete this task would be comparable to the increase in cost for the SGELA.
2. Replace ESRI GIS software with another vendor such as Intergraph or Pitney Bowes. These companies do not have the complete package of services comparable to ESRI. Also, the training required to replicate our existing products and services would be extensive. There would be a disruption of service as Staff becomes familiar with new software and current applications modified to utilize a new software system. It would take approximately six to nine months to become proficient in any new GIS software. During this time, the current field users of the secured online maps will be required to use other resources.
3. Implement open source software to conduct the City’s GIS operations. Similar capabilities can be obtained using various open source software programs. Unfortunately, there is not an efficient way to replace our current capabilities in a timely manner. As with option 2, the lag time for replicating our existing services would be in the six to nine month range and training would have to be contracted through a source familiar with the software. While the City has investigated open source software in the past, this option is still not effective for an enterprise-wide solution at this time.

Background Information

The City of Westminster has been a customer of Environmental Systems Research Institute (ESRI) for twenty years, first starting on the City’s mainframe UNIX computers, then moving into desktop applications and finally to web based mapping. The value that the GIS products and services deliver is recognized and utilized extensively by the Police, Fire, Finance, Public Works and Utilities, Community Development and Parks Recreation and Libraries Departments. This program has many day-to-day uses that make a significant, positive difference in how the City provides services.

The current licensing contract with ESRI is in the amount of \$29,800 for 2013. This amount has been approved in the 2013 and 2014 operating budgets. The current contract gives the City access to a limited number of software use licenses that have to be shared by all employees (the City currently has 28 licenses). The proposed Small Government Enterprise Licensing Agreement (SGELA) allows for unlimited desktop license installations of listed products and 200 secured mobile users. If the City Council agrees with the terms of the SGELA, the additional cost would be \$24,200 per year for a total cost of \$54,000 per year. The term of the contract is three years, starting in 2013, but the City can opt-out at any time and revert to the pre-2013 licensing structure and payment amount. At the end of the three year period, the agreement would be renegotiated. The following departments currently share in the annual license and maintenance cost and have identified funds within their 2013 and 2014 budgets necessary to cover the increased cost associated with the SGELA. The list below reflects the revised funding support for 2013 from each Department under the SGELA.

Community Development	\$34,550
Public Works and Utilities	\$16,950
Fire	\$1,500
Police	\$500

Parks Recreation & Libraries

\$500

TOTAL

\$54,000

SUBJECT: Small Government Enterprise Software License Agreement with ESRI

Page 3

The GIS section has been experiencing an increasing demand in the use of the GIS resources. Staff monitors the desktop license use, and frequently all of the 28 licenses are being used. This shuts out additional users from the system until a license is released. The number of GIS web maps that are available for field crews and citizens has also increased web traffic.

ESRI has provided online facilities for posting the City's secured utilities, rental housing and public safety maps without a charge for a term of two years beginning in approximately March of 2011. There are approximately 80 field crew users of these maps. They use them through a range of mobile devices including smart phones, tablets and laptops. GIS Staff was notified by ESRI in May 2012 that the evaluation period for the online secured maps will end in March of 2013. The cost to continue the existing use of these online services will be approximately \$20,000 per year in addition to the \$29,800 per year current license and maintenance agreement. In negotiations with the ESRI account representative, Staff was informed of a new way to keep the existing services as well as enhance the access to multiple GIS software capabilities. The Small Government Enterprise License Agreement (SGELA) is the alternative to paying for individual software licenses. It grants the City both unlimited quantities of software licenses for products that are regularly used and also provides limited quantities of other products that will extend the City's capabilities. The list of products is shown on Page 1 of the attached license agreement. The most important need is to be able to continue the use of the secured online services. The SGELA provides a more financially prudent way than the current license and maintenance contract structure. A locked fee of \$54,000 per year is provided for 2013-2014-2015 for unlimited licenses and secured online services plus other needed GIS software capabilities versus a restricted number of licenses plus secured online services for \$49,800 every year.

The attached contract has been reviewed by the City Attorney's Office and the Information Technology Department and has language that is compatible with restrictions imposed by the TABOR law. Other jurisdictions in the metro area that have adopted this licensing model include the City of Arvada, the City and County of Broomfield, the City of Commerce City, and the City of Brighton. They have all recognized the value and budgeting certainty that this model provides to their organizations.

Approving this contract supports City Council's Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services by investing in tools and technology that increase organizational productivity and efficiency.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: ESRI SGELA



Quotation # 20414530

Date: October 18, 2012

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
One International Court
Broomfield, CO 80021-3200
Phone: (909) 793-2853 Fax: (303) 449-8830
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Customer # 1549 Contract # 2010MPA5264
CITY OF WESTMINSTER
COMMUNITY DEVELOPMENT DEPT
4800 W 92ND AVE
WESTMINSTER, CO 80031
ATTENTION: Dave Murray
PHONE: (508) 614-6048
FAX:

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 10/18/2012 To: 01/16/2013

Material	Qty	Description	Unit Price	Total
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement, Year 1	53,000.00	53,000.00
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement, Year 2	53,000.00	53,000.00
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement, Year 3	53,000.00	53,000.00
			Item Total:	159,000.00
			Subtotal:	159,000.00
			Sales Tax:	0.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			Total:	\$159,000.00

The following items are optional items listed for your convenience.
These items are not included in the totals of this quotation.

Material	Qty	Description	Unit Price	Total
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement, Year 1	1,000.00	1,000.00
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement, Year 2	1,000.00	1,000.00
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement, Year 3	1,000.00	1,000.00

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Colleen Burke	Email: cburke@esri.com	Phone: (909) 793-2853 x8228
Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.		
<i>If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630</i>		



Quotation # 20414530

Date: October 18, 2012

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
One International Court
Broomfield, CO 80021-3200
Phone: (909) 793-2853 Fax: (303) 449-8830
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Customer # 1549 Contract # 2010MPA5264

CITY OF WESTMINSTER
COMMUNITY DEVELOPMENT DEPT
4800 W 92ND AVE
WESTMINSTER, CO 80031

ATTENTION: Dave Murray
PHONE: (508) 614-6048
FAX:

*To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 10/18/2012 To: 01/16/2013*

BY SIGNING BELOW YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

If you choose to discontinue your maintenance, you will become ineligible for maintenance benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your maintenance coverage at a later date.

This quotation is subject to the terms set forth herein and the terms of your agreement with Esri, if any, or as otherwise provided by Esri's standard terms and conditions at www.esri.com/legal, which are incorporated by reference. Federal Government entities and prime contractors buying under GSA pricing/terms are subject to Esri's Federal Supply Schedule GS-35F-5086H. Acceptance is limited to terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer or confirmation sent or to be sent by buyer. All terms of this quotation as referenced above shall be incorporated into and are part of any further or additional agreement regarding Esri's software data, web services, training, services and maintenance.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

By signing below, you are authorizing Esri to issue an invoice for the items included in the above quote in the amount of: \$ _____, plus sales taxes if applicable. (Note: Shipping costs are subject to change.)

Please check one of the following:

I agree to pay any applicable sales tax.

I am tax exempt, please contact me if exempt information is not currently on file with Esri.

Signature of Authorized Representative

Date

Name (Please Print)

Title

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax reflected on this quote has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state tax directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Colleen Burke	Email: cburke@esri.com	Phone: (909) 793-2853 x8228
Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law. <i>If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630</i>		



**SMALL MUNICIPAL AND COUNTY
ENTERPRISE LICENSE AGREEMENT**

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and **Environmental Systems Research Institute, Inc. ("Esri")**, with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of Esri's receipt of Licensee's Order citing this ELA. This ELA grants Licensee certain rights to use specific Esri Products for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA incorporates the ELA Quotation by reference and comprises (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207SET), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise this ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207SET), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of this ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Order or addendum will not apply, and the terms of this ELA will govern.

ENTERPRISE PRODUCTS SCHEDULE

Unlimited Quantities

Desktop Software and Extensions

ArcGIS for Desktop Advanced
 ArcGIS for Desktop Standard
 ArcGIS for Desktop Basic
 ArcGIS for Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Server Software and Extensions

ArcGIS for Server Workgroup and Enterprise (Advanced, Standard, and Basic)
 ArcGIS for Server Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Image

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime Standard
 ArcGIS Runtime Standard Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Network Analyst

Limited Quantities

One (1) Annual Subscription to Esri Developer Network (EDN) Standard*
 One (1) Esri CityEngine Advanced Single Use License
 One (1) Esri CityEngine Advanced Concurrent Use License
 One (1) ArcGIS Online Subscription* as provided in Other Benefits section

OTHER BENEFITS

One (1) ArcGIS Online Subscription with specified named users and credits as determined in the program description	Level 4
Number of Esri International User Conference Registrations provided annually	4
Number of Tier 1 Help Desk Individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested**	2
Virtual Campus Annual User License allowance	10,000
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside of this Agreement (Discount does not apply to Small Enterprise Training Package.)	

*ELA Maintenance is not provided for these items.

**Additional sets of backup media may be purchased for a fee.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Products listed on the schedule above. Except as provided in Section 9.1 Future Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it to Attn.: Esri Customer Service, 380 New York Street, Redlands, CA 92373-8100; e-mailing it to service@esri.com or faxing it to 909-307-3083. **ADDITIONAL OR CONFLICTING TERMS IN LICENSEE'S ORDER WILL NOT APPLY, AND THE TERMS OF THIS ELA WILL GOVERN.**

ACCEPTED AND AGREED:

(Licensee)

By: _____
Signature

Printed Name: _____

Title: _____

Date: _____

Esri EIN Number: **95-2775732**

Licensee Contact Information

Contact Name: _____

Address: _____

City, State, ZIP: _____

Telephone: _____

Fax: _____

E-mail: _____

ELA Quotation Number: _____

Esri Contract Number: _____

ELA TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account user name and password, or other mechanism required for use of a Product.
- "Commercial Application Service Provider Use" or "Commercial ASP Use" means generating revenue by providing access to Software through a website or Internet web application that enables third parties to access and use a Licensee-developed application that uses Software, for example, by charging a subscription, service, or any other form of transaction fee or by generating more than incidental advertising revenue.
- "Content" has the meaning provided in [Addendum 3](#).
- "Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes licensed under this ELA, whether bundled with Software and Online Services or delivered independently.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Products (and related Authorization Codes) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Deployment License" means a license that allows Licensee to sublicense select Software and associated Authorization Codes to third parties.
- "Documentation" means all user reference documentation that is delivered with the Software or, if delivered via download, that is delivered from the Software setup or installation program.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri to Licensee for the Enterprise Products.
- "ELA Quotation" means the Esri quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Products" means the Products identified in the Enterprise Products Schedule on page 1 of this ELA.
- "Incident" means a communication via telephone, web form, or chat by Licensee regarding technical problems with Software, Data, or Documentation.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Products provided to Licensee by Esri under this ELA.
- "Online Services" means any Internet-based geospatial system, including applications and associated APIs, but excluding Data or Content hosted by Esri or its licensors for storing, managing, publishing, and using maps, data, and other information.
- "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- "Product(s)" means Software, Data, Online Services, and Documentation licensed under the terms of this Agreement.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Products.
- "Service Credit(s)" means a unit of exchange that is allocated with an Online Services subscription in an amount specified in the Ordering Document. Each Service Credit entitles Licensee to consume a set amount of Online Services, the amount varying depending on the

Online Services being consumed. As Online Services are consumed, Service Credits are automatically debited from Licensee's account, up to the maximum number of Service Credits available. Additional Service Credits can be purchased as described in Exhibit 1 (also available at <http://www.esri.com/legal>).

- "Software" means the actual copy of all or any portion of Esri's proprietary software technology excluding Data accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies as identified in Exhibit 1.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License(s)" means license(s) or access provided for use of a Product during a fixed or limited time period ("Term") or on a subscription or transaction basis concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Enterprise Products are licensed and not sold. Esri and its licensors own the Enterprise Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect the Enterprise Products from unauthorized use, reproduction, distribution, or publication. Esri and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Online Services.

ARTICLE 3—GRANT OF LICENSE

Subject to the terms and conditions of this ELA, Esri grants to Licensee a personal, nonexclusive, nontransferable Term License solely to use, copy, and Deploy quantities of Enterprise Products as defined in the Enterprise Products Schedule for a term concurrent with this ELA (i) for which the applicable license fees have been paid; (ii) for Licensee's own internal use; (iii) in accordance with this ELA and the ELA configuration ordered; and (iv) for the applicable Term until terminated in accordance with Article 5. In addition to the Scope of Use in Article 4, Exhibit 1 applies to specific Products. Addendum 1, Addendum 2, Addendum 3, and Addendum 4 collectively comprise Exhibit 1—Scope of Use (E300) and are also available at <http://www.esri.com/legal>.

- a. *Software*. Terms of use for specific Software products are set forth in Addendum 1.
- b. *Data*. Data terms of use are set forth in Addendum 2.
- c. *Online Services*. Terms of use for Online Services are set forth in Addendum 3.
- d. *Limited Use Programs*. Terms of use for noncommercial, nonprofit, educational, or other limited-use programs are set forth in Addendum 4. Note: Addendum 4 does not apply to this ELA.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

- a. For Enterprise Products delivered, Licensee may
 - (1) Install and store selected Enterprise Products on electronic storage device(s);
 - (2) Make archival copies and routine computer backups;
 - (3) Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed six (6) months, provided that the Deployment of either version does not exceed Licensee's licensed quantity; thereafter, Licensee shall not use more Enterprise Products in the aggregate than Licensee's total licensed quantity;
 - (4) Move the Software in the licensed configuration to a replacement computer; and
 - (5) Distribute to third parties Software and any associated Authorization Codes required for use of a Deployment License.
- b. *Commercial Application Service Provider Use.* Provided that Licensee (i) is a governmental or not-for-profit organization that operates a website or offers an Internet service on a cost recovery basis and not for profit or (ii) acquires a Commercial ASP Use subscription license, Licensee may use the Software for Commercial ASP Use. However, Licensee may not provide third parties with direct access to Esri Software so that the third parties may use the Software directly, develop their own GIS applications, or create their own solutions in conjunction with the Software.
- c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensor(s): "Portions of this document include intellectual property of Esri and its licensor(s) and are used herein under license. Copyright © [Licensee will insert the actual copyright date(s) from the source materials] Esri and its licensor(s). All rights reserved."
- e. *Font Components.* While the Software is running, Licensee may use its fonts to display and print content. Licensee may only (i) embed fonts in content as permitted by the embedding restrictions in the fonts and (ii) temporarily download them to a printer or other output device to print content.
- f. *Consultant or Contractor Access.* Licensee may provide access to and use of Enterprise Products to any consultant or contractor of Licensee, provided consultants' and contractors' access to and use of Enterprise Products is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Products from Licensee's on-site computers or machines, or (iii) remotely accessing or using Enterprise Products from a third party's computers or machines under contract to Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require

consultants and contractors to discontinue access to and use of Enterprise Products upon completion of work for Licensee. Access to or use of Enterprise Products by consultants or contractors not exclusively for Licensee's benefit is prohibited.

4.2 Uses Not Permitted

Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not

- a. Sell, rent, lease, sublicense, lend, assign, or time-share Enterprise Products;
- b. Use for Commercial ASP Use or service bureau purposes;
- c. Use Enterprise Products for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service);
- d. Redistribute the Enterprise Products to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- e. Redistribute Authorization Codes;
- f. Reverse engineer, decompile, or disassemble Enterprise Products;
- g. Make any attempt to circumvent the technological measure(s) that controls access to or use of Enterprise Products;
- h. Store, cache, use, upload, redistribute, or sublicense Content or otherwise use Enterprise Products in violation of Esri's or a third party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- i. Remove or obscure any Esri or its licensors' patent, copyright, trademark, or proprietary rights notices and/or legends contained in or affixed to any Enterprise Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- j. Unbundle or independently use individual or component parts of the Enterprise Products;
- k. Incorporate any portion of the Enterprise Products into a product or service that competes with the Enterprise Products; or
- l. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Enterprise Products in a manner that would subject such code or any part of the Enterprise Products to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

5.1 Term. The Term of this ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Products Deployed shall be concurrent with the term of this ELA. No indefinite term or perpetual license grants are provided with this ELA.

5.2 Termination for Lack of Funds. Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

5.3 Termination for a Material Breach. Either party may terminate this ELA for a material breach by the other party. The

breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

5.4 No Use upon Expiration or Termination. Upon expiration or termination of this ELA, the right to use all Enterprise Products Deployed shall terminate. Licensee shall (i) cease access and use of affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modifications or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided in this Article 6, Esri warrants, for a period of ninety (90) days from the date Esri issues the Authorization Code enabling use of Software and Online Services, that (i) the unmodified Software and Online Services will substantially conform to the published Documentation under normal use and service and (ii) the media upon which the Software is provided will be free from defects in materials and workmanship.

6.2 Special Disclaimer. CONTENT, DATA, SAMPLES, PATCHES, UPDATES, ONLINE SERVICES PROVIDED ON A NO-FEE BASIS, AND HOT FIXES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND.

6.3 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF ONLINE SERVICES.

6.4 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT THAT ENTERPRISE PRODUCTS WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. ENTERPRISE PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.5 Exclusive Remedy. Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Esri's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for the Software or Online Services subject to the Esri Maintenance Program as applicable; or (iii) return of the license fees paid by Licensee for the Software or Online Services that do not meet Esri's limited warranty, provided that Licensee uninstalls,

removes, and destroys all copies of the Software or Documentation, ceases using Online Services, and executes and delivers evidence of such actions to Esri.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. ESRI AND ITS LICENSORS SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF ENTERPRISE PRODUCTS, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, THE TOTAL CUMULATIVE LIABILITY OF ESRI HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR ENTERPRISE PRODUCTS THAT GIVE RISE TO THE CAUSE OF ACTION.

7.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its fees and entered into this ELA in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. ESRI DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 Esri shall defend, indemnify, and hold Licensee harmless from and against any loss, liability, cost, or expense, including reasonable attorneys' fees that Licensee incurs as a result of any claims, actions, or demands by a third party alleging that Licensee's licensed use of the Software or Online Services infringes a US patent, copyright, or trademark provided

- a. Licensee promptly notifies Esri in writing of the claim;
- b. Licensee provides documents describing the allegations of infringement;
- c. Esri has sole control of the defense of any action and negotiation related to the defense or settlement of any claim; and
- d. Licensee reasonably cooperates in the defense of the claim at Esri's request and expense.

8.2 If the Software or Online Services are found to infringe a US patent, copyright, or trademark, Esri, at its own expense, may

either (i) obtain rights for Licensee to continue using the Software or Online Services or (ii) modify the allegedly infringing elements of the Software or Online Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the license shall terminate, and Licensee shall cease accessing infringing Online Services and shall uninstall and return to Esri any infringing item(s). Esri's entire liability shall then be to indemnify Licensee pursuant to Section 8.1 and to refund a portion of the ELA fees paid by Licensee in the current fee payment period. The refund will be calculated for the time remaining for the fee payment period, starting from the notice date of infringement to the end of the fee payment period.

8.3 Esri shall have no obligation to defend Licensee or to pay any resultant costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of Software or Online Services with a product, process, or system not supplied by Esri or specified by Esri in its Documentation; (ii) material alteration of Software or Online Services by anyone other than Esri or its subcontractors; or (iii) use of Software or Online Services after modifications are provided by Esri for avoiding infringement or use after a return is ordered by Esri under Section 8.2.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Updates. Esri reserves the right to update the Small Municipal and County Enterprise Products program suite. Licensee may continue to use all Enterprise Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Enterprise Products are incorporated into the standard program, they will be offered to Licensee via written notice for incorporation into the Enterprise Products Schedule at no additional charge. New or updated Enterprise Products may require additional or revised terms and conditions. The terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. Esri may provide notice of the additional terms or revisions to Licensee in writing or by posting them on Esri's website at <http://www.esri.com/legal>. The additional terms or revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Products. Should Licensee reject the additional terms or revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Products.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, import, transfer, or release Enterprise Products, in whole or in part, to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, reexport, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

9.3 Taxes and Fees. License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs. Sales or use taxes for the fees quoted are as required by

law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. Esri will include applicable sales or use taxes on Licensee's invoice unless Licensee provides proof with its order that its organization or use of the product is tax exempt.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successors and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without Esri's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding on the respective successors and assigns of the parties to this ELA.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Esri shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

9.9 Governing Law. This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

9.10 Patents. Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Esri technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Esri technology or services, or any portion thereof, are part of any claim or preferred embodiment in a patent or similar application.

9.11 Entire Agreement. This ELA, including its incorporated documents, constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this ELA must be in writing and signed by each party.

ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Enterprise Products provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable Esri US Software Maintenance Program document (found at <http://www.esri.com/legal>) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Online Services.

- a. Tier 1 Support Provided by Licensee
- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
 - (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
 - (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
 - (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
 - (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact Esri Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
 - (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact Esri directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) Esri shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
- (5) When the Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the user.

Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website.

- c. No Software other than the defined Enterprise Products will be provided maintenance under this ELA. Licensee may acquire maintenance for other Software (non-Enterprise Products) outside this ELA.

ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

11.1 Orders, Delivery, and Deployment

- a. Licensee shall issue an Order upon execution of this ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial

payment due within thirty (30) days of execution of this ELA. Esri's Federal ID Number is 95-2775-732.

- b. Upon receipt of the initial Order from Licensee, Esri shall authorize download of the Enterprise Products to Licensee for its Deployment activities. If requested, Esri will ship backup media to the ship-to address identified on the Order, FOB Destination, with shipping charges prepaid. For those entities that avoid sales tax by downloading deliverables, request for delivery or receipt of tangible media may cause license fees to be subject to taxes. Licensee acknowledges that should such taxes become due, Esri has a right to invoice and Licensee agrees to pay any such sales or use tax associated with its receipt of tangible media.
- c. Esri shall provide Authorization Codes to activate the nondestructive copy protection program that enables the Enterprise Products to operate.
- d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Products.

11.2 Order Requirements

- a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
- b. The following information shall be included in each Order (or Ordering Document):
- (1) Licensee name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due
 - (4) On the face page of Order (or Ordering Document), a reference to this ELA and the following statement: "THIS ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE ORDER WILL NOT APPLY."

ARTICLE 12—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of Esri by Licensee. Licensee agrees that upon execution of this ELA, Esri may publicize the existence of this ELA.

ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

13.1 OEM Licenses. Certain Esri partners are authorized to either embed limited portions of Esri technology or bundle Esri products or services with their application or service under Esri's OEM or Solution OEM programs. Partner pricing and product bundling are independent of this ELA, and each partner markets under its own business model and pricing. Licensee shall not be entitled to or seek any discount from the OEM partner or Esri, directly or indirectly, as a result of or based on the availability of such Software, Data, or Online Services as Enterprise Products under this ELA. Licensee shall not be entitled to or seek to decouple Esri's technology or products/services from the partner's bundle or solution. In addition, such Software, Data, Online Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM partner and not through this ELA.

13.2 Product Obsolescence. During the term of this ELA, some Enterprise Product items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Products that have been Deployed for the term of this ELA, but updates for such obsolete Enterprise Products may not be available. Esri's Product Life Cycle Support

Policy, available at <http://help.arcgis.com/en/shared/Product-life-cycle/ProductLifeCycle.pdf>, defines the support phases and overall support plans. ELA Maintenance shall be subject to the individual Product Life Cycle Support Status, which can be found at <http://resources.arcgis.com/content/product-life-cycles>.

13.3 Renewal. Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

13.4 Annual Report of Deployments. At each anniversary date and ninety (90) days prior to the expiration date of this ELA, Licensee shall provide a written report to Esri detailing all Deployments made. The report will be subject to audit by an authorized representative of Esri.

ARTICLE 14—OPTIONAL ITEMS

If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of this ELA with respect to the training courses.



**EXHIBIT 1
SCOPE OF USE
(E300 08/22/2012)**

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

**ADDENDUM 1
SOFTWARE TERMS OF USE
(E300-1)**

This Software Terms of Use Addendum ("Addendum 1") sets forth the terms of Licensee's use of Software and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/licensing/software-license.html> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 1 takes precedence over conflicting terms of the License Agreement.

SECTION 1—DEFINITIONS

Software may be offered under the following license types as set forth in the applicable sales quotation, purchase order, or other document identifying the Products that Licensee orders:

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2. "Deployment Server License" means a license that, in addition to providing Staging Server License rights, authorizes Licensee to install and use the Software or Data to provide services to multiple users on the same or other computer(s).
3. "Development Server License" means a license that authorizes Licensee to install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
4. "Single Use License" means a license that allows Licensee to permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Licensee may permit the single authorized end user to install a second copy for end user's exclusive use on a second computer as long as only one (1) copy of Product is in use at any time. No other end user may use Product under the same license at the same time for any other purpose.
5. "Staging Server License" means a license that, in addition to providing Development Server License rights, enables Licensee to use and install the Software for the following purposes: user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data updates, and training activities.
6. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or transaction basis.

SECTION 2—TERMS OF USE FOR SPECIFIC SOFTWARE

Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software. Specific Software is subject to the terms of use set forth in the notes referenced below:

<p>Desktop</p> <ul style="list-style-type: none">▪ Address Coder (22; Addendum 2, Note 7)▪ ArcExplorer—Java and Windows Editions (20; Addendum 2, Note 1)▪ ArcGIS for Desktop (Advanced, Standard, or Basic) (26; Addendum 2, Note 1; Addendum 2, Note 6)▪ ArcGIS Explorer Desktop (20; Addendum 2, Note 1)▪ ArcGIS for AutoCAD (20)▪ ArcLogistics<ul style="list-style-type: none">– Desktop (Addendum 2, Note 1; Addendum 2, Note 2)– Using ArcGIS Online (20; 46; Addendum 2, Note 1)– Using ArcGIS for Server (20; 46; Addendum 2, Note 1)– Navigator (46; Addendum 2, Note 1; Addendum 2, Note 2)▪ ArcPad (12; 13; Addendum 2, Note 1; Addendum 2, Note 2)▪ ArcReader (20; Addendum 2, Note 1)▪ ArcView 3.x and Extensions (17)▪ Esri Business Analyst (Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Maps for Office (Addendum 2, Note 1)▪ Sourcebook•America (20; Addendum 2, Note 8) <p>Server</p> <ul style="list-style-type: none">▪ ArcGIS for Server<ul style="list-style-type: none">– Workgroup (8; 9; 28; 29; 30; 32; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6)– Enterprise (8; 9; 27; 31; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6)– Cloud Bundle (10; Addendum 3—Common Terms)▪ ArcGIS for Server Extensions<ul style="list-style-type: none">– ArcGIS for INSPIRE (8; Addendum 2, Note 1)	<ul style="list-style-type: none">▪ Esri Business Analyst Server<ul style="list-style-type: none">– Workgroup (8; 9; 28; 29; 30; 31; 39; Addendum 2, Note 1; Addendum 2, Note 4)– Enterprise (8; 9; 27; 31; 39; Addendum 2, Note 1; Addendum 2, Note 4)▪ Portal for ArcGIS (31; 61; 62; Addendum 2, Note 1)▪ Esri Tracking Server (31)▪ Esri Maps for IBM Cognos (53)▪ Esri Maps for SharePoint (Addendum 2, Note 1) <p>Developer Tools</p> <ul style="list-style-type: none">▪ ArcGIS Runtime SDK for iOS, Windows Phone, Windows Mobile, or Android (16; Addendum 2, Note 1)▪ ArcGIS Engine Developer Kit and Extensions (16, 22, 26)▪ ArcGIS Engine for Windows/Linux and Extensions (15; 22; 26; Addendum 2, Note 1; Addendum 2, Note 6)▪ ArcGIS for iOS (Addendum 2, Note 1)▪ ArcGIS for Windows Mobile Deployments (15; 54; Addendum 2, Note 1)▪ ArcGIS Runtime (18; 59; Addendum 2, Note 1)▪ ArcGIS Runtime SDK (16; 60; Addendum 2, Note 1)▪ ArcGIS Web Mapping (including ArcGIS API for JavaScript/HTML5, ArcGIS API for Flex, ArcGIS API for Microsoft Silverlight, ArcGIS API for WPF) (15; 16; 64; 66; Addendum 2, Note 1)▪ Esri Business Analyst Server Developer (Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Developer Network (EDN) Software, Online Services, and Data (24; 26; Addendum 2, Note 1; Addendum 2, Note 6)▪ Esri File Geodatabase API (47)
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Notes

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29. Software can only be used with a supported version of SQL Server Express. Supported versions are listed with the system requirements for the product on the Esri website.
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31. Licensee may have redundant Esri Server Software installation(s) for failover operations, but the redundant Software can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
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38. The ArcGIS 3D Analyst for Server extension included with ArcGIS for Server Standard (Workgroup or Enterprise) may be used only for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS 3D Analyst for Server extension Software is permitted with ArcGIS for Server Standard.
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53. This authorizes installation and use of a sufficient quantity of instances of ArcGIS for Server Enterprise Standard solely for the purposes of integrated intercommunication between Esri ArcGIS for Server map services and IBM Cognos data packages. No other use of Esri ArcGIS for Server Enterprise Standard is permitted.
54. ArcGIS for Windows Mobile Deployments are licensed for use with ArcGIS for Server Advanced (Enterprise or Workgroup), ArcGIS for Desktop (Advanced, Standard, Basic), and ArcGIS Engine applications.
- 55–58. Reserved.
59. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users up to the number of Deployment Licenses that have been purchased.
60.
 - a. ArcGIS Runtime SDK licenses shall not be used for Internet or server development;
 - b. An end user must purchase a software application that includes an ArcGIS Runtime license to obtain the right to run an ArcGIS Runtime application on one (1) computer; and
 - c. Customers building applications for their own internal use must purchase ArcGIS Runtime licenses for every application Deployed that includes ArcGIS Runtime. A single user may have multiple ArcGIS Runtime licensed applications installed on one (1) computer, but each application is an independent Deployment of ArcGIS Runtime.
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**ADDENDUM 2
DATA TERMS OF USE
(E300-2)**

This Data Terms of Use Addendum ("Addendum 2") sets forth the terms of Licensee's use of Data and includes Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/licensing/software-license.html> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 2 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to modify the Data terms of use referenced below at any time. Licensee may cancel a subscription upon written notice to Esri or discontinue use of the Data, as applicable. If Licensee continues to use the Data, Licensee will be deemed to have accepted the modification. Data terms of use are set forth in the notes referenced below:

<ul style="list-style-type: none"> ▪ ArcGIS Online Data (1) ▪ StreetMap Premium for ArcGIS (2) ▪ StreetMap Premium for Windows Mobile (2) ▪ StreetMap Premium for ArcPad (2) ▪ ArcLogistics Data (2) ▪ Data Appliance for ArcGIS (3) ▪ Business Analyst/Location Analytics Data (4, 10) 	<ul style="list-style-type: none"> ▪ Demographic, Consumer, and Business Data ("Esri Data") (5, 10) ▪ Data and Maps for ArcGIS (6) ▪ Address Coder Data (7, 10) ▪ Sourcebook•America Data (8, 10) ▪ MapStudio Data (9)
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Notes

1. *ArcGIS Online Data*: Software and Online Services that reference this note enable access to ArcGIS Online Data. ArcGIS Online Data is provided for use solely in conjunction with Licensee's authorized use of Esri Software and Online Services. Licensee may use Data accessed through ArcGIS Online as permitted under the terms of the URLs referenced below:
 - a. NAVTEQ data is subject to the terms of use at http://www.esri.com/legal/pdfs/j9791-navteq_use_data.pdf.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/legal/pdfs/j9946-icubed.pdf>.
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 - e. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.

2. *StreetMap Premium for ArcGIS; StreetMap Premium for ArcGIS for Windows Mobile; StreetMap Premium for ArcPad; ArcLogistics Data*: StreetMap Premium Data may be used for mapping, geocoding, and single vehicle routing purposes but is not licensed for dynamic routing. For instance, StreetMap Premium Data may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed. StreetMap Premium Data may not be used to perform synchronized routing of multiple vehicles. Data acquired for use with ArcGIS for Desktop, ArcGIS for Server, ArcPad, or ArcLogistics Software may only be used with the Product for which the Data was acquired, and may not be used with any other Product. StreetMap for Windows Mobile Data is licensed for use solely on mobile devices or in conjunction with ArcGIS for Mobile applications. Data may include data from either of the following sources:
 - a. NAVTEQ data is subject to the terms of use at http://www.esri.com/legal/pdfs/j9791-navteq_use_data.pdf.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/legal/pdfs/j9792-teleatlas_use_data.pdf.

3. *Data Appliance for ArcGIS*: Data provided with Data Appliance is subject to the following additional terms of use:
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- b. NAVTEQ data is subject to the terms of use at http://www.esri.com/legal/pdfs/j9791-navteq_use_data.pdf.
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- e. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.

4. *Business Analyst Data; Location Analytics Data*: Business Analyst Data is provided with Esri's Business Analyst (Server, Desktop) or accessed through Business Analyst Online and Community Analyst. Location Analytics Data is accessed through Business Analyst Online API, Community Analyst API, and Location Analytics API. The Data is subject to the following additional terms of use:
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 - b. Licensee's use of Canadian Edition Data with Business Analyst (Server, Desktop), Business Analyst Online API, Community Analyst API, or Location Analytics API is subject to the Use of Data Restrictions specific to [Esri Business Analyst \(Canadian Edition\) Data](#).
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5. *Demographic, Consumer, and Business Data ("Esri Data")*: This Data category includes demographic, consumer, business, and Tapestry Segmentation datasets. Subject to the terms of the License Agreement and this Addendum 2, Licensee may use the Esri Data for any business purpose.
6. *Data and Maps for ArcGIS*: The Data is available to licensed users of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online. Data and Maps for ArcGIS is provided for use solely in conjunction with authorized use of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online.
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 - b. StreetMap Data may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.

7. *Address Coder Data*: This Data is included with Address Coder and is provided for Licensee's internal business use solely in connection with Licensee's authorized use of Address Coder.
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**ADDENDUM 3
ONLINE SERVICES ADDENDUM
(E300-3)**

This Online Services Addendum ("Addendum 3") sets forth the terms of Licensee's use of Online Services and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/licensing/software-license.html> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 3 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to update the terms from time to time. [Section 1](#) of this Addendum 3 contains terms applicable to all Online Services; [Section 2](#) contains common terms applicable to specific Online Services.

SECTION 1—COMMON TERMS OF USE OF ONLINE SERVICES

ARTICLE 1—DEFINITIONS

In addition to the definitions provided in the License Agreement, the following definitions apply to this Addendum 3:

- a. "API" means application programming interface.
- b. "ArcGIS Website" means <http://www.arcgis.com> and any related or successor websites.
- c. "Content" means Data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, software applications, and Developer Tools.
- d. "Developer Tools" means software development kits (SDKs), APIs, software libraries, code samples, and other resources.
- e. "Named Users" means Licensee's employees; agents; consultants; contractors; or, for education accounts, registered students whom Licensee authorizes to access Online Services for Licensee's exclusive benefit through Licensee's ArcGIS Online account, to which they are explicitly linked through unique, individual user names and passwords.
- f. "Online Content" means Content hosted or provided by Esri as part of Online Services, including any Map Services, Task Services, Image Services, and Developer Tools and excluding Content provided by third parties that Licensee accesses through Online Services.
- g. "Service Components" means each of the following: Online Services, Online Content, ArcGIS Website, Developer Tools, Documentation, or related materials.
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ARTICLE 2—USE OF ONLINE SERVICES

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2.3 Licensee's Responsibilities. Licensee or Licensee's Named Users are the only persons authorized to access Online Services through Licensee's accounts. Authorization Codes may not be shared among multiple individuals but may be reassigned for absences of one (1) month or longer. Licensee and Licensee's Named Users are responsible for maintaining the confidentiality of Authorization Codes and for ensuring that unauthorized third parties do not access Licensee's account. Licensee will immediately notify Esri if Licensee becomes aware of any unauthorized use of Licensee's account or any other breach of security.

2.4 Prohibited Uses of the Online Services. In addition to the prohibited uses under the License Agreement, Licensee shall not (i) attempt to gain unauthorized access to the Online Services or assist others to do so; (ii) use Online Services for spamming, to transmit junk e-mail or offensive or defamatory material, or for stalking or making threats of physical harm; (iii) use Online Services to store or transmit software viruses, worms, time bombs, Trojan horses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment ("Malicious Code"); (iv) mirror, reformat, or display Online Services in an attempt to mirror and/or make commercial use of Online Services except to the degree that Online Services directly enable such functionality; (v) share the client-side data cache derived from Online Services with other licensed end users or third parties; (vi) distribute the client-side data cache, routes, or geocodes derived from Online Services to third parties; (vii) manually or systematically harvest information and data contained within Online Services; (viii) use ArcGIS Online Map Services, Geocoding Services, or Routing Services in connection with any products, systems, or applications installed or otherwise connected to or in communication with vehicles capable of vehicle navigation, positioning, dispatch, real-time route guidance, fleet management, or similar applications; or (ix) incorporate any portion of Online Services into a commercial product or service unless it adds material functionality to the Online Services.

2.5 Evaluations. Esri may provide licenses to use certain Services for Licensee's internal evaluation purposes. Such licenses continue until the stated evaluation period expires or until Licensee purchases a subscription, whichever occurs first. **IF LICENSEE DOES NOT CONVERT LICENSEE'S EVALUATION LICENSE TO A SUBSCRIPTION PRIOR TO EXPIRATION OF THE EVALUATION TERM, ANY CONTENT AND CUSTOMIZATIONS THAT LICENSEE UPLOADED OR MADE DURING THE EVALUATION TERM WILL BE PERMANENTLY LOST. IF LICENSEE DOES NOT WISH TO PURCHASE A SUBSCRIPTION, LICENSEE MUST EXPORT SUCH CONTENT BEFORE THE END OF LICENSEE'S EVALUATION PERIOD.**

2.6 Modifications of Online Services. Esri reserves the right to alter, modify, deprecate, or discontinue Online Services and related APIs at any time. If reasonable under the circumstances, Esri will provide prior notice of any material alterations. Esri will attempt to support any deprecated APIs for up to six (6) months, unless there are legal, financial, or technological reasons not to support them.

2.7 Attributions. Licensee is not permitted to remove any Esri or its licensors' logos or other attribution associated with any use of ArcGIS Online Services.

ARTICLE 3—TERM AND TERMINATION

The following supplements Article 5—Term and Termination of the License Agreement:

3.1 Term of Subscriptions. The term of any subscription will be provided in the Ordering Document under which it is purchased or in the Online Services description referenced therein.

3.2 Service Interruption. Licensee's access (including access on behalf of Licensee's customers) to and use of Online Services may be suspended, without prior notice, for any unanticipated or unscheduled downtime or unavailability of all or any portion of Online Services, including system failure or other events beyond the reasonable control of Esri or its affiliates.

3.3 Service Suspension. Esri and its affiliates shall be entitled, without any liability to Licensee, to suspend access to any portion or all of Online Services at any time on a service-wide basis (a) if Licensee breaches this License Agreement or exceeds Licensee's usage limits and fails to purchase additional Service Credits sufficient to support Licensee's continued use of Online Services as described in Article 5 of this Addendum; (b) if there is reason to believe that Licensee's use of Online Services will adversely affect the integrity, functionality, or usability of the Online Services or that Esri and its licensors may incur liability by not suspending Licensee's account; (c) for scheduled downtime to conduct maintenance or make modifications to Online Services; (d) in the event of a threat or attack on Online Services (including a denial-of-service

attack) or other event that may create a risk to the applicable part of Online Services; or (e) in the event that Esri or its affiliates determine that Online Services (or portions thereof) are prohibited by law or otherwise that it is necessary or prudent to do so for legal or regulatory reasons. If warranted under these circumstances, Licensee will be notified of any Service Suspension beforehand and allowed reasonable opportunity to take remedial action.

3.4 Esri is not responsible for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Licensee or any Licensee customer may incur as a result of any Service Interruption or Service Suspension.

ARTICLE 4—LICENSEE'S CONTENT, FEEDBACK

4.1 Licensee's Content. Licensee is solely responsible for the development, operation, and maintenance of Licensee's Content and for all materials that appear on or in any of Licensee's Content. Licensee retains all right, title, and interest in Licensee's Content. Licensee hereby grants Esri and its licensors a nonexclusive, nontransferable, worldwide right to host, run, and reproduce Licensee's Content solely for the purpose of enabling Licensee's use of Online Services. Without Licensee's permission, Esri will not access, use, or disclose Licensee's Content except as reasonably necessary to support Licensee's use of Online Services, respond to Licensee's requests for customer support, or troubleshoot Licensee's account or for any other purpose authorized by Licensee in writing. If Licensee accesses Online Services with an application provided by a third party, Esri may disclose Licensee's Content to such third party as necessary to enable interoperation between the application and Online Services. Esri may disclose Licensee's Content if required to do so by law or pursuant to the order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure. It is Licensee's sole responsibility to ensure that Licensee's Content is suitable for use with Online Services and for maintaining regular offline backups using the Online Services export and download capabilities.

4.2 Removal of Licensee's Content. Licensee will provide information and/or other materials related to Licensee content as reasonably requested by Esri to verify Licensee's compliance with this License Agreement. Esri may remove or delete any portions of Licensee's Content if there is reason to believe that uploading it to, or using it with, Online Services violates this License Agreement. If reasonable under these circumstances, Esri will notify Licensee before Licensee's Content is removed. Esri will respond to any Digital Millennium Copyright Act take-down notices in accordance with Esri's Copyright Policy, available at http://www.esri.com/legal/licensing/dmca_policy.html.

4.3 Sharing Licensee's Content. Online Services and ArcGIS Website include publishing capabilities that allow Licensee to make Licensee's Content available to third parties ("Sharing Tools"). Licensee hereby grants to any third parties with whom Licensee elects to share Licensee's Content using such Sharing Tools the right and license to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Licensee's Content with Online Services subject to any terms of use and access restrictions that Licensee provides with Licensee's Content. **ESRI IS NOT RESPONSIBLE FOR ANY LOSS, DELETION, MODIFICATION, OR DISCLOSURE OF LICENSEE'S CONTENT RESULTING FROM LICENSEE'S NAMED USERS' MISUSE OF SUCH SHARING TOOLS OR ANY OTHER SERVICE COMPONENTS. LICENSEE'S USE OF SUCH SHARING TOOLS IS AT LICENSEE'S SOLE RISK.**

4.4 Retrieving Licensee's Content upon Termination. Upon termination of this License Agreement or any evaluation or subscription, Esri will make Licensee's Content available to Licensee for download for a period of thirty (30) days unless Licensee requests a shorter window of availability or Esri is legally prohibited from doing so. Thereafter, Licensee's right to access or use Licensee's Content with Online Services will end, and Esri will have no further obligations to store or return Licensee's Content.

ARTICLE 5—LIMITS ON USE OF ONLINE SERVICES; SERVICE CREDITS

Esri may establish limits on the resources available to Licensee with Online Services. These limits may be controlled through Service Credits. Service Credits are used to measure the consumption of ArcGIS Online services made available through Licensee's account. The maximum Service Credits provided with Licensee's ArcGIS Online account will be addressed in the applicable Ordering Document. Esri will notify Licensee's account administrator when Licensee's Service consumption reaches approximately seventy-five percent (75%) of the Service Credits allocated to Licensee through Licensee's subscription. The overage limits for a particular Service and options to address overages will be provided in the Service description and specified in the Ordering Document. Esri reserves the right to suspend Licensee's account until Licensee pays all outstanding overage fees in accordance with this License Agreement.

ARTICLE 6—ONLINE CONTENT; THIRD-PARTY CONTENT AND WEBSITES

6.1 Online Content. ArcGIS Online Data is included as a component of Online Services and is licensed under the terms of the License Agreement.

6.2 Third-Party Content and Websites. Online Services and ArcGIS Website may reference or link to third-party websites or enable Licensee to access, view, use, and download third-party Content. This Agreement does not address Licensee's use of third-party Content, and Licensee may be required to agree to different or additional terms in order to use third-party Content. Esri does not control these websites and is not responsible for their operation, content, or availability; Licensee's use of any third-party websites and third-party Content is *as is*, without warranty, and at Licensee's sole risk. The presence of any links or references in Online Services to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

ARTICLE 7—LICENSEE'S WARRANTIES

Licensee warrants that Licensee's Content or use of Online Services with a product, process, or system not supplied by Esri or specified by Esri in its Documentation will not (i) infringe or misappropriate any third-party intellectual property rights or proprietary rights, (ii) violate any third party's privacy rights or any applicable law, or (iii) contain or transmit to a third party any Malicious Code. Except as prohibited by applicable law, Licensee agrees to defend, indemnify, and hold harmless Esri from and against any claim, action, liability, or demand arising out of a breach of the foregoing warranties.

SECTION 2—TERMS OF USE FOR SPECIFIC ONLINE SERVICES

Specific Online Services are subject to the terms of use set forth in the notes referenced below:

<ul style="list-style-type: none">▪ ArcGIS Online (1; 2; 3; Addendum 2, Note 1; Addendum 2, Note 6)▪ Business Analyst Online (4; Addendum 2, Note 1; Addendum 2, Note 4)▪ Business Analyst Online Mobile (4; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6; Addendum 2, Note 1; Addendum 2, Note 4)▪ Community Analyst (4; Addendum 2, Note 1; Addendum 2, Note 4)	<ul style="list-style-type: none">▪ Esri Community Analyst API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Location Analytics API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6; Addendum 2, Note 1; Addendum 2, Note 4)▪ Redistricting Online (3; Addendum 2, Note 1)▪ MapStudio (5; Addendum 2, Note 9)
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Notes

1. In addition to the common terms of use of Online Services:
 - a. Licensee may use Licensee's ArcGIS Online account to build a Value-Added Application(s).
 - b. Licensee may provide access to Licensee's Value-Added Application(s) to third parties, subject to the following terms:
 - i. Licensee may allow anonymous user access to Licensee's Value-Added Application(s).
 - ii. Licensee shall not add third parties as Named Users to Licensee's ArcGIS Online account for the purpose of allowing third parties to access Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iii. Licensee shall not provide a third party with access to ArcGIS Online Services enabled through Licensee's ArcGIS Online account other than through Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iv. Licensee is responsible for any fees accrued through the use of Licensee's ArcGIS Online account by third parties accessing Licensee's Value-Added Application(s). This includes Service Credits required to support third-party Online Services usage and any additional subscription fees for Online Services as required.
 - v. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).
 - vi. Licensee will restrict third-party use of Online Services as required by the terms of this Agreement.
 - c. For ArcGIS Online ELA and Organization Plan accounts: Licensee is also permitted to
 - i. Charge an additional fee to third parties to access Licensee's Value-Added Application(s), subject to the terms of this License Agreement; or
 - ii. Transfer Licensee's Value-Added Application(s) to a third party's ArcGIS Online account, subject to the following:
 - (1) Licensee may charge third parties a fee for Licensee's Value-Added Application(s).
 - (2) Licensee is not obligated to provide technical support for the third party's general use of its ArcGIS Online account not related to Licensee's Value-Added Application(s).
 - (3) Licensee is not responsible for any fees accrued through the third party's use of Licensee's Value-Added Application(s) that have been transferred to or implemented on the third party's ArcGIS Online account.
 - d. For Personal Plans, Education and Not-for-Profit use of ArcGIS Online accounts: Licensee is not permitted to charge an additional fee to third parties to access Licensee's Value-Added Application(s) or generate more than incidental advertising revenue as a consequence of the deployment or use of the Value-Added Application(s). Charging a fee to access Licensee's Value-Added Application(s) or generating more than incidental advertising revenue requires an ArcGIS Online ELA or Organization Plan account.

2. Licensee is not permitted to be the licensee of an ArcGIS Online account for or on behalf of a third party.
3. Terms of Use for ArcGIS Online Services: The following ArcGIS Online Services are not subject to ArcGIS Online fee-based Service Credit consumption usage. There is no fee (unless otherwise noted) to use these services up to the predefined maximum usage limits shown below. Use of these services beyond the predefined usage limits requires an additional fee. These services may be used only in conjunction with ArcGIS Software or an ArcGIS Online account.
 - a. *Map Services, Imagery Services, and Geometry Services*: Licensee may put these services to any use consistent with these terms of use, subject to an aggregate limit of fifty million (50,000,000) transactions during any twelve (12)-month period. "Transaction" is defined in the Documentation at the ArcGIS Online Content resource center at <http://help.arcgis.com/en/arcgisonline/content/>.
 - b. *ArcGIS Online Standard Task Services (available at <http://tasks.arcgis.com>)*: Licensee may put these services to any use consistent with these terms of use, subject to the following:
 - *Standard Geocoding Services*: Licensee may use these services for search capabilities only, and results may not be stored for later use. Whenever results are stored for later use, a subscription is required.
 - *Standard Routing Services*: Licensee is subject to a limit of five thousand (5,000) routing requests (as defined in the Documentation) during any twelve (12)-month period.
 - c. *ArcGIS Online Subscription Task Services (available at <http://premiumtasks.arcgis.com>)*: Upon Licensee's payment to Esri of the applicable fee(s), Licensee may put these services to any use consistent with these terms of use. Licensee may store results for later use.
 - d. *ArcGIS Online Sample Services*: Licensee may use these services for internal evaluation and development purposes only. All licenses for ArcGIS Online Services are subject to these terms of use and any additional restrictions or requirements identified in the Documentation.

The following ArcGIS Online Service is subject to fee-based ArcGIS Online Service Credit consumption usage:

- a. *ArcGIS Online World Geocoding Service (available at <http://geocode.arcgis.com>)*: Licensee may use this service for search capabilities at no cost, but results may not be stored for later use. Upon Licensee's payment for an ArcGIS Online subscription or Service Credits, Licensee may batch geocode and store results for later use.
4. Licensee may not display or post any combination of more than one hundred (100) Esri Business Analyst Online or Community Analyst Reports and maps on Licensee's external websites.
5. Licensee may create, publicly display, and distribute maps in hard copy and static electronic format for news-reporting purposes.
6. Licensee may develop software or web applications that use Business Analyst Online API, Community Analyst API, or Location Analytics API to access, query, create, display, and redistribute Reports and resultant static, electronic maps to end user(s) of Licensee's software or web applications. If Licensee has an anonymous user subscription, Licensee may provide access to Licensee's Value-Added Application(s) to anonymous end users, limited to the number of Reports Licensee has paid for. End user(s) of Licensee's software or web applications may use Reports and maps for internal purposes only and not for further redistribution. "Report(s)" means any formatted output created by the Business Analyst Online API, Community Analyst API, or Location Analytics API Products, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats. Licensee and Licensee's end users are prohibited from using Reports or other output generated by Business Analyst Online API, Community Analyst API, or Location Analytics API as a substitute for Business Analyst Online API, Community Analyst API, or Location Analytics API, including, but not limited to, (i) combining and including such output in one or more files or databases and (ii) making such output available through a multiuser computer application. For clarity, end users may save Reports locally for their own internal use. For publicly facing applications developed with Business Analyst Online API (Canadian Edition), Reports and Data may be produced or exported in static formats only (e.g., JPEG, PDF); Licensee must ensure that Licensee's application does not allow Canadian Edition Reports to be exported as CSV, XML, HTML, or XLS files or in any other format that readily enables extraction or manipulation of the file's contents. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).

**ADDENDUM 4
LIMITED USE PROGRAMS
(E300-4)**

This Limited Use Programs Addendum ("Addendum 4") applies to any Licensee that has been qualified by Esri or its authorized distributor to participate in any of the programs described herein. This Addendum 4 includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/licensing/software-license.html> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 4 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to update the terms from time to time.

<ul style="list-style-type: none">▪ Educational Programs (1)▪ Grant Programs (2)	<ul style="list-style-type: none">▪ Home Use Program (3)▪ Other Esri Limited Use Programs (4)
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Notes

1. *Educational Programs:* Licensee agrees to use Products solely for educational purposes during the educational use Term. Licensee shall not use Products for any administrative use unless Licensee has acquired an administrative use Term License. Licensee shall not use Products for commercial or for-profit purposes.
2. *Grant Programs:* Licensee may use Products only for Noncommercial purposes as specified in the Esri grant document. Licensee shall not use Products for commercial or for-profit purposes.
3. *ArcGIS for Home Use Program:*
 - a. All ArcGIS for Home Use Program Products are provided as Term Licenses and are identified on Esri's Home Use Program website found at <http://www.esri.com/arcgis-for-home/> or Licensee's authorized distributor's website.
 - b. Esri grants to Licensee a personal, nonexclusive, nontransferable, Single Use License solely to use the Products provided under the ArcGIS for Home Use Program as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been paid, (ii) for Licensee's own Noncommercial internal use, (iii) in accordance with this License Agreement and the configuration ordered by Licensee or as authorized by Esri or its authorized distributor, and (iv) for a period of twelve (12) months unless terminated earlier in accordance with the License Agreement. "**Noncommercial**" means use in a personal or individual capacity that (i) is not compensated in any fashion; (ii) is not intended to produce any works for commercial use or compensation; (iii) is not intended to provide a commercial service; and (iv) is neither conducted nor funded by any person or entity engaged in the commercial use, application, or exploitation of works similar to the licensed Products.
 - c. **Installation Support.** Installation Support for a period of ninety (90) days is included with ArcGIS for Home Use. As discussed further on the Esri or authorized distributor's website, Esri provides technical support in response to specific inquiries. Installation Support will apply only to unmodified Software. Software is provided only for standard hardware platforms and operating systems supported by Esri as described in the Software Documentation. Esri is not responsible for making or arranging for updates to interfaces for nonstandard devices or custom applications.

Esri Installation Support will be provided in compliance with the Esri ArcGIS for Home Use Installation Support document on the Esri website at <http://www.esri.com/legal/pdfs/home-use-installation-support.pdf>. Esri supports users solely with the installation of Esri Software. Esri's Support website is at <http://support.esri.com/en/support>. Support provided by an authorized distributor will be in accordance with the distributor's technical support program terms and conditions.
4. *Other Esri Limited Use Programs:* If Licensee acquires Products under any limited use program not listed above, Licensee's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Addendum 4. All such program terms are incorporated herein by reference.



EXHIBIT 2
TRAINING ADDENDUM
(E207SET 3/11)

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

ARTICLE 1—TRAINING DESCRIPTION

Esri offers instructor-led training related to the use of its proprietary GIS software. Esri will provide to Licensee a fixed number of training days to use for Instructor-Led Training, as defined in this Small Enterprise Training Package, if purchased. Instructor-Led Training events occur at an Esri Learning Center or via the web in a cloud environment. The Esri software training course(s) to be conducted, location, schedule dates, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the Esri Training website. Esri reserves the right to modify course content when necessary due to software technical capabilities or limitations.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- Esri will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. Esri will provide each Student with a course manual where applicable.
- Esri will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

ARTICLE 3—LICENSEE'S RESPONSIBILITIES

- Licensee must ensure the protection of Esri's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s) unless otherwise required by law.
- Licensee must not resell seat(s) to an Esri training class unless explicitly authorized in writing by Esri.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on Esri's Training website.
- Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to Esri Customer Service a list of the names of Students that are to attend any training class. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's

participation due to US government export regulation requirements, course scheduling changes, or cancellations.

- Licensee must provide written notice to Esri's Customer Service at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for Esri training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from Esri. **Esri reserves the right to record a classroom training event for future rebroadcast.**

ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

- When a Student's place in class is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Should a Student substitution occur without three (3) business days' notification, an additional nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center class to another one (1) time at no additional charge provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a class provided Esri's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full Student Seat fee.

If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- To order training, Licensee must include training in the Purchase Order for the ELA or provide a Purchase Order as required and specified within the ELA that matches the Esri quotation.
- Where Licensee submits additional Purchase Orders to purchase training days for additional year(s), any unused training days will automatically roll over.
- A Purchase Order is required annually for each three (3)-year term. Failure to submit annual Purchase Orders will result in the forfeit of unused training days.
- Licensee must assign an individual within its organization to the role of Training Administrator to serve as liaison between Licensee's organization and Esri as well as internally manage and authorize allocated training days.

- The training days are available for a period of twelve (12) months, commencing on the purchase Effective Date, and ending when all training days are consumed, whichever is sooner.
- Esri will invoice for outstanding training expenses where applicable.
- Training days are not transferable and not refundable for any other Esri products or services.

ARTICLE 6—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, Esri and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 7—WARRANTY

7.1 Esri will provide training in a manner consistent with the technical and professional standards of the industry.

7.2 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE TRAINING IS ERROR FREE.

ARTICLE 8—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 9—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.



Agenda Memorandum

City Council Meeting
January 28, 2013



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

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

Recommended City Council Action

Authorize the City Manager to sign the third amended intergovernmental agreement with the Urban Drainage and Flood Control District and Adams County to provide additional funding in the amount of \$1,700,000 for the Little Dry Creek Regional Detention Pond and related channel improvements.

Summary Statement

- This is the third amendment to the intergovernmental agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) for the Little Dry Creek drainage project, which was originally approved by City Council on February 9, 2009. This amendment is necessary to accrue sufficient funding in the project budget to award the construction contract for the tunneling work under the Federal Boulevard embankment.
- The first phase of construction work is proposed to begin in February 2013 with the boring of three pipes through the Federal Boulevard embankment near Little Dry Creek. The first pipe to be bored will be for the City's proposed 36-inch diameter sanitary sewer. The second will be for the 10-inch Crestview Water & Sanitation District's sanitary sewer line, and the third will be the 108-inch diameter storm drainage culvert.
- This amended IGA will add \$300,000 from UDFCD and \$1,700,000 from the City of Westminster into this project budget in order to award the proposed construction contract. The City's share of the funding, \$1,700,000, is available in the Storm Water Utility Fund.
- The IGA contains provisions for amending the document to allocate additional funding in future budget years. Significant future funding from the City's Storm Water Utility and the UDFCD is anticipated that will allow this project to be fully funded within the next two years.

Expenditure Required: \$1,700,000 (City's share)

Source of Funds: Stormwater Utility Fund - Little Dry Creek Regional Detention Project

Policy Issue

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

Alternative

Council could choose not to authorize this amended intergovernmental agreement at this time. Staff does not recommend this alternative because the matching funds from the UDFCD will help complete this project in a cost effective manner. If Council chooses not to approve this IGA, it would take longer to complete the project without UDFCD funds, thus delaying the drainage improvements necessary to accommodate the construction of the proposed transit-oriented development in the vicinity of Westminster Station.

Background Information

The original IGA for this project was authorized by City Council on February 9, 2009. At that time, the UDFCD contributed \$100,000, Adams County contributed \$150,000 and the City contributed \$150,000 to the project budget. The first amendment to the IGA, authorized by Council on October 25, 2010, added UDFCD funding in the amount of \$600,000 and City funding in the amount of \$500,000 to the budget.

The second amendment authorized by City Council on December 10, 2012, added UDFCD funding in the amount of \$275,000 and City funding in the amount of \$275,000 to the budget. The proposed action on this third amendment to the IGA will bring the total funding for the project to \$4,050,000.

The timing of this third amendment is critical as the UDFCD plans to award a contract in February for the tunneling work through the Federal Boulevard embankment. This first tunnel is necessary for the construction of the City's proposed 36-inch diameter sewer main that is planned for construction in April.

The second tunnel is for the 10-inch diameter Crestview sanitary sewer main that will also start construction in April. The last tunnel to be constructed will be the 108-inch diameter storm sewer that will assist in lowering the floodplain by four feet in an effort to protect the commuter rail line from flood inundation.

This multi-faceted project will help advance the City of Westminster's Strategic Plan Goal of a Safe and Secure Community by protecting people, homes and buildings from flooding through an effective stormwater management program. Additionally this project will assist in the development of a multi-modal transportation system and developing a transit oriented development around the Westminster Station.

This project will dramatically change and revitalize this area once the regional open space and active recreational uses as identified in the Little Dry Creek Park Master Plan are implemented. This also assists the City's Strategic Plan Goal of creating a Beautiful and Environmentally Sensitive City by increasing green space consistent with defined goals.

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

	Previously Contributed	Additional Contribution	Current Total	Percentage Share
DISTRICT	\$975,000	\$300,000	\$1,275,000	31.5%
COUNTY	\$150,000	\$0	\$150,000	3.7%
CITY	\$925,000	\$1,700,000	\$2,625,000	64.8%
TOTAL	\$1,500,000	\$2,000,000	\$4,050,000	100.0%

Westminster's share of the funding for this project (\$1,700,000) is available from the Little Dry Creek Regional Detention Project of the Stormwater Capital Improvements Fund.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- IGA Third Amendment
- Vicinity Map

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

Agreement No. 08-09.09C

THIS AGREEMENT, made this _____ day of _____, 2013, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY OF WESTMINSTER (hereinafter called "CITY") and ADAMS COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

WITNESSETH:

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

WHEREAS, PARTIES now desire to continue to fund final design, right-of-way acquisition and construction; and

WHEREAS, PARTIES desire to increase the level of funding by \$2,000,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 12, Series of 2010, Resolution No. 43, Series of 2010, Resolution No. 21, Series of 2012, and Resolution No. 65, Series of 2012); and

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

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

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Delineation, description and acquisition of required rights-of-way/ easements;
3. Construction of improvements;
4. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$4,050,000 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AS AMENDED</u>	<u>PREVIOUSLY AMENDED</u>
1. Final Design	\$ 950,000	\$ 650,000
2. Right-of-way	200,000	200,000
3. Construction	2,800,000	1,100,000
4. Contingency	100,000	100,000
Grand Total	\$4,050,000	\$2,050,000

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

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

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	31.5%	\$ 975,000	\$ 300,000	\$1,275,000
COUNTY	3.7%	\$ 150,000	\$ -0-	\$ 150,000
CITY	64.8%	\$ 925,000	\$1,700,000	\$2,625,000
TOTAL	100.0%	\$2,050,000	\$2,000,000	\$4,050,000

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

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval.

Payment of each party's full share (CITY - \$2,625,000; COUNTY - \$150,000; DISTRICT - \$1,275,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special interest bearing account to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY and COUNTY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

5. All other terms and conditions of Agreement No. 08-09.09 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

ADAMS COUNTY

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

County Attorney

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

City Attorney

Little Dry Creek Regional Drainage Project Vicinity Map

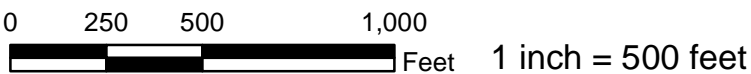


72nd Avenue

Lowell Blvd.

Federal Blvd.

Tunneling location





Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Second Reading of Councillor’s Bill No. 1 re the Comprehensive Land Use Plan Amendment for The Registry (LongsView) Development

Prepared By: Patrick Caldwell, Planner III

Recommended City Council Action

Pass Councillor’s Bill No. 1 on second reading amending the Comprehensive Land Use Plan changing the designation on a portion of the Registry site and for a portion of the Northridge at Park Centre 3rd Replat site from Business Park to R-18 and City-Owned Open Space. This recommendation is based on a finding that the proposed amendment will be in the public good and that:

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

Summary Statement

- The proposed development consists of 25.37 acres located on the east side of Zuni Street and Federal Parkway, south of 122nd Avenue and generally north of the Cornerstone Christian Academy property (formerly the Arabian Horse Center).
- The developer is proposing a for-rent multi-family development consisting of 312 dwelling units.
- Parking for the project will largely be provided in 272 spaces underneath the units. In addition, 44 standard garage spaces, 42 carport spaces and 208 surface level parking are provided for residents and guests.
- Buildings will range in height from three to four stories. The site is sloped to the north and west, which will result in many of the units having mountain views.
- The project is proposed to be developed in one phase.
- The entire Public Land Dedication (PLD) area of 8.4 acres located at the southeast corner of 122nd Avenue and Federal Parkway will be in the form of a sledding area on land to be dedicated to the City to fulfill the required public land dedication requirement.
- This Councillor’s Bill was approved on first reading by City Council on January 14, 2013.

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance
Exhibit A – Legal Description
Exhibit B – Comprehensive Land Use Plan Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **1**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Winter - Atchison

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds that:

a. An application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owners of the properties described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from "Business Park" to "R-18" for the 16.07 acre parcel and to "City-owned Open Space" for the 10.05 acre parcel generally located at the southeast corner of Zuni Street and Federal Parkway.

b. Such application has been referred to the Planning Commission, which body held a public hearing thereon on December 11, 2012, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

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

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

e. The owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly that the requested amendment will provide opportunities for housing in many forms for all incomes, lifestyles, and age groups within the City, and; incorporate natural terrain features into the design, and; incorporate water conservation measures in accordance with the City of Westminster Landscape Regulations, and; incorporate a high quality of design for private developments and buildings.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designations of the properties more particularly described on attached Exhibit A to R-18 and City-owned Open Space, respectively, as depicted on the map attached as Exhibit B, which is incorporated herein by reference.

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 14th day of January, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 28th day of January, 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

R-18

A parcel of land, located in the SW1/4 of Section 33, T1S, R68W of the 6th P.M., being more particularly described as follows:

Commencing at the Southwest corner of said Section 33; thence N 00°15'13" W, along the west line of said Section 33, a distance of 729.89; thence N 89°59'25" W, a distance of 2.50 feet to the point of beginning;

Thence N 00°15'13" W, a distance of 764.60 feet; thence along the arc of a curve to the left, having a central angle of 14°27'14", a radius of 497.53 feet, for an arc length of 125.51 feet; thence N 75°17'34" E, a distance of 39.00 feet; thence along the arc of a non-tangent curve to the right, having a central angle of 01°40'56", a radius of 1119.00 feet, for an arc length of 32.85 feet (the chord of which bears N 64°42'12" E, a distance of 32.85 feet); thence along the arc of a non-tangent curve to the right, having a central angle of 30°40'29", a radius of 50.00 feet, for an arc length of 26.77 feet (the chord of which bears N 41°34'07" E, a distance of 26.45 feet); thence N 56°54'21" E, a distance of 117.82 feet ; thence along the arc of a curve to the right, having a central angle of 86°22'54", a radius of 35.00 feet, for an arc length of 52.77 feet; thence S 36°42'44" E, a distance of 35.46 feet; thence N 53°17'16" E, a distance of 37.63 feet; thence along the arc of a non-tangent curve to the right, having a central angle of 168°04'42", a radius of 34.96 feet, for an arc length of 102.54 feet (the chord of which bears N 51°09'29" E, a distance of 69.53 feet); thence N 49°06'06" E, a distance of 56.19 feet; thence along the arc of a curve to the right, having a central angle of 40°38'41", a radius of 100.00 feet, for an arc length of 70.94 feet; thence N 89°44'47" E, a distance of 176.95 feet; thence N 34°44'47" E, a distance of 43.18 feet; thence S 55°15'13" E, a distance of 58.79 feet; thence S 00°15'13" E, a distance of 1089.14 feet; thence S 89°55'37" W, a distance of 678.87 feet to the point of beginning, containing 700,093 square feet (16.07 acres) more or less.

County of Adams, State of Colorado

Bearings are based on the west line of the SW1/4 of Section 33, T1S, R68W of the 6th P.M. Said line is assumed to bear N 00°15'13" W, and is monumented on the south by a 2.5" aluminum cap, L.S.#2149, and on the north by a 3" aluminum cap, L.S.#2149.

City-Owned Open Space

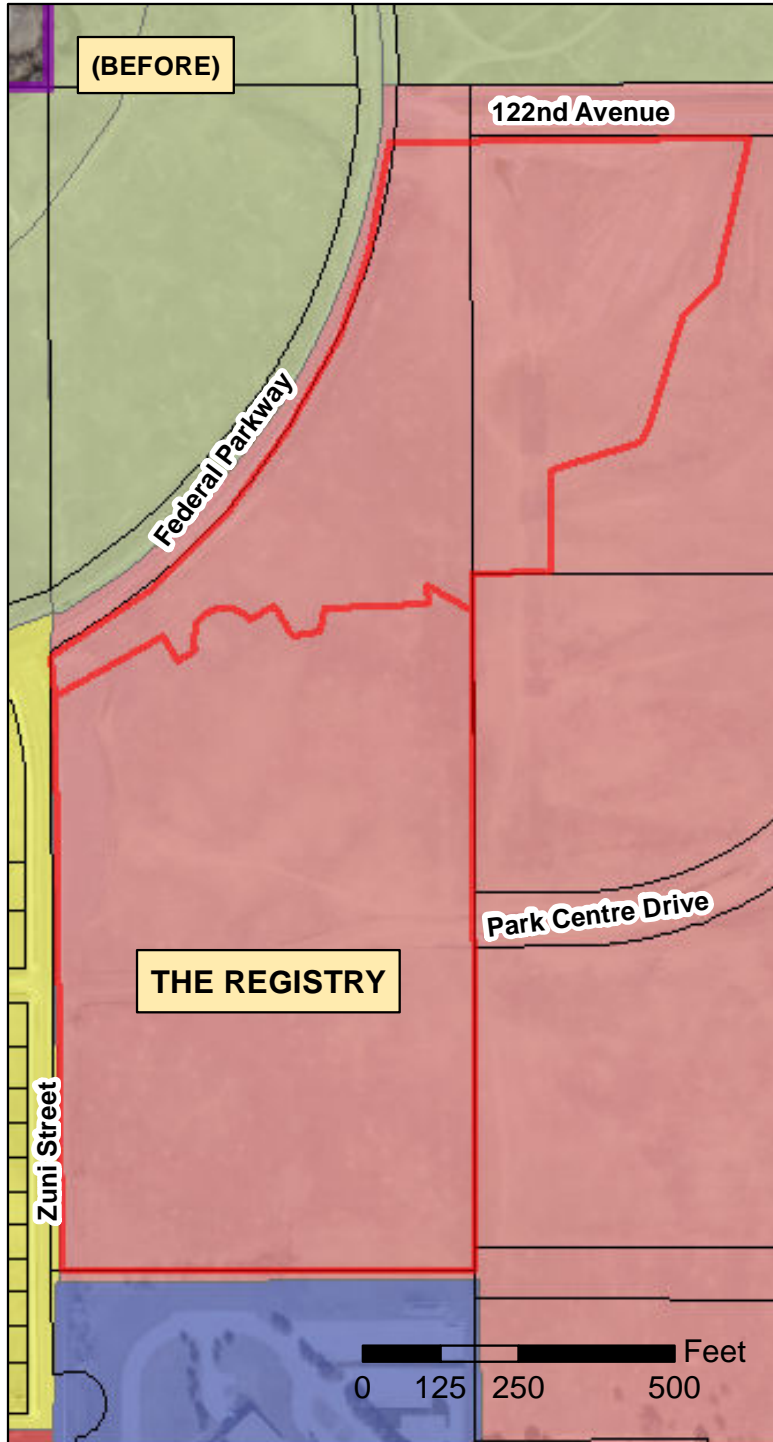
A parcel of land, located in the SW1/4 of Section 33, T1S, R68W of the 6th P.M., being more particularly described as follows:

Commencing at the Southwest corner of said Section 33; thence N 00°15'13" W, along the west line of said Section 33, a distance of 1628.42 feet; thence N 89°44'47" E, a distance of 19.52 feet to the point of beginning;

Thence S 75°17'34" W, a distance of 39.00 feet; thence along the arc of a non-tangent curve to the left, having a central angle of 8°01'12", a radius of 497.53 feet, for an arc length of 69.64 feet (the chord of which bears N 18°43'02" W, a distance of 69.58 feet); thence N 22°43'36" W, a distance of 43.64 feet; thence along the arc of a non-tangent curve to the left, having a central angle of 61°14'03", a radius of 1000 feet, for an arc length of 1068.74 feet (the chord of which bears N 36°39'21" E, a distance of 1018.59 feet); thence N 89°36'05", a distance of 121.62 feet; thence N 89°36'21" E, a distance of 437.33 feet; thence S 15°33'32" W, a distance of 235.61 feet; thence S 30°17'09" W, a distance of 91.10 feet; thence S 13°01'33" W, a distance of 155.60 feet; thence S 49°35'15" W, a distance of 55.90 feet; thence S 66°28'04" W, a distance of 133.39 feet; thence N 00°20'24" W, a distance of 156.64 feet; thence S 89°44'55" W, a distance of 126.08 feet; thence S 00°15'13" E, a distance of 21.95 feet; thence N 55°15'13" W, a distance of 58.79 feet; thence S 34°44'47" W, a distance of 43.18 feet; thence S 89°44'47" W, a distance of 176.95 feet; thence along the arc of a curve to the left, having a central angle of 40°38'41", a radius of 100.00 feet, for an arc length of 70.94 feet; thence S 49°06'06" W, a distance of 56.19 feet; thence along the arc of a non-tangent curve to the left, having a central angle of 168°04'42", a radius of 34.96 feet, for an arc length of 102.54 feet (the chord of which bears S 51°09'29" W, a distance of 69.53 feet); thence S 53°17'16" W, a distance of 37.63 feet; thence N 36°42'44" W, a distance of 35.46 feet; thence along the arc of a curve to the left, having a central angle of 86°22'54", a radius of 35.00 feet, for an arc length of 52.77 feet; thence S 56°54'21" W, a distance of 117.82 feet ; thence along the arc of a non-tangent curve to the left, having a central angle of 30°40'29", a radius of 50.00 feet, for an arc length of 26.77 feet (the chord of which bears S 41°34'07" W, a distance of 26.45 feet); thence along the arc of a non-tangent curve to the left, having a central angle of 01°40'56", a radius of 1119.00 feet, for an arc length of 32.85 feet (the chord of which bears S 64°42'12" W, a distance of 32.85 feet) to the point of beginning, containing 437,697 square feet (10.05 acres) more or less.

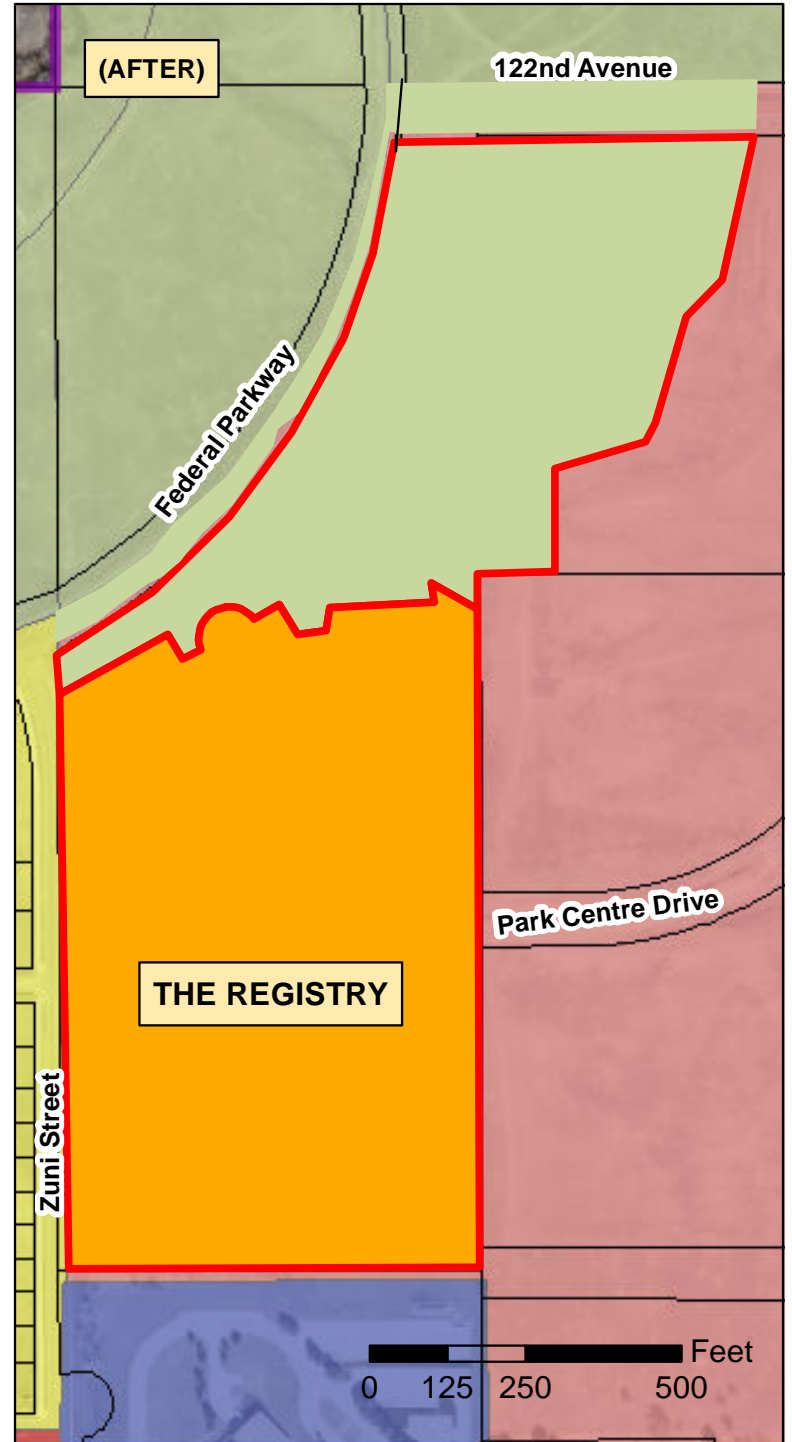
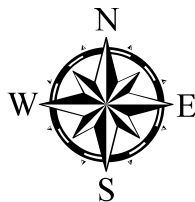
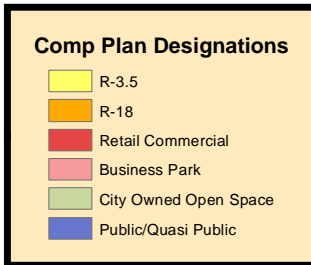
County of Adams, State of Colorado

Bearings are based on the west line of the SW1/4 of Section 33, T1S, R68W of the 6th P.M. Said line is assumed to bear N 00°15'13" W, and is monumented on the south by a 2.5" aluminum cap, L.S.#2149, and on the north by a 3" aluminum cap, L.S.#2149.



The Registry

(SEC of Federal Parkway and Zuni Street)





Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Second Reading of Councillor’s Bill No. 2 re Ranch Barn and Pasture Lease Agreement

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

Pass Councillor’s Bill No. 2 on second reading authorizing the City Manager to sign a lease agreement between the City of Westminster and Two Horse Run, LLC for the lease of the Ranch Barn and Pasture located at 1600 West 120th Avenue in the City of Westminster.

Summary Statement

- The Ranch Open Space was purchased in 1989 and was one of the first open space sites acquired by the City. In 1998, the historic Marion Barn (now referred to as the Ranch Barn) was moved to the open space property to make room for an office building located just south of the open space.
- From 1989 until early 2012, a local farmer, Bill Tessar, provided the horses and maintained the property with little cost to the City. In the spring of 2012, Mr. Tessar passed away.
- Maintaining a pastoral setting within an urban environment is one of the elements for which the Ranch Open Space was first acquired and the reason the Department of Parks, Recreation and Libraries wishes to continue allowing horses on the property.
- Bids to lease the Ranch Barn and Pasture were solicited through a Request For Proposal (RFP) process and two interested parties submitted applications: Two Horse Run, LLC and Mr. Arturo Madera.
- An interview panel was convened and based upon the proposal received, the quality of their RFP, the oral interview presentation and their proximity to the property, the panel unanimously recommends awarding the lease agreement to Two Horse Run, LLC.
- Rent for the property is \$300 per month.
- The term of the lease is for one year with the possibility of three additional yearly extensions. The lease would be extended by the City Manager without the necessity of returning to Council.
- The lease requirements for maintenance at the Ranch Barn property are mentioned in Sections 1,2, 2, 7 and 9 in the attached Ranch Barn and Pasture Lease Agreement.
- Councillor’s Bill No. 2 was passed on first reading on January 14, 2013.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **2**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Briggs – Kaiser

A BILL

FOR AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE CITY AND TWO HORSE RUN LLC FOR THE LEASE OF THE RANCH BARN AND PASTURE LOCATED AT 1600 W. 120th AVENUE, WESTMINSTER, CO 80234.

WHEREAS the City owns Open Space property located at 1600 W. 120th Avenue, Westminster, Colorado 80234, consisting of pasture land and a historic barn structure, and

WHEREAS the City desires certain duties to be performed at The Ranch Barn and Pasture property, and the City will permit limited horse boarding and the use of pasture land as described herein in exchange for those duties, and

WHEREAS Lessee desires to perform those duties in addition to paying the City a monthly rental payment in order to utilize said boarding opportunities,

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

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreement between Two Horse Run LLC and the City for the property located at 1600 West 120th Avenue, Westminster, CO 80234, attached to this Ordinance, is approved.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 14th day of January, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of January, 2013.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

**RANCH BARN AND PASTURE
LEASE AGREEMENT
2013**

THIS LEASE AGREEMENT, is entered into this _____ day of _____, 2013, between The City of Westminster (the "City"), and Two Horse Run LLC (the "Lessee").

RECITALS

- A. Whereas, the City owns Open Space property located at 1600 W. 120th Avenue, Westminster, Colorado 80234, consisting of pasture land and an historic barn structure, and
- B. Whereas the City desires certain duties to be performed at The Ranch Barn and Open Space property, and the City will permit limited horse boarding and the use of pasture land as described herein in exchange for those duties, and
- C. Whereas Lessee desires to perform those duties in addition to paying the City a monthly rental payment in order to utilize said boarding opportunities,

TERMS AND CONDITIONS OF LEASE

Now, therefore, in consideration of the keeping and performance of the covenants and agreements by the Lessee hereinafter set forth, the City and Lessee agree as follows:

1. The City hereby leases unto the Lessee the following described premises (the "Premises"), situated in the City of Westminster, County of Adams, State of Colorado, to wit:

16.8 acres of pasture land and an historic barn, located at 1600 W. 120th Avenue within the boundaries of the City of Westminster, Adams County and is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

1.1. The Barn: The barn may be used by Lessee for up to a maximum of four (4) horses. Specific portions of the barn including the loft area and three (3) indoor rooms are used for City storage and are not part of this lease. The following areas are included in the lease for use by the Lessee:

- 1 – 15' x 15' indoor stall
- 1 – 13' x 13' indoor stall
- 2 – 11' x 13' indoor stalls
- 1 – 8' x 13' tack storage room

1.2. Pasture: The pasture consists of 16.8 acres of grassland that can be used for grazing purposes by the Lessee's horses. It is the responsibility of the Lessee to monitor the condition of the pasture during the grazing season and to restrict the number of horses to a number that does not cause overgrazing, even if that number is less than four (4). The health and vitality of the pasture is of extreme importance and the lease can be terminated if the City deems that overgrazing or pasture health is in jeopardy. Periodic on-site meetings between the Lessee and the City of Westminster Open Space Supervisor are mandatory to monitor this issue.

2. Duties: Lessee shall be responsible for caretaking duties for the Ranch Barn and Open Space pasture land. These duties include, but are not limited to:

- Clean up and disposal of all animal waste in and around the barn. On a semi-annual (twice per year) all animal waste shall be physically removed from inside the barn and inside the

surrounding outdoor corral area. The waste may be spread by the use of a manure spreader in the outlying pasture as an alternative to complete removal from the site.

- Minor repairs and maintenance of hardware and structures to insure ease of operation and security such as; doors, windows, fences and gates.
- Maintain security for all structures and access points.
- Respond to other emergency situations as required.
- Seeding and fertilization of the pasture on a schedule to be determined by the City of Westminster Open Space Supervisor. The City will provide the needed supplies but the Lessee is required to provide the labor and equipment.

3. Rent: In addition to fulfilling the duties required of Lessee in paragraph 2. above, Lessee shall pay monthly rent in the amount of \$300 per month payable on the first (1) day of each month, commencing February 1, 2013.

4. Machinery: The use of tractors and other farm/ranch equipment by Lessee is permitted on this site for maintenance purposes only. The storage of this equipment is limited to one (1) tractor and one (1) piece of equipment. Lessee shall store all equipment on the south side of the barn inside the fenced area. Lessee shall not store any gasoline or other flammable liquids inside the barn. The Lessee assumes all liability for any vandalism, theft, or damage that may occur to Lessee's machinery.

5. Use of Grounds: Lessee may use the amenities of the Ranch Barn and Open Space with the following expressed limitations:

- There will be no engaging in business of any kind for payment either in cash or in-kind services.
- Boarding of horses for profit is not allowed.
- Holding events or training of animals beyond those owned by the Lessee is not allowed.
- Off-road vehicles including ATV's, motorcycles, cars and trucks are not allowed.

6. Insurance: The only insurance coverage that the City will maintain on the leased premises will be damage and casualty insurance on the structures and improvements (fences). Any other insurance will be the sole responsibility of the Lessee including insurance for their personal belongings, any vehicle or possessions stored on the City's premises, and medical or personal liability coverage for themselves, their families or guests.

7. Labor: From time to time, Lessee may be asked to perform additional services including but not limited to the following: field fence repair; cleanup of buildings and grounds, carpentry, and minor construction; field weed and rodent control, and this work will be part of the conditions of the exclusive lease being offered by the City.

8. Term of Agreement: This Lease will begin on February /01/ 2013, and continue for a period of one (1) year with the possibility three (3) additional yearly extensions at the discretion of the City, based upon performance of the services described herein, provided, however, that either party may terminate this lease for its convenience or for any reason upon written notice to the other at least sixty (60) days prior to the proposed date of termination.

9. General Considerations: The Lessee agrees to keep the barn and area surrounding it in good condition. Lessee further agrees to maintain a spirit of peace and tranquility on the premises and keep a respectful attitude toward the public and natural surroundings, which have come about and are provided solely as a result of many years of constant work and attention.

10. Improvements: City reserves the right to improve the property, if funding and opportunity exists,

during the term of this lease but shall not unreasonably disturb the Lessee's use of the Premises.

11. Use of Premises. The making of this Lease is expressly conditioned on Lessee's use of the Premises for horse boarding only, consistent with the land uses specified in the Westminster Municipal Code. If Lessee should ever use the Premises for any other use this Lease may be terminated forthwith by the City.

12. Premises are Leased "AS IS". Lessee accepts the Premises "as is" and acknowledges that City shall have no obligation for maintenance or repair of the Premises or for any injury that may result to Lessee's property, including livestock.

13. Lessee's Covenants. Lessee covenants and agrees to the following:

a. Lawful use. To use the Premises for no purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Westminster;

b. Entry by City. To allow the City at any reasonable hour of the day to enter into and go through the Premises;

c. Overloading. Not to permit the Premises, or the walls or floors thereof, to be endangered by overloading, or the Premises to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous.

d. Alterations, modifications. Not to make any alterations to, or modifications in or upon the Premises, including the installation or removal of attached fixtures, without first obtaining the City's written consent. No such alterations or modifications shall be made, except pursuant to plans submitted by Lessee to the City Manager or his designee. All such alterations or modifications shall be done in conformance with all applicable laws, codes, regulations, and rules of the City and the State of Colorado. All such alterations or modifications shall be done at the Lessee's expense. All such expenses shall be the sole financial responsibility of the Lessee. Further, unless the parties otherwise agree in writing, the Lessee shall be obligated to restore the Premises to the original condition as entered upon if requested to do so in writing by City;

e. Duty of care. To exercise reasonable care in the supervision of the Lessee's agents at all times when they are in or upon the Premises;

f. Damage by Lessee. To reimburse City for any expense incurred by it in repairing any damage to the Premises caused by Lessee, his employees or agents, or any person in their care;

g. Indemnity. To indemnify and hold harmless the City from and against any claim for personal injury or property damage resulting from any act or omission of Lessee or its agents;

h. Subletting. To sublet no part of the Premises, nor assign this lease or any interest therein without City's specific written consent;

i. Nuisance. Not to permit any disorderly conduct or nuisance whatever about the Premises, the building in which they are located, or on the building grounds, having a tendency to annoy, disturb or interfere with other occupants in the surrounding area;

j. Surrender in good condition. At the expiration or termination of this lease to surrender and deliver up the Premises in as good order and condition as when the same were entered upon, loss by fire, inevitable accident and ordinary wear excepted;

14. City/Lessee Covenants: The City and the Lessee further covenant and agree that:

a. Emergency repairs. Notwithstanding any provision in this Lease Agreement to the contrary, Lessee agrees to perform all repairs of an emergency nature necessary to protect the Premises from undue and avoidable injury or damage.

b. City not responsible for Lessee's property. City shall have no responsibility or liability for any loss or damage to any personal property of the Lessee or any fixtures installed by the Lessee;

c. Flammable, hazardous materials. Lessee shall store no flammable, toxic, dangerous, hazardous or obnoxious materials anywhere in the Premises;

15. Untenantable conditions. If the Premises become so damaged by fire, flood, act of God or any other casualty not caused by the Lessee so as to render the Premises untenantable, the Lessee may terminate this Lease without further obligation, unless the damage is repaired by the City within 30 days, in which case the Lease will continue under the existing terms and conditions;

16. Insolvency of Lessee. If the Lessee becomes insolvent, or is declared bankrupt, the City may terminate this Lease forthwith, and all rights of the Lessee hereunder shall thereupon terminate;

17. Peaceable surrender. At the expiration of the term of this Lease, whether by passage of time or by act of the City as provided in this Lease Agreement, the Lessee shall surrender and deliver up the Premises peaceably to the City, and if the Lessee shall remain in possession after termination of this lease, the Lessee shall be deemed guilty of a forcible detainer of the Premises under the statute, and shall be subject to eviction and removal in accordance with state law;

18. Default. If default shall be made in any of the covenants or agreements contained in this Lease Agreement to be kept by Lessee, it shall be lawful, upon 30 days written notice, for the City to declare the term ended and to repossess the Premises in accordance with state law;

19. No waiver. No assent, express or implied, to any breach of any one or more of the covenants or agreements contained in this Lease Agreement shall be deemed or taken to be a waiver of any succeeding or other breach;

20. Designated representatives. The following persons are hereby designated by the parties as the persons responsible for the implementation of this lease:

For the City:

Richard Dahl, Park Services Manager

Rod Larsen, Open Space Supervisor

Donald M. Tripp, Director of Parks, Recreation and Libraries

For the Lessee:

Judy L. Schmidt-Asay, Two Horse Run , LLC.

21. Notices. Should Notices need to be sent or problems arise concerning this Lease the parties agree to contact:

For the Lessee:

Judy L. Schmidt-Asay, Two Horse Run, LLC.
1687 W. 115th Circle
Westminster, Colorado 80234

For the City:

Richard Dahl, Park Services Manager; rdahl@cityofwestminster.us
Rod Larsen, Open Space Supervisor; rlarsen@cityofwestminster.us
Donald M. Tripp, Director of Parks, Recreation and Libraries; dtripp@cityofwestminster.us

IN WITNESS WHEREOF the parties have executed this indenture the day and year first above written.

CITY

J. Brent McFall, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:



Office of the City Attorney

LESSEE

Two Horse Run LLC Judy L Schmidt-Asay
Two Horse Run LLC Judy L Schmidt-Asay

Print name

EXHIBIT A



120th Ave

Tejon St

Pecos St

The Ranch Open Space
Lease Area: 16.8 acres within existing
fenceline, including barn (approx)
Barn: 51' x 58'; 2,958 SF (approx)

The Ranch Barn

The Ranch Golf Course



The Ranch Open Space
City of Westminister





Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Second Reading of Councillor’s Bill No. 4 re Housekeeping Amendments to Specific Chapter Sections in Title XI of the Westminster Municipal Code, Land Development and Growth Management Procedures

Prepared By: Linda Yeager, City Clerk
Marty McCullough, City Attorney

Recommended City Council Action

Pass Councillor’s Bill No. 4 on second reading making housekeeping amendments to specific Chapter Sections in Title XI of the Westminster Municipal Code.

Summary Statement

- As City Council is aware, the Westminster Municipal Code (W.M.C. or Code) is a codification of general ordinances of the City and serves as a major resource to Staff and citizens, both in print and electronically.
- Staff attempts to keep the Code current by regularly seeking Council approval of necessary amendments. Council has requested Staff to review and update the Code on a regular basis to maintain accuracy and ensure it is as free of errors as possible. In general, state, federal and city codes benefit from regular housekeeping measures such as those being proposed at this time for Westminster.
- Staff considers these proposed amendments to be primarily housekeeping in nature, but beyond the scope of authority granted to the City Clerk in Section 1-1-5, W.M.C., to correct errors of punctuation, capitalization, formatting, grammar and spelling, and internal references.
- Staff believes these amendments will improve the overall quality of the Code.
- City Council passed this Councillor’s Bill on first reading at the meeting of January 14, 2013.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 4

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Briggs - Major

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 11-1-3, 11-1-6, 11-3-2, 11-3-8, 11-3-11, 11-4-4, 11-5-6, 11-5-7, 11-5-8, 11-5-10, 11-5-11, 11-5-12, 11-5-19, 11-6-4, 11-6-6, 11-6-7, 11-6-8 AND 11-12-7 OF THE WESTMINSTER MUNICIPAL CODE AS HOUSEKEEPING MEASURES THROUGH OCTOBER 2012

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-1-3(A)(5), W.M.C., is hereby AMENDED to read as follows:

11-1-3: VIOLATIONS: (2534 2797 3491 3497 3634)

(A) Unless otherwise permitted by this Code, it shall be unlawful for any person to:

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

Section 2. Section 11-1-6(A)(3), W.M.C., is hereby AMENDED to read as follows:

11-1-6: LAND USE AND DEVELOPMENT REVIEW FEE SCHEDULE: (2598 3031 3152 3497 3599)

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

(3) **Document Fees:**

Plan Submittal <u>Document Guidelines</u>	\$20
Comprehensive Land Use Plan	\$25
Northeast Comprehensive Development Plan	\$5
Copies of Plans on File	\$5/page
Copies of Documents (up to 20 pages) on CD	\$5/CD

Section 3. Section 11-3-2, W.M.C., is hereby AMENDED to read as follows:

11-3-2: DEFINITIONS: (2534 2571 2651 2714 2735 2975 3091 3561 3634) The following words, terms, and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Active Residential Development” shall mean a residential development with an approved Official Development Plan that has not exceeded the duration limitations in Section 11-5-17, W.M.C., expired pursuant to Chapter 5 of this Title and that has service commitments set aside (provided the service commitments have not expired) for the residential area covered by the Official Development Plan.

Active Residential Developments include residential projects under construction, build-out, infill, and South Westminster residential projects.

~~In order to~~A residential development will not be deemed ~~to be~~ an Active Residential Development, ~~at least one (1) unless a~~ building permit for ~~a at least one (1)~~ new dwelling unit ~~must be~~ issued ~~with~~during any successive two (2) ~~successive calendar years period~~ following initial building permit issuance, ~~or an extension is except that an extended time period to receive a building permit may be~~ specifically approved by the City Council based upon the following findings:

- The need for the extension is the result of some unusual and unforeseeable circumstance beyond the reasonable control of the developer; and
- The extension is needed to avoid undue or inequitable hardship that would otherwise result if the extension were not granted; and
- There is no reason to believe that the developer will not be able to proceed with the development of the project within the extended time period.

“Attached Senior Housing Unit” shall mean an attached residential dwelling unit within a Senior Housing Development~~housing project~~ restricted to persons sixty (60) years of age or over, or as may otherwise be determined by Council.

“Build-Out Development” shall mean a proposed residential development that does not meet the active residential definition but does meet all of the following:

- There is an existing, City-approved Official Development Plan and plat for the site; and
- The proposed land use and density comply with the Comprehensive Land Use Plan; and
- The project is located on land where at least fifty percent (50%) of the housing units within the Official Development Plan have received a certificate of occupancy or at least fifty percent (50%) of the required public improvements, as determined by the City Engineer, have been accepted as complete; and
- Existing public improvements (water lines, sewer lines, streets, etc.) are adjacent to the site; and
- The undeveloped site for the proposed development does not exceed ten (10) acres; and
- The project will meet or exceed all of the City’s minimum design standards and guidelines; and
- The project will offer incentive items detailed within the City’s competition guidelines and will, at a minimum, meet the lowest score of the project(s)’ awarded service commitments for the most recent residential competition for that project type. The project may offer different incentive items than those chosen by the comparable project, but the total of incentive points offered must meet or exceed the score of the comparable project.

An Official Development Plan (ODP) amendment (bringing the project into compliance with City design guidelines) and plat must be submitted for review and are subject to City Manager approval. If the project is unable to meet all of the minimum and incentive design requirements and all other ODP requirements, the project will be subject to Planning Commission review and approval or denial.

“Custom Residence” shall mean a single-family detached residence that has interior plans and exterior elevations that are unique as compared to the other single-family residences within the same subdivision as determined by the Chief Building Official.

“Custom Residential Development” shall mean a single-family detached residential development consisting exclusively of custom residences.

“Infill Residence” shall mean a custom residence that is not part of an active residential development and that is constructed on a vacant site in an area where less than ten percent (10%) of the residential land is vacant.

“Senior Housing Development” shall mean an attached, multiple-unit residential project for persons sixty (60) years of age or older and may include a senior housing project that meets the specifications of either one of the following types of facilities:

Government-Sponsored Senior Housing and Non-Profit Senior Housing: government-sponsored senior housing projects provided by non-profit section”_501(c)-C-(3)” organizations as defined by the federal government. Said projects must be approved by the City Council. Such projects shall be subject to the provisions contained in Section 11-3-8(B), W.M.C. Service requirements for said projects shall be reviewed individually, and service commitments shall be awarded on an individual basis by City Council action at the time of approval of an Official Development Plan; or

Non-Government Sponsored For-Profit Senior Housing:

- Skilled nursing facilities: facilities that integrate shelter for the elderly with medical, nursing, psychological and rehabilitation services for persons who require twenty-four- (24) hour nursing supervision and care.
- Assisted living: shelter and services for frail elderly who are functionally and/or socially impaired and in need of twenty-four- (24) hour supervision. Services must include, as a minimum, environmental security, transportation, housekeeping, social activities, laundry and meals.
- Congregate care: shelter for elderly who may need limited assistance but do not need twenty-four- (24) hour supervision. Services must include, as a minimum, environmental security, transportation, housekeeping, social activities, laundry and meals.
- Independent living: ~~attached or~~ multi-family housing targeted specifically to seniors who are functionally and socially independent. Services must include, at a minimum, environmental security, transportation, housekeeping and social activities.

A Senior Housing Development does not include single-family detached or single-family attached housing products that have age restrictions.

“Service Commitment” shall mean a unit measure of City service required as determined by the average service provided to one (1) single-family detached dwelling unit. Adequacy of a service commitment for a structure shall be determined in accordance with the following schedule:

Single-Family Detached Dwelling Unit or Mobile Home Unit	1.0 Service Commitment
Single-Family Attached Dwelling Unit	0.7 Service Commitment
Multi-Family Dwelling Unit	0.5 Service Commitment
Attached Senior Housing Unit	0.35 Service Commitment
Non-Residential—To be determined on a case-by-case basis, based upon the specific plan presented.	

“South Westminster Residential Project” shall mean a residential project located south of 80th Avenue in the City of Westminster that meets all applicable design criteria for such projects.

If a project is able to meet all the criteria above for a South Westminster Residential Project, an ODP and plat must be submitted for review and are subject to City Manager approval. If City staff and the developer are unable to resolve all issues prior to finalizing the ODP, the project shall be subject to Planning Commission approval or denial.

Section 4. Section 11-3-8, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

11-3-8: MANDATORY IN-HOUSE WATER CONSERVATION: (2534) In-house water conservation shall be mandatory for all structures constructed in the City, as follows:

(A) RESIDENTIAL STANDARDS: ~~All residential plumbing fixtures shall conform to the most recent version of the City's Plumbing Code. In-house water conservation shall be mandatory for all residential dwelling units hereafter constructed in the City and shall include all of the following:~~

~~Water closets constructed with maximum flush of three point five (3.5) gallons.~~

~~Water saving shower heads with maximum flow of three gallons per minute (3gpm).~~

~~Aerators on all sinks and lavatory faucets with maximum flow of three gallons per minute (3gpm).~~

~~Shower cut-off valve incorporated in either a single control mixing valve or the shower head.~~

(B) NON-RESIDENTIAL USER STANDARDS: The following conservation standards shall be mandatory for non-residential uses:

(1) ~~Restrooms, kitchens, and industrial processes shall incorporate water conservation design and fixtures;~~ All plumbing fixtures shall conform to the most recent version of the City's Plumbing Code.

(2) Car Wash Recycle. Full water recycling systems shall be mandatory for all ~~full-service~~ commercial car wash facilities hereafter constructed in the City, ~~except. Water recycling systems shall not be mandatory~~ for self-service ~~commercial~~ car wash es facilities.

Section 5. Section 11-3-11, W.M.C., is hereby AMENDED to read as follows:

11-3-11: EFFECTIVE DATE: (3561) This Chapter shall ~~become effective on January 1, 2011, and shall continue to~~ be in effect through December 31, 2020.

Section 6. Section 11-4-4, W.M.C., is hereby AMENDED to read as follows:

11-4-4: ALLOWED USES: (2534 2896 2975 3295 3497)

(A) This Section lists the uses allowed ~~in specific zoning districts. The table of uses that follows lists the allowed uses~~ within each ~~zoning or~~ corresponding district, ~~excluding~~ the Planned Unit Development District, PUD. ~~Uses allowed pursuant to this Section do not apply to that area included in the South Westminster Urban Renewal Plan, Phase I (Sub-areas A-I), and the uses allowed in that area shall be governed by the Plan.~~

(B) The listing of a use as being allowed in any particular district shall be deemed to be an exclusion of such use from any other district, unless ~~such~~ the use is specifically allowed in ~~the~~ such other district. The Planning Manager shall determine if an unlisted use or set of uses falls into the definition of a listed use, and such determination is subject to review and approval by the Planning Commission, if an applicant so requests, subject to the hearing requirements of Section 11-5-13 (A), W.M.C. The decision of the Planning Commission on the matter is final.

(C) Uses are allowed only insofar as they are not prohibited or in conflict with other provisions of this Title or the City's Comprehensive Plan. In the event of any conflict or inconsistency between this Section and the City's Comprehensive Plan, the Comprehensive Plan shall control.

(D) Uses allowed pursuant to this Section do not apply to that area included in the South Westminster Urban Renewal Plan, Phase I (Sub-areas A-I), and the uses allowed in that area shall be governed by the Plan.

(E) The categories of allowed uses are as follows:

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

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

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

[THE TABLE THAT FOLLOWS REMAINS UNCHANGED]

Section 7. Section 11-5-6, W.M.C., is hereby AMENDED to read as follows:

11-5-6: OFFICIAL DEVELOPMENT PLAN (ODP) WAIVER: (2534 2598)

(A) No ODP waiver shall be granted for any property zoned Planned Unit Development.

(BA) The requirement for an ODP may be waived by the City Manager if the City Manager determines (1) that the proposed improvements are minor site improvements, including, but not limited to, additions, remodeling and accessory buildings; the construction of a single-family dwelling on a platted lot in a standard residential district; or advertising signs, fences, and landscaping that are to be made in accordance with this Code and (2) the improvements will have no adverse impacts on surrounding lots and parcels nor the public health, safety, or general welfare. The City Manager may condition the approval of any such waiver upon the development satisfying any or all of the criteria set forth in Section 11-5-15, W.M.C., Standards for Approval of Official Development Plans and Amendments to Official Development Plans. ~~No waiver shall be granted for any property zoned Planned Unit Development and subject to a previously approved Preliminary Development Plan.~~

(CB) A waiver of the ODP requirement may also be granted by the City Manager for the purpose of combining nonconforming lots or portions of nonconforming lots with continuous frontage in single ownership in a manner that creates conforming lots. Such nonconforming lots or portions of lots shall be considered for the purpose of this Code to be an unsubdivided parcel. Prior to the issuance of a building permit for any structure on such lots, a final plat in accordance with this Code shall be required to be submitted and approved. The plat shall bring the lots into conformance with the density requirements of the district in which they are located. Upon the denial by the City Manager of an ODP waiver, an ODP approval shall be required prior to development or redevelopment.

(DE) An application for an ODP waiver shall be in a form and contain such information as may be required by the City Manager.

(ED) An application fee as specified in the Land Use and Development Review Fee Schedule set forth in Section 11-1-6, W.M.C., shall be paid at the time of application for an ODP waiver.

Section 8. Section 11-5-7, subsections (A)(3) and (4), W.M.C., are hereby AMENDED to read as follows:

11-5-7: FORMAT AND APPROVAL PROCESS FOR PRELIMINARY DEVELOPMENT PLANS (PDP's): (2534 2598 2975 3599)

(A) APPLICATION PROCEDURES FOR PDP'S:

(3) Upon a determination by the project planner that ~~Following~~ the concept plan review, if any, is complete, the applicant shall prepare a detailed submittal for technical review of the proposed plans in the format specified in the Community Development Department's Plan Submittal Guidelines ~~for submittal~~, a copy of which is available in the Planning Division office. Comments shall be prepared and

returned to the applicant. Additional submittals may be required at the option of the City. Staff review and feedback concerning a concept plan shall not be construed as a type of approval or pre-approval of any aspect of the submittal.

(4) Following the concept plan review, if any, and prior to commencing any technical review of a proposed PDP, the applicant shall complete the neighborhood notification process described in the Community Development Department's [Plan Submittal Guidelines](#) ~~for neighborhood notification~~, a copy of which is available in the Planning Division office. The City Manager or the Manager's designee may waive this requirement for neighborhood notification, if the Manager determines, based upon the project's likely and foreseeable impacts on the surrounding neighborhood, that no neighborhood notification is required.

Section 9. Section 11-5-8, W.M.C., is hereby AMENDED to read as follows:

11-5-8: FORMAT AND APPROVAL PROCESS FOR OFFICIAL DEVELOPMENT PLANS (ODP'S): (2534 2598 3027 3028 3599)

(A) APPLICATION PROCEDURES FOR ODP'S:

(1) Applicants shall consult with the City prior to submitting an application for approval of an ODP to discuss the project concept and to gather information regarding City policies, codes, standards and procedures.

(2) Following the initial discussion, an applicant may submit a concept plan and shall submit an application for review in a format specified in the Community Development Department's [Plan Submittal Guidelines](#) ~~for submittal~~, a copy of which is available in the Planning Division office.

(3) ~~Upon a determination by the project planner that~~ ~~Following~~ the concept plan review, if any, ~~is complete~~, the applicant shall prepare a detailed submittal for technical review of the proposed plans in the format specified in the Community Development Department's [Plan Submittal Guidelines](#) ~~for submittal~~, a copy of which is available in the Planning Division office. Comments shall be prepared and returned to the applicant. Additional submittals may be required at the option of the City. Staff review and feedback concerning a concept plan shall not be construed as a type of approval or pre-approval of any aspect of the submittal.

(4) Following the concept plan review, if any, and prior to commencing any technical review of a proposed ODP, the applicant shall complete the neighborhood notification process described in the Community Development Department's [Plan Submittal Guidelines](#) ~~for neighborhood notification~~, a copy of which is available in the Planning Division office. The City Manager or the Manager's designee may waive this requirement for neighborhood notification, if the Manager determines, based upon the project's likely and foreseeable impacts on the surrounding neighborhood, that no neighborhood notification is required.

(5) Prior to any review of a proposed ODP, the applicant shall provide:

(a) Either the written consent of all owners of the property in the proposed ODP or evidence otherwise satisfactory to the Planning Manager of the applicant's authority to represent the owners of the property;

(b) Evidence of ownership and encumbrances satisfactory to the City and such other information as may be reasonably required to evaluate the proposed development;

(c) A non-refundable application fee as specified in the Land Use and Development Review Fee Schedule set forth in Section 11-1-6, W.M.C., shall be paid at the time of application for any proposed ODP. In addition, all recording fees shall also be paid for all plans and plats that have been approved by the City prior to their recording.

(6) The City may initiate an application for an ODP without the consent of the property owner or owners for any redevelopment project within an Urban Renewal Area; provided, however, the approval of any such application shall be conditional and not effective until such time as all property covered by the ODP has been acquired by the Westminster Economic Development Authority or its designated redeveloper for the project. In such event, the above application procedures of this subsection (A) shall not be applicable.

(B) APPROVAL PROCESS FOR ODP'S:

(1) Administrative approvals. The City Manager may, but shall not be required to, approve any ODP or ODP waiver, without hearing or notice, that:

- (a) Does not introduce a new land use not allowed by the PDP.
- (b) Meets all requirements of the zoning district in which it is located, and the requirements of any PDP for the property.
- (c) Does not involve a parcel or lot more than ten (10) acres in size, or involves a proposed non-residential development of twenty (20) acres or less in size, exclusive of property intended for or designated for future public ownership or dedication for open space, parks, rights-of-way or other public uses, that is determined by the City Manager to further the City's economic development goals and if such development meets guidelines established by City Council to qualify for economic development assistance.

(2) ODP's requiring public hearings.

(a) The City Manager may, in his sole discretion, elect to refer any ODP to the Planning Commission and City Council for their consideration at a public hearing.

(b) Any ODP not administratively approved by the City Manager or not eligible for such administrative approval shall, upon the request of the applicant, be referred to the Planning Commission and City Council for consideration pursuant to the procedures set forth in Section 11-5-13, W.M.C.

(3) Final approval by Planning Commission. The decision of the Planning Commission regarding an original or amended ODP shall be final, unless a timely appeal of such decision is filed in accordance with Section 11-5-13(B), W.M.C.

Section 10. Section 11-5-10, subsection (A), W.M.C., is hereby AMENDED to read as follows:

11-5-10: FORMAT AND APPROVAL PROCESS FOR AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS (ODP'S): (2534 3599 3634)

(A) APPLICATION PROCEDURES FOR ODP AMENDMENTS:

(1) Applicants ~~shall~~should consult with the City prior to submitting an application for approval of an ODP amendment to discuss the project concept and to gather information regarding City policies, codes, standards and procedures. Applicants may propose an amendment to an ODP for all or only a portion of the entire land area within the previously approved ODP, except that an amendment to a residential ODP for an individual single-family lot within a detached single-family housing development, which does not add a new use or change the density, shall proceed under the variance process set forth in Section 2-2-8, W.M.C.

(2) Following the initial discussion, an applicant may submit a concept plan and shall submit an application for review in a format specified in the Community Development Department's Plan Submittal Guidelines ~~for submittal~~, a copy of which is available in the Planning Division office.

(3) Following the concept plan review, if any, the applicant shall submit a formal application for approval and prepare a detailed submittal for technical review of the proposed plans in the format specified in the Community Development Department's [Plan Submittal Guidelines](#) ~~for submittal~~, a copy of which is available in the Planning Division offices. Comments shall be prepared and returned to the applicant.

Additional submittals may be required at the option of the City. Staff review and feedback concerning a concept plan shall not be construed as a type of approval or pre-approval of any aspect of the submittal.

(4) Following the concept plan review, if any, and prior to commencing any technical review of a proposed ODP amendment, the applicant shall complete the neighborhood notification process described in the Community Development Department's [Plan Submittal Guidelines](#) ~~for neighborhood notification~~, a copy of which is available in the Planning Division offices. The City Manager or the Manager's designee may waive this requirement for neighborhood notification, if the Manager determines, based upon the project's likely and foreseeable impacts on the surrounding neighborhood, that no neighborhood notification is required.

(5) Prior to any review of a proposed ODP amendment, the applicant shall provide:

(a) Either the written consent of the owner(s) of the property in the area proposed for ODP amendment or evidence otherwise satisfactory to the Planning Manager of the applicant's authority to represent the owner(s) of such property;

(b) Evidence of ownership and encumbrances satisfactory to the City and such other information as may be reasonably required to evaluate the proposed development; and

(c) A non-refundable application fee, as specified in the Land Use and Development Review Fee Schedule set forth in Section 11-1-6, W.M.C., shall be paid at the time of application for any proposed ODP amendment. In addition, all recording fees shall also be paid for all plans and plats that have been approved by the City prior to their recording.

(6) The City may initiate an application for an ODP amendment without the consent of the property owner or owners for any redevelopment project within an Urban Renewal Area; provided, however, the approval of any such application shall be conditional and not effective until such time as all property covered by the ODP has been acquired by the Westminster Economic Development Authority or its designated redeveloper for the project. In such event, the above application procedures of this subsection (A) shall not be applicable.

(7) An amendment to an ODP may be initiated by:

(a) The owner of the area covered by the proposed amendment, except as provided in subsection (A)(1) above; or

(b) The City when the City Council determines:

(i) That approved land uses for the Planned Unit Development are no longer appropriate, due to changed conditions in the vicinity, revisions to the City's Comprehensive Plan, any incompatibilities between an existing land use and surrounding zoning or development, or Council finds that the ODP no longer meets the requirements of Section 11-5-15, W.M.C.;

(ii) That public facilities are inadequate or do not meet current standards; or

(iii) That natural hazards or other environmental problems exist that threaten the public health, safety or welfare.

(8) The City Manager may, in his or her sole discretion, on a case-by-case basis, waive any of the normal submittal requirements for amendments to ODP's within his or her administrative approval

authority that the City Manager deems to be minor in substance and scope and reduce the fee for such minor amendments.

Section 11. Section 11-5-11, subsection (A)(1), W.M.C., is hereby AMENDED to read as follows:

11-5-11: FORMAT AND APPROVAL PROCESS FOR FINAL PLATS: (2534 2598)

(A) APPLICATION PROCEDURE FOR FINAL PLATS:

(1) An application for review and approval of a final plat shall be submitted in the format specified in the [City's Community Development Department's Plan Submittal Document Guidelines, a copy of which is available in the Planning Division office.](#)

Section 12. Section 11-5-12, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

11-5-12: APPLICATION FORMAT AND CONTENT FOR LANDSCAPE AND IRRIGATION DRAWINGS AND PRIVATE IMPROVEMENTS AGREEMENT: (2534 3133)

(A) As required by the [City's Community Development Department's Plan Submittal Guidelines, a copy of which is available in the Planning Division office, plan submittal document](#) and the City's landscape regulations, landscape and irrigation plans shall be reviewed and approved by the City.

(B) The format and content for landscape and irrigation drawings and private improvements agreements shall be as specified by the [City's Community Development Department's Plan Submittal Guidelines, a copy of which is available in the Planning Division office, plan submittal document](#), the City's landscape regulations, and as set forth in this Code.

Section 13. Section 11-5-19, W.M.C., is hereby AMENDED to read as follows:

11-5-19: DISCLOSURE REQUIREMENTS: (2534) Developers of property within the corporate limits of the City and within a Planned Unit Development District shall post, in a prominent location in the sales or rental office for said property, the following materials:

(A) A sign containing, in prominent, bold lettering, the following statement: "All questions concerning the future use or development of property located outside the boundaries of this project should be addressed to the City of Westminster."

~~(B) Any additional information or signage that may be required by City Council at the time of platting and processing of the Official Development Plan.~~

~~(C) A contract concerning the sale of residential units of lots prior to the seller's obtaining approval of a submitted Preliminary Development Plan, an Official Development Plan, and a Subdivision Plat pursuant to this Code shall contain, in prominent, boldfaced lettering, the following clause and the developer shall post in the sales office the following prominent, boldfaced lettered statement: "Final subdivision plans pending approval by the City of Westminster. Sales contracts contingent upon approval by the City of Westminster of such plans."~~

~~(D) A sign containing, in prominent, bold lettering, the following statement: "A copy of the Preliminary Development Plan and the current Official Development Plan and Plat for this subdivision is maintained in this office and is available for inspection upon request."~~

Section 14. Section 11-6-4, sub-subsection (A)(1), W.M.C., is hereby AMENDED to read as

follow:

11-6-4: PUBLIC AND PRIVATE IMPROVEMENT AGREEMENTS AND SURETY REQUIREMENTS: (2534 3634)

(A) Except as provided in Section 11-5-16(B), W.M.C., before the City Manager shall approve a Final Plat or, in the event that a Final Plat is not required, prior to issuing a building permit, the developer shall have submitted the following agreements and surety for the construction of public and private improvements for the development:

(1) A written agreement between the owner and the City for the installation of all public improvements, and a separate agreement for all private improvements, within one (1) year from the date of plat approval, or such other period as may be approved by the City. Such agreements shall be in accordance with the City's standard forms of these agreements as set forth in the [City's Community Development Department's Plan Submittal Document Guidelines](#), a copy of which is available in the [Planning Division office](#).

Section 15. Section 11-6-6, subsection (P), W.M.C., is hereby AMENDED to read as follows:

11-6-6: LOCAL IMPROVEMENT DISTRICTS: (2534)

(P) DEFAULT OF PAYMENT: At the expiration of said thirty- (30) day period provided in the preceding Section, the Finance Director shall return the local assessment roll to the Clerk, showing all payments made thereon with the date of each payment. Said roll shall be certified by the City Clerk under the corporate seal of the City and delivered to the County Treasurer of Adams County or Jefferson County, as the case may be, with his warrant for collection of the same, and the City Clerk shall obtain a receipt from the County Treasurer for the same. The County Treasurer shall receive payment of all assessments appearing upon the assessment roll with interest. In case of default in the payment of any installment of principal or interest when due, the County Treasurer shall advertise and sell any and all property, ~~concerning for~~ which such default is suffered ~~for the and apply such proceeds to~~ payment of the whole of the unpaid assessments, ~~with-including~~ interest and penalties thereon. Said advertisements and sales shall be made at the same time and in the same manner, under all the same conditions and penalties, and with the same effect as are provided by general law for sales of real estate in default of payment of general taxes.

Section 16. Section 11-6-7, sub-subsection (B)(6), W.M.C., is hereby AMENDED to read as follows:

11-6-7: PROCEDURES FOR THE ESTABLISHMENT OF RECOVERY AND PARTICIPATION COSTS: (2534)

(B) RECOVERY OF COSTS OF PUBLIC IMPROVEMENTS:

(6) In connection with the construction of any improvement or facility by a property owner or developer pursuant to this Section, the City and such owner or developer may enter into a written agreement concerning the construction and the owner or developer's rights of cost recovery, if any. ~~Agreements may include provision for simple interest. The City Manager shall be empowered to execute such agreements on behalf of the City,~~ as follows:

- (a) Agreements may include provision for simple interest.
- (b) The City Manager shall be empowered to execute such agreements on behalf of the City.
- (c) In each such agreement, the City shall require that the developer or his successors notify the City in the event that there is a change in the payee of recovery fees collected for

disbursement by the City. This notice shall be provided no later than thirty (30) days after the effective date of the change in payee. This notification shall include the new payee, the payee's address, a description of the event resulting in the change of the payee, and the effective date of the change in payee. The notice shall be signed by someone legally authorized to bind the transferor. The City shall send collected recovery fees to the payee of record, as set forth in this paragraph (c). If, due to lack of notice by the payee, the City is unable to ascertain the identity or location of the payee within sixty (60) days after receipt of the recovery fees, such fees shall revert to the City, and the City may declare the agreement terminated and deposit the undisbursed recovery fees in the City's general fund for City use.

Section 17. Section 11-6-7, sub-subsection (F)(2), W.M.C., is hereby AMENDED to read as follows:

11-6-7: PROCEDURES FOR THE ESTABLISHMENT OF RECOVERY AND PARTICIPATION COSTS: (2534)

(F) INTEREST:

(1) ~~For any recovery agreements executed after August 13, 1984, t~~The maximum amount of allowable accrued interest for any recovery agreement is fifty percent (50%) of the original cost of the public facility.

Section 18. Section 11-6-8, paragraphs (C)(3)(b), (F)(1)(a), (F)(3)(b) and (F)(3)(c), W.M.C., are hereby AMENDED to read as follows:

11-6-8: DEDICATION OF PROPERTY FOR PUBLIC PURPOSES: (2534 2694 2876 2912 3086)

(C) PARK DEVELOPMENT FEES:

(3) Credits.

(a) Any person, firm, or corporation required to pay a park development fee hereunder may receive credit against such fee for public park improvement work done by said developer at the developer's expense simultaneously with the construction of the dwelling units in accordance with City standards and policies.

(b) The amount of such credit shall be determined by the City for various public park improvements, such as, but not limited to, land leveling or earth work incorporated into the park improvements; installation of automatic irrigation systems; finished grading, soil preparation and seeding or sod; plant materials; and park equipment. To qualify for such credit, all park development plans must indicate the following, including, but not limited to: a detailed cost estimate, site location and size, site design, grading, all improvements, including site amenities and landscaping, and shall be subject to the review and approval of the Department of Parks, Recreation, and Libraries, and shall be included in an Official Development Plan approved by the City. Improvements must be designed and installed according to acceptable City standards and specifications. Improvements, such as overlot grading, roadways, sidewalks, bikeways and trails, utilities, and other similar improvements, as determined by the City that would be otherwise required with the development of the subdivision, or are adjacent to the public park or off-site, are generally not subject to credit toward the park development fee. ~~The City may authorize park development fee credits for any improvements not listed above that the City finds will benefit an existing or proposed public park or recreation site or facility, including off site improvements.~~

(c) The required park development fee and any credits thereto, and the timing of completion of park improvements, shall be specified on the relevant Official Development Plan for the project. Completion of park improvements should occur in an early phase of an overall development.

(d) The City Council may authorize park development fee credits for any improvements not listed above that Council finds will benefit an existing or proposed park or recreation site or facility, including off-site improvements. Such credit shall not exceed ninety-four percent (94%) of the total park development fees owed by the developer; not less than six percent (6%) percent of the total development fee shall be paid by the developer in cash. Any proposed credit for park development fees that is authorized under this subsection shall be subject to specific City Council approval, formalized in a written agreement, which shall be approved by Council.

(F) LAND DEDICATION FOR PUBLIC SCHOOL SITES:

(1) Scope and application. In order to meet the infrastructure demands placed upon the City and the school districts to adequately serve new residential development, the owner of unplatted residential lots; the owner of existing platted, but undeveloped, residential lots; and the owner of undeveloped attached or multi-family dwelling units for which building permits are issued after the enactment of this ordinance, shall provide public school sites or fees in lieu thereof to reasonably serve the proposed subdivision or residential development.

(a) The City Manager, in consultation with the specific school district, shall decide if the owner of unplatted residential property shall dedicate land or provide cash-in-lieu thereof. The City Manager, in consultation with the school district, shall determine the location of the land to be dedicated. On any Preliminary Development Plan and any Official Development Plan, land to be dedicated or cash-in-lieu of land dedication, shall be identified. For any residential properties with approved Official Development Plans or Final Plats on the effective date of this ordinance, a cash-in-lieu of land dedication will be required, based upon the methodology herein. For any building permit for a new residential unit ~~issued after June 30, 2001~~, the fee will be collected by the City at time of issuance of the utility permit for each unit or building consisting of multiple units.

(3) Conveyance of dedicated land/cash-in-lieu.

(a) Any person or entity proposing residential zoning or development shall dedicate or convey land for a public school site. In the event that land is not deemed feasible or in the best interests of the City or school district, as determined by the City or school district, the City may require a payment in lieu of land dedication or a combination of both dedication and payment. The manner of dedication or payment (land dedication or payment in lieu) shall be as stated in this ordinance and the incorporated methodology. This shall not preclude the City and school district, and any person or entity, from mutually agreeing to resolve the issue of dedication for public school sites in a manner other than as stated above. A credit or reduction of fee adjustment can be agreed upon for a developer or builder that is already involved in dedication and improving a school site at the time of subdivision.

(b) The City shall refer to the school districts all residential land development applications for review and comment concerning the number of students generated and the adequacy of public school sites and facilities. Land dedications for school sites shall be conveyed to the City any time after Preliminary Development Plan approval, by general or special warranty deed, or by dedication on the Final Plat, as determined by the City. Fees paid as cash-in-lieu of land dedication for unplatted residential properties shall be paid to the City at time of Final Plat, ~~with the exception of those residential developments that were processing Official Development Plans in the City's development review process during the months January through May, 2001, as determined by the City Manager or his designee. These same residential projects that are also not required to dedicate a school land parcel or meet exemption requirements shall have the option of paying the required cash in lieu of land dedication at time of Final Plat or at time of issuance of the utility permit for each unit or building consisting of multiple units as described in Section 11-6-8(E)(3)(C), W.M.C.~~

(c) The City ~~will begin shall~~ collection of cash-in-lieu for existing platted, but undeveloped, single-family lots; and single-family attached or multi-family buildings at the time of issuance of the utility permit for each lot or building. ~~Collection will begin for these lots or~~

~~buildings that obtain a building permit after June 30, 2001.~~ The City will identify the collection of the cash-in-lieu, by school district and lot address.

(d) An intergovernmental agreement with each school district will be required, addressing details of school site coordination and development referrals, the methodology of collecting and disbursing the funds, conveyance of land, accounting and reports, and other matters, prior to release of land dedications or cash-in-lieu to the appropriate school district.

Section 19. Section 11-12-7, subsection (E), W.M.C., is hereby AMENDED to read as follows:

11-12-7: SITE MAINTENANCE: (2532 2534 3133 3338 3560)

(E) Properties not in compliance with the requirements of this Section shall become compliant by January 1, 2016. Properties determined not to be in compliance based on inspection or review of the site plan required by Section 5-12-5(A)(11), ~~W.M.C., of the Westminster Municipal Code~~ shall have, before January 1, 2012, submitted to the City a plan for property improvements detailing how the property will be timely brought into compliance.

Section 20. This ordinance shall take effect upon its passage after second reading.

Section 21. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 14th day of January, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of January, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Second Reading of Councillor's Bill No. 5 Amending the Westminster Municipal Code, Section 1-10-1, regarding Councillor Election Conformance with Section 1-11-4 of the Code

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Pass Councillor's Bill No. 5 on second reading amending Westminster Municipal Code Section 1-10-1(C) to ensure that requirements conform with Section 1-11-4 of the Code and with provisions of the Westminster City Charter for seating a new Councillor should a current Councillor whose term has not expired be elected to the Office of Mayor.

Summary Statement

- At the January 7, 2013, City Council Study Session, Staff reviewed the current conflict between Section 1-10-1(C), W.M.C., and Section 1-11-4 of the W.M.C. and Section 5.7 of the City Charter.
- Section 1-11-4, W.M.C. and Section 5.7 of the City Charter outline, in identical language, how vacancies on City Council are to be filled. Section 1-10-1(C), W.M.C., describes a different procedure for filling a vacancy on City Council when the vacancy is created because a City Councillor has been elected to the Office of Mayor.
- Section 1-10-1(C), W.M.C., must be changed to ensure conformance with the City Charter and eliminate contradictions in process.
- This Councillor's Bill was passed on first reading at the January 14, 2013, Council meeting.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **5**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Lindsey - Atchison

A BILL

**FOR AN ORDINANCE AMENDING SECTION 1-10-1 OF THE WESTMINSTER MUNICIPAL
CODE CONCERNING FILLING A COUNCIL VACANCY UPON MAYORAL ELECTION**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-10-1, subsection (C) W.M.C, is hereby AMENDED as follows:

1-10-1: ELECTION AND TERM LIMITATION OF MAYOR: (2308 3064 3129)

...

(C) Any Councillor may be a candidate for the office of Mayor, but no person may run for the office of Mayor and Councillor at the same election. If a Councillor with an unexpired term is elected Mayor, the unexpired term shall be filled in the manner prescribed by Section 1-11-4, W.M.C. ~~served by the candidate for Councillor who receives the next highest number of votes after all other Councillor positions are filled in the election for Councillor positions.~~

...

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 14th day of January, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 28th day of January, 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Item 9 A

Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: 2013 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 Councilor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council and Water Quality Administrator Mary Fabisiak as alternate representative to the RFSC. Appoint 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 Councilor 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 2013?

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 Secure 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 28, 2013



SUBJECT: Resolution No. 3 re Reappointing Members to Boards and Commissions and Filling Vacancies

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 3 reappointing members whose terms of office expired on December 31, 2012, to an additional two-year term and appointing alternate members to regular membership, where applicable, on the Board of Building Code Appeals, the Environmental Advisory Board, the Historic Landmark Board, the Human Services Board, the Open Space Advisory Board, the Parks, Recreation and Libraries Advisory Board, the Personnel Board, the Planning Commission, and the Special Permit and License Board.

Summary Statement

- City Council action is requested to reappoint citizens serving as members of the aforementioned established City Boards and Commissions whose terms of appointment expired on December 31, 2012, and to appoint alternate members to regular membership where vacancies exist.
- All affected Board members were contacted to determine interest and willingness to continue serving. New terms are for two-year periods.
- The remaining vacancies on City Boards and Commissions will be filled at a later date after City Council has had the opportunity to conduct interviews with interested Westminster citizens.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council want to reappoint those individuals on Boards and Commissions whose terms of office expired on December 31, 2012, and fill vacancies through the appointment of alternate members to regular membership?

Alternative

None identified

Background Information

The terms of office of four members on the Board of Building Code Appeals expired on December 31. Emma Pinter and Delbert Ragland would like to be reappointed to the Board. While enjoying his terms of office on the Board since 2007, James C. Black tendered his resignation due to health issues. Adoption of the attached resolution will reappoint Ms. Pinter and Mr. Ragland for additional two-year terms that will expire December 31, 2014. Further, it will name Greg Gruno, first alternate, to regular membership, and Nancy Partridge, currently the second alternate, as the first alternate member. The vacancy in the second alternate membership will need to be filled at a later date.

The terms of Michele Christiansen, Ron Gallegos, Mark Moreno, and Melanie Stone on the Environmental Advisory Board expired December 31. After four years of service, Ms. Christiansen resigned, indicating that serving had been a good experience, but time commitments now prevent her continued involvement. Ms. Stone and Messrs. Gallegos and Moreno would like to be reappointed and will be if the attached resolution is adopted. Their terms of office will expire December 31, 2014. In November, Rhea Staniszewski, whose term would have expired December 31, 2013, resigned because she and her family were moving from Westminster. The attached resolution appoints Ellen Buckley, the alternate member, to fill the vacancy created by Ms. Staniszewski's resignation, creating alternate and regular member vacancies that will need to be filled at a later date.

The terms of office of Kaaren Hardy, Patti Kinnear, Jami Mohlenkamp, and Chris Meschuk on the Historic Landmark Board expired on December 31. All except Ms. Kinnear, who resigned in November due to time constraints following eight years of service on the Board, have voiced interest in being reappointed for additional two-year terms. The attached resolution reappoints Ms. Hardy and Messrs. Mohlenkamp and Meschuk and also names Michael Keaveny, the alternate member, to regular membership to fill the vacancy created by Ms. Kinnear's resignation. All terms of office will expire December 31, 2014. This action creates an alternate member vacancy that will need to be filled at a later date.

The terms of office of Tom Bruchmann and Samantha Dixon on the Human Services Board expired December 31. Both have indicated a desire to be reappointed, which will occur, if the attached resolution is adopted. Their terms of office will expire December 31, 2014.

The terms of three members of the Open Space Advisory Board expired on December 31, and Sarada Krishnan and Marley Steele-Inama have expressed interest in being reappointed. Randal Whorton, a 22-year veteran of the Board, has declined reappointment and expressed appreciation for the opportunity he has had to serve. The proposed resolution reappoints Ms. Krishnan and Ms. Steele-Inama and names Beau Martin, the alternate, a regular member. All terms of office will expire December 31, 2014. This Board has one vacancy (alternate member) that will need to be filled at a later date.

The terms of office of four members on the Parks, Recreation and Libraries Advisory Board expired at year end. Bernice Aspinwall, Stephanie Bingham, Ronald Dickerson and Mary Litwiler would like to be reappointed. The attached resolution accomplishes these reappointments to the Board with terms to expire December 31, 2014.

The terms of office of two regular members on the Personnel Board expired on December 31. Margaret Rivera and Betty Whorton would like to be reappointed, and the attached resolution accomplishes their reappointment to terms that will expire December 31, 2014.

The terms of Donald Anderson, Tracy Colling, Lawrence Dunn, Mike Litzau and Joe McConnell on the Planning Commission expired on December 31. All five would like to continue serving another two-year term. If adopted, the attached resolution reappoints them to additional terms that will expire December 31, 2014.

The terms of office of three members of the Special Permit and License Board expired on December 31. David Amin, George Werkmeister, and John Velasquez have indicated they would like to be reappointed. The attached resolution makes those reappointments to terms that will expire on December 31, 2014.

Letters expressing City Council's appreciation for their years of service and contributions to the community have been signed by Mayor McNally and mailed to the individuals who resigned their offices.

The citizens volunteering to serve on the City's Boards and Commissions play important roles in helping the City reach its strategic goals. Working in coordination with Staff and City Council, the member contributions assist the City to have a Strong, Balanced Local Economy; to be a Financially Sustainable City Government Providing Exceptional Service; to be a Safe and Secure Community; to have Vibrant Neighborhoods in One Livable Community; and to be a Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. 3

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION FOR CITY OF WESTMINSTER BOARD AND COMMISSION
REAPPOINTMENTS AND NEW APPOINTMENTS**

WHEREAS, each member of the City's Boards and Commissions whose term expired on December 31, 2012 has been contacted and the majority of them have conveyed the desire to be re-appointed to the Board where they are currently serving; and

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

WHEREAS, Council has, with regret, accepted the resignations received from James C. Black of the Board of Building Code Appeals, from Rhea Staniszewski and Michele Christiansen of the Environmental Advisory Board, from Patti Kinnear of the Historic Landmark Board, and from Randal Whorton of the Open Space Advisory Board.

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

Section 1. The following individuals are hereby reappointed members of the City of Westminster Board or Commission listed below with terms of office to expire December 31, 2014.

<u>BOARD/COMMISSION</u>	<u>NAMES OF RE-APPOINTEES</u>
Board of Building Code Appeals	Emma Pinter and Delbert Ragland
Environmental Advisory Board	Ron Gallegos, Mark Moreno, and Melanie Stone
Historic Landmark Board	Kaaren Hardy, Jami Mohlenkamp, and Chris Meschuk
Human Services Board	Tom Bruchmann and Samantha Dixon
Open Space Advisory Board	Sarada Krishnan and Marley Steele-Inama
Parks, Recreation and Libraries Advisory Board	Bernice Aspinwall, Stephanie Bingham, Ronald Dickerson, and Mary Litwiler
Personnel Board	Margaret Rivera and Betty Whorton
Planning Commission	Donald Anderson, Tracy Colling, Lawrence Dunn, Mike Litzau, and Joe McConnell
Special Permit and License Board	David Amin, John Velasquez, and George Werkmeister

Section 2. The following appointments of alternate members are being made to fill vacancies in regular memberships created by resignations with terms of office to expire December 31, 2014:

<u>BOARD/COMMISSION</u>	<u>NAMES OF APPOINTEES</u>
Board of Building Code Appeals	Greg Gruno
Historic Landmark Board	Michael Keaveny
Open Space Advisory Board	Beau Martin

Section 3. The following appointments are made to fill vacancies with terms of office to expire December 31, 2013.

<u>BOARD/COMMISSION</u>	<u>NAMES OF APPOINTEE</u>
Board of Building Code Appeals	Nancy Partridge (1 st alternate)
Environmental Advisory Board	Ellen Buckley (regular)

PASSED AND ADOPTED this 28th day of January, 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Item 10 A

Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Resolution No. 4 re Revision of the City of Westminster's Investment Policy

Prepared By: Tammy Hitchens, Director of Finance
Rachel Price, Financial Analyst

Recommended City Council Action

Adopt Resolution No. 4 approving the revised Investment Policy for the investment of public funds.

Summary Statement

- The City implemented an Investment Policy in 1999 and from time to time has updated the Policy to conform with the Colorado Revised Statutes as it relates to the investment of public funds.
- In compliance with State Statutes, the investment policy revision requested by Staff will remove a current restriction that investment must maintain required ratings from all identified rating agencies. Because of recent actions by certain rating agencies Staff has found that normally solid conservative investments (such as US Treasuries) are receiving isolated minor downgrades. The recommended rating change would allow continued investment in obligations that continue to meet minimum ratings from two rating agencies.
- The changes recommended for Council approval will maintain the City's Investment Policy in conformance with state statutes.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should City Council adopt the revised Investment Policy?

Alternative

Do not approve the proposed Investment Policy amendments, *Attachment A*. The recommended changes do not compromise the City's investment portfolio from the prudent investment principals of diversity and credit quality nor do they conflict with any state statutes. The recommended changes maintain an investment policy that is in compliance with Colorado state statute requirements but will provide flexibility to enhance the overall rate of return on the portfolio within these parameters.

Background Information

The City has a portfolio of investable funds of approximately \$150,000,000 as of December 31, 2012. The portfolio size fluctuates during the course of a year based on the market value of securities, cash-flow demands such as debt service payments, major capital expenditures, working capital requirements, and the amount of revenues collected which may be available to invest. The investment of public funds is conservative by law and follows the "prudent investor" standard. The "prudent investor" standard is an investment industry recognized term that applies the following mandate to investments: a fiduciary "shall exercise the judgment and care, under circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital." This language is embedded in Colorado Revised Statute 15-1-304, Standard for Investments and adhered to by the City of Westminster.

The City's Investment Policy provides Staff and any outside investment advisor the City might utilize with a sound tool for prudent and lawful guidance for the investment of public funds. Of utmost importance is the preservation of invested principal, providing adequate cash-flow for daily liquidity needs, and finally striving to achieve market rates of return. The preservation of capital is maintained by following very conservative investment guidelines that are structured in the state statutes not only in regards to the types of securities permissible for investment but also reflect the importance of diversification when investments are purchased that are not direct U.S. Government securities. The flexibility to invest in securities outside of U.S. Treasuries allows the City to capture a higher yield of investment earnings; however, the statutes mandate portfolio minimum and maximum levels within investment instruments as well as limits by issuer and maturity length as a means to protect entities from bearing unnecessary risk by not being adequately diversified.

In compliance with State Statutes, the policy revisions requested for Council approval will remove a prior restriction, which required that credit ratings on securities considered for purchase be rated by not less than the minimum rating requirement by any rating agency. The unintended consequence of the current requirement resulted in the potential inability to invest or hold a security that one agency downgraded below the minimum required in the Policy while other agencies maintained the higher credit rating.

An extreme example of this occurred during the summer of 2011 when Standard and Poor's downgraded US Treasuries below AAA status yet the other rating agencies held their AAA ratings on Treasuries. On September 26, 2011 Council approved a revision to the policy, allowing for the purchase and possession of Treasuries, despite the downgrade by one rating agency below the minimum. Council action to amend the Policy clarifies the intent to apply the same provision to include other authorized and otherwise safe securities under this statute principal, thereby, giving the City prudent flexibility to purchase and hold securities which are highly rated at a minimum rating level by the other rating agencies.

The securities impacted by the Policy clarification include senior debt offerings of Commercial Paper, Bankers Acceptance Notes, Corporate Securities, along with General Obligations and Revenue Obligations of state or local governments. All of the above need to be rated by at least two rating agency services at the time of purchase and have the minimum ratings level.

The proposed changes to the Investment Policy as presented in *Attachment A* do not impact the credit standards and issuer limitations of permissible investments that the state statutes deem necessary to maintain a well diversified portfolio, but do allow the City to invest in securities which otherwise are considered sound investments. Page 8 of *Exhibit A* in the City's Investment Policy outlines the guidelines the City follows regarding limits on types of securities that comprise the investment portfolio. The City's Investment Advisor continually monitors watch on the securities purchased and sold within the portfolio to ensure compliance with these limits. Staff discusses these purchases on a frequent informal basis with the Investment Advisor. Formal quarterly meetings are held with Staff to review the portfolio, discuss the decision-making philosophy used by the Advisor and get updates on trends in the economy.

This recommended action supports the strategic objectives of a Financially Sustainable City Government Providing Exceptional Services. It does so by assuring that the City maintains a prudent up-to-date investment policy to guide investment decisions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Attachment A – Investment Policy

RESOLUTION

RESOLUTION NO. 4

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION FOR THE APPROVAL OF
THE REVISED CITY OF WESTMINSTER INVESTMENT POLICY**

WHEREAS, the City of Westminster has an existing Investment Policy that governs the investment decisions of public funds that has been in effect since September 26, 2011; and

WHEREAS, the Investment Policy is tailored after the State of Colorado statutes regarding the investment of public funds; and

WHEREAS, revisions to Section 24-75-601, C.R.S., required the Investment Policy to be updated to reflect changes within the statute; and

WHEREAS, Staff utilizes the Investment Policy as the guiding document for the investment of public funds; and

WHEREAS, the Investment Policy complements the City Council's Strategic Plan Goals and Objectives.

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

That the attached revised Investment Policy is hereby approved.

PASSED AND ADOPTED this 28th day of January, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
Office of the City Attorney

City of Westminster
Investment Policy
~~September, 2011~~ January 28, 2013

I. POLICY

The City of Westminster (“the City”) is a Colorado home rule municipality operating under its City Charter. The City functions under the direction of a City Manager who is appointed by a seven member City Council. Colorado Statutes provide home rule municipalities with legal authority to promulgate and implement local standards for cash and investment management operations.

It is the policy of the City to invest public funds in a manner that will provide preservation of capital, meet the daily liquidity needs of the City, diversify the City’s investments, conform to all local rules and state statutes governing the investment of public funds, and generate market rates of return.

This Investment Policy addresses the methods, procedures and practices which must be exercised to ensure effective and judicious fiscal and investment management of the City’s funds. It replaces any previous Investment Policy or investment procedures of the City.

This Investment Policy was adopted by the City Council of the City of Westminster on ~~September 26, 2011~~ January 28, 2013 (Resolution No. 31, Series 20112013).

II. SCOPE

This Investment Policy applies to the activities of the City with regard to investing the financial assets of all funds except for its Employee Pension Plan Funds, the Deferred Compensation Fund, and the Volunteer Firefighter Pension Fund that are organized and administered separately. The policy shall apply to any new fund that may be created unless specifically exempted from the policy. Funds collected for the City of Westminster by other government agencies shall be governed by the investment policies of that agency and are not subject to the provisions of this policy.

Cash shall be pooled for investment purposes. The investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective average daily balances relative to the total pooled balance in the investment portfolio.

III. INVESTMENT OBJECTIVES

The City’s funds shall be invested in accordance with all applicable City policies, Colorado statutes, and Federal regulations, and in a manner designed to accomplish the following objectives, which are listed in priority order:

- Preservation of capital and protection of investment principal.
- Maintenance of sufficient liquidity to meet anticipated cash flows.

- Diversification to avoid incurring unreasonable financial risks.
- Attainment of a market rate of return as defined in Section XIII of this Investment Policy.

IV. DELEGATION OF AUTHORITY

Authority to manage the City's investment portfolio is derived from City Charter Section 4.12. Management responsibility for the investment program is vested with the Finance Director. The Finance Director shall maintain a list of employees of the City of Westminster who are authorized to purchase, sell, wire securities or funds, or transfer custodianship on behalf of the City.

The Finance Director shall have the discretion to appoint one or more investment advisers, registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, to assist in the management of all or a portion of the City's investment portfolio. All investments made through such investment advisers shall be within the guidelines of the City's investment policies.

The Finance Director shall establish written procedures and internal controls for the operation of the City's investment program, designed to prevent loss of public funds due to fraud, error, misrepresentation and imprudent actions.

V. PRUDENCE

The standard of prudence to be used for managing the City's assets is the "prudent investor" standard applicable to a fiduciary, which states that a prudent investor "shall exercise the judgment and care, under circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital." (Colorado Revised Statutes 15-1-304, Standard for Investments.)

The City's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally without risk and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured losses may occur in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the City.

Authorized investment staff acting in accordance with written policies and procedures, and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion to the Finance Director and appropriate action is taken to control adverse developments.

VI. INVESTMENT COMMITTEE

The Finance Director shall appoint an Investment Committee, chaired by the Treasury Manager and shall include at least two additional employees of the City knowledgeable in the area of governmental investments. The purpose of the Investment Committee shall be to provide advice regarding the operation of the cash management and investment program. The Committee shall meet at least once per quarter.

VII. ETHICS AND CONFLICTS OF INTEREST

City employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the City's investment program or that could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees shall disclose to the Finance Director and to the City Manager any personal financial interests that may be related to or that may conflict with the City's investment program, and they shall subordinate their personal investment transactions to those of the City.

VIII. AUTHORIZED SECURITIES AND TRANSACTIONS

All investments will be made in accordance with the Colorado Revised Statutes (C.R.S.) as follows: C.R.S. 11-10.5-101, et seq. Public Deposit Protection Act; C.R.S. 11-47-101, et seq. Savings and Loan Association Public Deposit Protection Act; C.R.S. 24-75-601, et. seq. Funds - Legal Investments; C.R.S. 24-75-603, Depositories; and C.R.S. 24-75- 702, Local governments - authority to pool surplus funds. Any revisions or extensions of these sections of the statutes will be assumed to be part of this Investment Policy immediately upon being enacted.

This Investment Policy further restricts the investment of City funds to the securities and transactions listed below and summarized in Exhibit A.

1. U.S. Treasury Obligations: Treasury bills, Treasury notes, Treasury bonds and Treasury STRIPS with maturities not exceeding seven years from the date of trade settlement. At all times, the City shall maintain at least 15% of its investment portfolio in U.S. Treasury obligations.
2. Federal Agency debentures and mortgage-backed securities with a final maturity not exceeding seven years from the date of trade. The total investment in Federal Agency securities shall not exceed 10% of the City's investment portfolio.
3. Federal Instrumentality Securities: Debentures, discount notes, callable securities, step-up securities, collateralized mortgage obligations, and stripped principal or coupons with maturities not exceeding seven years from the date of trade settlement. Subordinated debt may not be purchased. Not more than 30% of the City's investment portfolio may be invested in the securities of any one federal instrumentality. The total investment in collateralized mortgage obligations shall not exceed 10% of the City's investment portfolio.

4. Repurchase Agreements or flexible repurchase agreements collateralized by U.S. Treasury obligations or Federal Instrumentality securities listed in 1. and 3. above with a final maturity not exceeding ten years. The purchased securities shall have a minimum market value including accrued interest of 102% of the dollar value of the transaction. Collateral shall be held by the City's third-party custodian bank, and the market value of the collateral securities shall be marked-to-the market daily. Repurchase agreements shall have a termination date of 180 days or less. Flexible repurchase agreements shall have a maximum term of the life of the corresponding construction project or one year, whichever is less.

Repurchase Agreements shall be entered into only with broker/dealers recognized as primary dealers by the Federal Reserve Bank of New York, or with firms that have a primary dealer within their holding company structure. Approved Repurchase Agreement counterparties shall have a short-term credit rating of at least A-1 or the equivalent and a long-term credit rating of at least A or the equivalent by a Nationally Recognized Statistical Rating Organization. Repurchase agreement counterparties shall execute a City approved Master Repurchase Agreement with the City. The Finance Director shall maintain a copy of the City's approved Master Repurchase Agreement along with a list of broker/dealers who have executed same.

5. Commercial Paper ~~with maturities not exceeding 270 days~~with maturities not to exceed 270 days., ~~rated at least A-1 by Standard & Poor's, P-1 by Moody's, or F-1 by Fitch at the time of purchase by at least two services that rate the commercial paper, and rated not less by any service that rates the commercial paper.~~At the time of purchase commercial paper shall be rated at a minimum by at least two of the ratings services as follows: A-1 by Standard & Poor's, P-1 by Moody's, or F-1 by Fitch. If the commercial paper issuer has senior debt outstanding, the senior debt must be rated by each service that rates the issuer at least A+ by Standard & Poor's, A1 by Moody's or A+ by Fitch. The total investment in commercial paper shall not exceed 20% of the City's investment portfolio. The aggregate investment in commercial paper, bankers acceptances and corporate securities shall not exceed 50% of the City's investment portfolio, and no more than 5% of the City's investment portfolio may be invested in the obligations of any one issuer.
6. Eligible Bankers Acceptances ~~with maturities not exceeding 180 days~~with maturities not to exceed 180 days, issued by FDIC insured state or national banks with combined capital and surplus of at least \$250 million. Banker's acceptances at the time of purchase shall be rated at least A-1 by Standard & Poor's, P-1 by Moody's, or F-1 by Fitch at the time of purchase by at least two services that rate the instrument~~shall be rated at a minimum by at least two of the ratings services as follows: A-1 by Standard & Poor's, P-1 by Moody's, or F-1 by Fitch, and rated not less by any service that rates it.~~ If the issuing bank has senior long-term debt outstanding, it must be rated at the time of purchase at a minimum as follows: A by Standard & Poor's, A2 by Moody's or A by Fitch. The total investment in bankers acceptances shall not exceed 20% of the City's investment portfolio. The aggregate investment in bankers acceptances, commercial paper, and corporate securities shall not exceed 50% of the City's investment portfolio, and no more than 5% of the City's investment portfolio may be invested in the obligations of any one issuer.

7. Corporate Securities denominated in U.S. dollars of any corporation or bank organized and operating within the United States with a net worth in excess of \$250 million. Corporate securities with maturities not to exceed three years from the date of trade settlement and at the time of purchase are rated at a minimum by at least two of the ratings services as follows: AA- by Standard & Poor's, Aa3 by Moody's, or AA- by Fitch shall have a maximum maturity of three years from the date of trade settlement and must be rated at least AA- by Standard and Poor's, Aa3 by Moody's or AA- by Fitch, by at least two rating services, and not less by any service that rates it. The total investment in corporate securities shall not exceed 30% of the City's investment portfolio. The aggregate investment in corporate securities, commercial paper and bankers acceptances shall not exceed 50% of the City's investment portfolio, and no more than 5% of the City's investment portfolio may be invested in the obligations of any one issuer.
8. General Obligations and Revenue Obligations of state or local governments with maturities not to exceed three years from the date of trade settlement~~with a maturity not exceeding three years from the date of trade settlement,~~. General obligations at the time of purchase shall be rated at a minimum by at least two of the ratings services as follows: AA- by Standard & Poor's, Aa3 by Moody's, or AA- by Fitch. ~~rated at the time of purchase at least AA by Standard & Poor's, Aa by Moody's or AA by Fitch by at least two services that rate the obligations.~~ Revenue obligations at the time of purchase shall be rated at a minimum by at least two of the ratings services as follows: AAA by Standard & Poor's, Aaa by Moody's or AAA by Fitch at the time of purchase. The total investment in general obligations and revenue obligations shall not exceed 10% of the City's investment portfolio and not more than 3% of the City's investment portfolio may be invested in the general obligations and revenue obligations of any one issuer.
9. Non-negotiable Certificates of Deposit with a maturity not exceeding one year in any FDIC insured state or national bank, or state or federal savings bank located in Colorado that is a state approved depository per C.R.S. 24-75-603. Certificates of deposit that exceed FDIC insurance limits shall be collateralized as required by the Public Deposit Protection Act or the Savings and Loan Association Public Deposit Protection Act. The total investment in non-negotiable certificates of deposit shall not exceed 10% of the City's investment portfolio and not more than 5% of the City's investment portfolio may be invested in the certificates of any one bank.
10. Local Government Investment Pools authorized under C.R.S. 24-75-702 that: 1) are "no-load" (no commission or fee shall be charged on purchases or sales of shares); 2) have a constant net asset value of \$1.00 per share; 3) limit assets of the fund to those securities authorized by state statute; 4) have a maximum stated maturity and weighted average maturity in accordance with Rule 2a-7 of the Investment Company Act of 1940; and 5) have a rating of AAAm by Standard & Poor's, Aaa by Moody's or AAA/V1+ by Fitch. The total investment in local government investment pools shall not exceed 50% of the City's investment portfolio and not more than 30% of the City's investment portfolio may be invested in any one pool.
11. Money Market Mutual Funds registered under the Investment Company Act of 1940 that: 1) are "no-load" (no commission or fee shall be charged on purchases or sales of shares); 2) have a constant net asset value of \$1.00 per share; 3) limit assets of the fund to those securities authorized by state statute; 4) have a maximum stated maturity

and weighted average maturity in accordance with Rule 2a-7 of the Investment Company Act of 1940; and 5) have a rating of AAAm by Standard & Poor's, Aaa by Moody's or AAA/V1+ by Fitch. The total investment in money market mutual funds shall not exceed 20% of the City's investment portfolio and not more than 10% of the City's investment portfolio may be invested in any one fund.

The foregoing list of authorized securities shall be strictly interpreted. Any deviation from this list must be pre-approved by the City Council.

Tests for limitations on percentages of holdings apply to the composite of the City's entire investment portfolio, not to individual portfolios maintained by the City. Percentage limitations used for measurements are based on the percentage of portfolio cost value.

If following the purchase of a security, its credit rating falls below the required minimum rating, the security may be retained by the Finance Director with the approval of the Investment Committee.

IX. INVESTMENT MATURITY AND LIQUIDITY

The investment portfolio shall remain sufficiently liquid to meet all cash requirements that may be reasonably anticipated. To the extent possible, investments shall be matched with anticipated cash flows and known future liabilities. Investments shall be limited to maturities not exceeding seven years from the date of trade settlement, unless the maturity is matched to a specific cash flow need, and the purchase is preapproved by the Investment Committee. The weighted average final maturity of the investment portfolio shall not exceed three years.

X. COMPETITIVE TRANSACTIONS

Each investment transaction shall be competitively transacted with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid and offering prices shall be recorded. If the City is offered a security for which there is no other readily available competitive offering, quotations for comparable or alternative securities will be documented.

XI. SELECTION OF BROKER/DEALERS

The Finance Director shall maintain a list of broker/dealers approved for investment purposes, and it shall be the policy of the City to purchase securities only from those authorized firms.

To be eligible, a firm must meet at least one of the following criteria:

1. Be recognized as a primary dealer by the Federal Reserve Bank of New York or have a primary dealer within its holding company structure,
2. Report voluntarily to the Federal Reserve Bank of New York,
3. Qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

Broker/dealers will be selected by the Finance Director on the basis of their expertise in public cash management and their ability to provide service to the City's account. Approved broker/dealer representatives and the firms they represent shall be licensed to do business in Colorado and as such are subject to the provisions of the Colorado Revised Statutes, including but not limited to C.R.S. 24-75-601. Each authorized broker/dealer shall be required to submit and annually update a City approved Broker/Dealer Information Request Form that includes the firm's most recent financial statements.

In the event that an external investment advisor is not used in the process of recommending a particular transaction in the City's portfolio, authorized broker/dealers shall attest in writing that they have received a copy of this Policy.

The City may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in item 5 of the Authorized Securities and Transactions section of this Investment Policy.

XII. SAFEKEEPING AND CUSTODY

The Finance Director shall approve one or more banks to provide safekeeping and custodial services for the City. A City approved safekeeping agreement shall be executed with each custodian bank. To be eligible, a financial institution shall qualify as a depository of public funds in Colorado as defined in C.R.S. 24-75-603.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. Ownership of all securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities purchased by the City will be delivered by either book entry or physical delivery and will be held in third-party safekeeping by the City approved custodian bank, its correspondent bank or the Depository Trust Company (DTC).

The City's custodian will be required to furnish the City monthly reports of holdings of custodied securities as well as a report of monthly safekeeping activity. In addition, safekeeping receipts or customer confirmations shall be issued for each transaction.

XIII. PERFORMANCE BENCHMARKS

The City's investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the investment portfolio shall be compared to the average yield on the U.S. Treasury security that most closely corresponds to the investment portfolio's weighted average effective maturity. When comparing the performance of the investment portfolio, all fees involved with managing it shall be included in the computation of its rate of return net of fees.

XIV. REPORTING

Performance of the portfolio shall be reported quarterly and submitted to the City Manager. Reports shall include details of the characteristics of the portfolio as well as its performance for that period. Material deviations from projected investment strategies shall be reported immediately to the City Manager.

XV. POLICY REVISIONS

This Investment Policy shall be reviewed annually by the Investment Committee. If deemed appropriate, the Investment Committee shall recommend revisions to the City Council.

EXHIBIT A

**SUMMARY OF AUTHORIZED SECURITIES THAT MAY BE PURCHASED BY THE
CITY OF WESTMINSTER**

INSTRUMENT	PORTFOLIO MIN/MAX	ISSUER MAXIMUM	MAXIMUM MATURITY
U.S. Government Securities	15% min 100% max	100%	Seven (7) years unless the maturity is matched to a specific cash flow need.
U.S. Government Agencies	10% max	10%	Seven (7) years unless the maturity is matched to a specific cash flow need.
U.S. Government Instrumentalities	100% max	30%	Seven (7) years unless the maturity is matched to a specific cash flow need.
Collateralized Mortgage Obligations (CMOs)	10% max	10%	Seven (7) years unless the maturity is matched to a specific cash flow need.
Repurchase Agreements	100% max	100% max	180 days
Commercial Paper	20% max	5%	270 days
Banker's Acceptances	20% max	5%	180 days
Corporate Bonds & Medium Term Notes	30% max	5%	Three (3) years
State and Local Government debt	10% max	3%	Three (3) years
CD's (non-negotiable)	10% max	5%	One (1) year
LGIPs	50% max	30%	Comply with Rule 2a-7
Money Market Mutual Funds	20% max	10%	Comply with Rule 2a-7



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Resolution No. 5 re Spring 2013 Adams County Open Space Grant Application

Prepared By: Sarah Washburn, Landscape Architect II
Richard Dahl, Park Services Manager

Recommended City Council Action

Adopt Resolution No. 5 authorizing the Department of Parks, Recreation and Libraries to pursue a grant totaling \$434,000 from the Adams County Open Space Grant Program during the 2013 Spring Cycle for the construction of Tanglewood Creek Trail between 123rd and 128th Avenue along Tanglewood Creek.

Summary Statement

- The Department of Parks, Recreation and Libraries wishes to pursue a grant from the Adams County Open Space Grant Program for funding assistance with the construction of the Tanglewood Creek Trail within City Open Space, a Master Planned 0.82-mile long segment of the larger I-25 Regional Trail.
- The City hired Muller Engineering for the engineering design and technical report generation required for construction permitting, after City Council approval on August 27, 2012. In December 2012, Muller Engineering prepared a preliminary estimate of probable cost to construct this trail between 123rd and 128th Avenue valued at \$720,473. As plans develop in the next few months, the estimate of probable cost is not expected to change dramatically.
- Staff recommends using an adjacent project with a trail component between 121st and 123rd Avenue linking directly to this project and already underway by the Department of Community Development to add City matching “in-kind” value to this grant request. Additionally, Staff recommends using the engineering design fees as matching value. Staff recommends requesting \$434,000, or 45% of the total estimated cost of the project between 121st and 128th Avenue to assist with construction of this trail.

Expenditure Required: \$286,473 plus In-Kind Match

Source of Funds: General Capital Improvement Fund
- POST Trail Development Funds (\$202,881)
Adams County District 12 School Land Dedication Funds (\$83,592)
In-Kind Services and Other Expenses (\$240,403)

Policy Issue

Should the City attempt to seek assistance for the construction of trail improvements within City Open Space along Tanglewood Creek?

Alternative

Council could choose not to pursue additional funding for the improvements. This is not recommended because the City does not have adequate funds to construct the trail in full without assistance from Adams County. If the only funding for the project comes from the City's available cash in the designated funding sources mentioned, only one City block of trail could be constructed. This would not meet the City's Master Plan goal of creating a regional trail with linkages to other existing trails, nor would it serve the needs of the community in any meaningful way. If the City's funds are spent down without pursuing this grant, the City's ability to leverage existing dollars would be substantially limited or not possible at all, as adequate matching grant funding would be unavailable for at least two years while the POST Trail Development account accrues funding. Furthermore, if the trail was constructed in smaller segments across longer periods of time, efficiency is lost and total project costs would grow higher as various contractors move on and off the site multiple times.

Background Information

The City acquired the Tanglewood Creek Open Space in 2007 to provide protection of the vibrant watershed and its unique ecology and to provide a recreational trail spine within it similar to the City's other creek corridors. The acquisition was made possible with grant funding from Adams County Open Space in the amount of \$356,871.10, in addition to substantial City funds exceeding that amount. Although there are no formal trails constructed within the proposed work area, informal "social trails" are very apparent and indicate a desire by area residents and students to travel generally north-south through the area. If funding is received, the project would formalize a trail with concrete paving and be suitable for multiple uses and abilities.

Due to the nature of the surrounding watershed and the proposed improvements, more extensive hydrology, wetland, and endangered species reports are required prior to disturbance. Staff initiated work with Muller Engineering Company, Inc. in late 2012 to begin developing these reports, construction documents, and cost analyses. During this work, Muller found substantial erosion in the creek channel adjacent to one of the proposed creek crossings. If left unmitigated, the creek channel will continue to erode upstream and take with it the fragile riparian and wetland vegetation around it. This unique ecology was a primary reason the City pursued preservation of this creek channel initially, and stabilizing the situation as soon as possible is critical for preservation of the open space character. The Engineer recommends creating a sculpted concrete drop structure to blend into the natural surroundings.

Muller Engineering's preliminary estimate for probable construction cost for grading, 4,325-feet (0.82 miles) of 10-foot wide concrete trail, a 470-foot long 5-foot wide sidewalk connection, two creek crossings, drop structure, on-site wetland mitigation, and revegetation is approximately \$720,473 including contingency. If adequate grant funding is received to complete the project in full, the City would immediately solicit bids for the work, with further City Council approval required prior to construction initiation, targeted for Fall of 2013.

A 50% match of cash and in-kind services are needed for Adams County Open Space grant applications. This request proposes a 55% match of cash funding and in-kind values for this grant as follows:

Funding Source	Cash Amount	In-Kind Value	Total
Adams County Open Space Grant Request	\$434,000		\$434,000
PRL POST Trail Development Funds	\$202,881		\$202,881
CD Adams County District 12 School Land Dedication Fee Funds, IGA requirement to construct sidewalk in this area	\$83,592		\$83,592
PRL Tanglewood Creek Trail Engineering Design Fees (City Council approval 9/27/12)		\$60,113	\$60,113
CD Timberlake Pond & Tanglewood Creek Channel Trail Improvements (from 121 st Ave to 123 rd Ave)		\$180,290	\$180,290
Total Project Value			\$960,876

The City has been successful in acquisition of grants from a variety of sources in the past, including from Adams County Open Space. Previous funds received have been for park and trail development projects and for open space acquisitions. The City has developed a strong partnership with Adams County in its successful use of these grant funds. Most recently, the City was awarded \$232,000 for passive recreation uses and trail development within Savery Farm Open Space adjacent to Mushroom Pond.

This grant request supports the City's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Tanglewood Creek Regional Trail Location Map
- Tanglewood Creek Regional Trail Alignment

RESOLUTION

RESOLUTION NO. **5**

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION
TO PURSUE A GRANT REQUEST FROM THE
2013 ADAMS COUNTY OPEN SPACE GRANT PROGRAM
FOR TANGLEWOOD CREEK TRAIL**

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

WHEREAS, the City of Westminster has budgeted for improvements for the Tanglewood Creek Trail; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that Staff shall submit a grant application to the Adams County Open Space Grant Program for the funding cycle of 2013, requesting funding not to exceed \$434,000 to enhance the development of Tanglewood Creek Trail.

PASSED AND ADOPTED this 28th day of January, 2013.

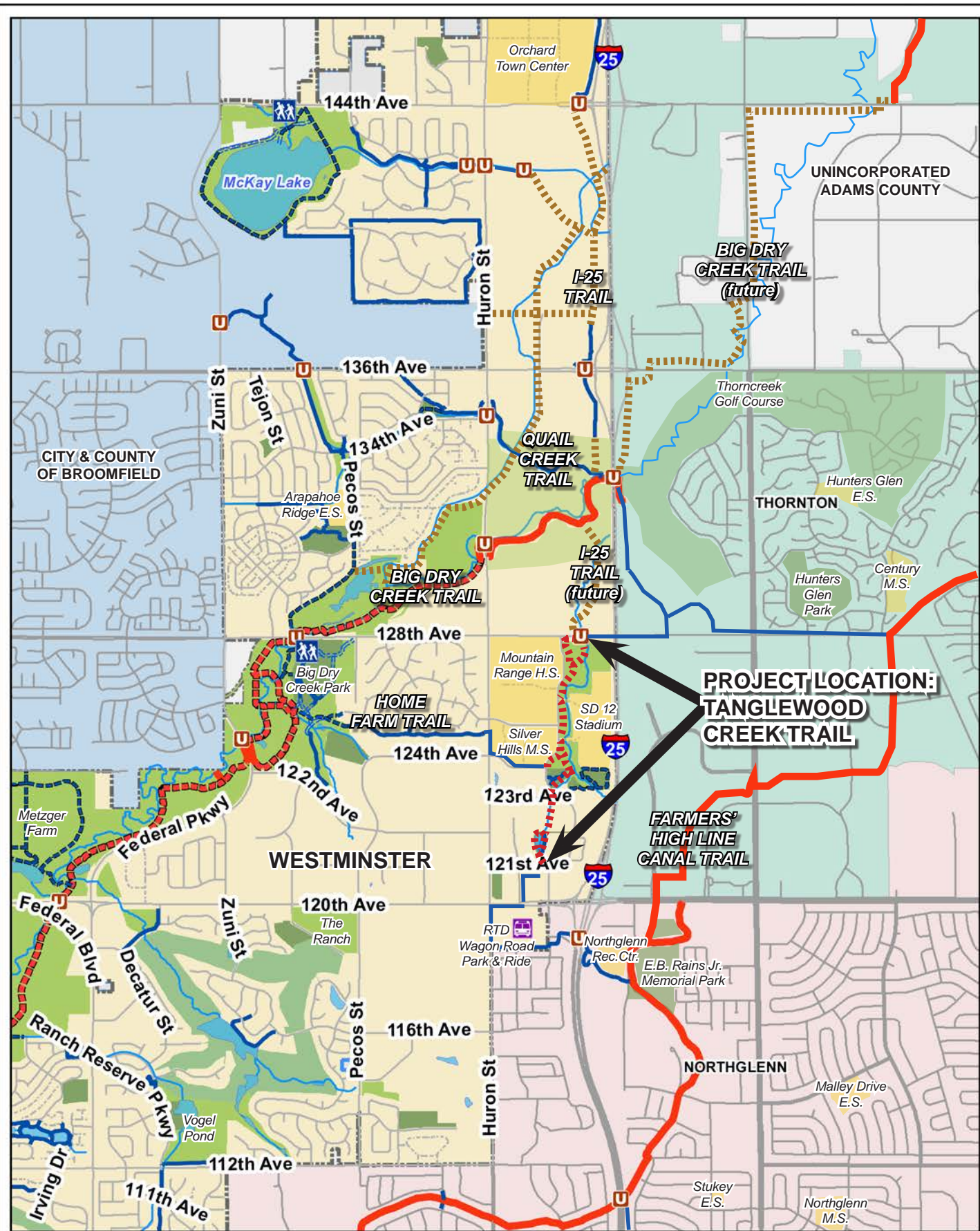
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

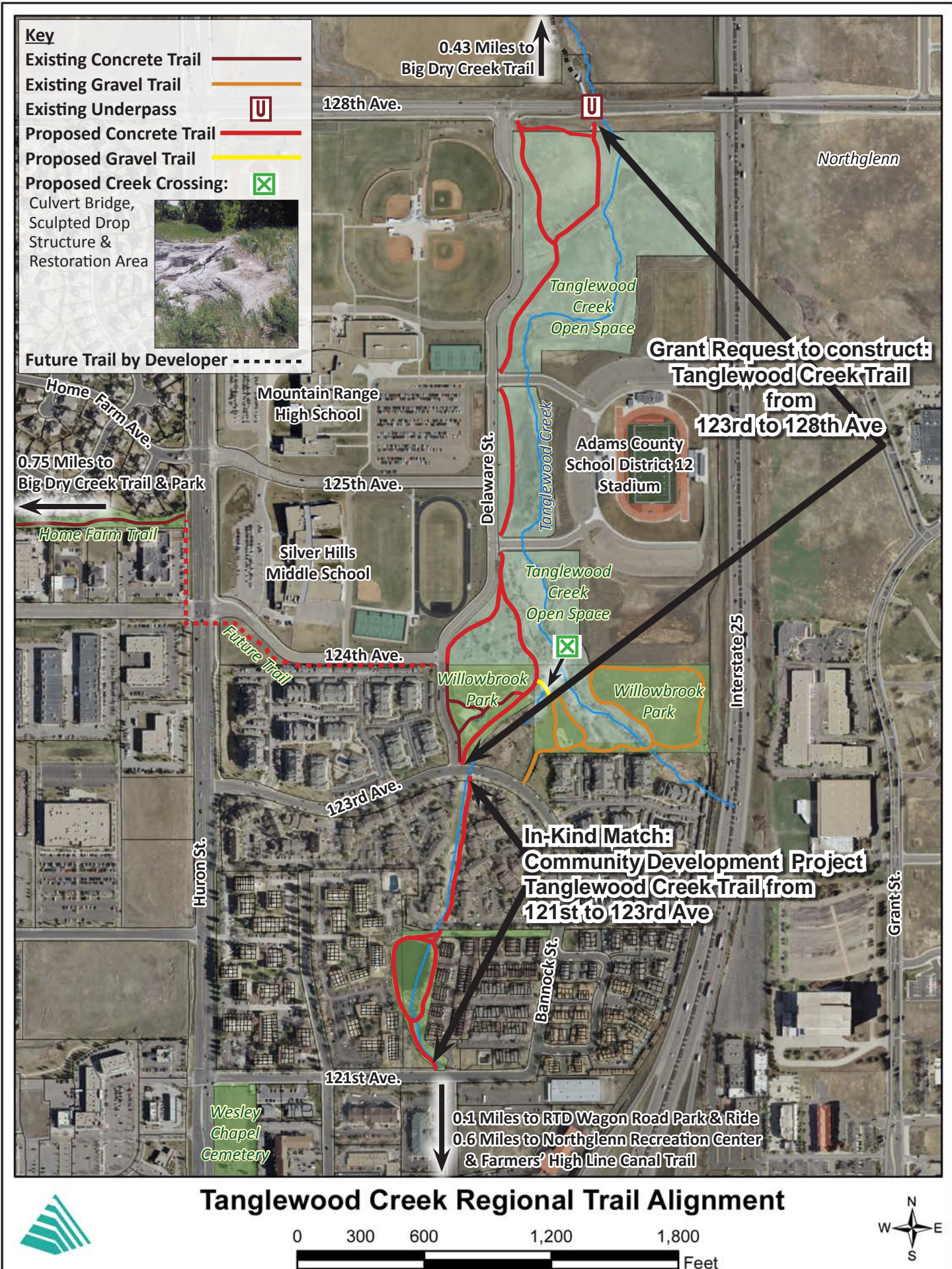
City Clerk

City Attorney



Tanglewood Creek Regional Trail Location Map







Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Resolution No. 6 re Spring 2013 Adams County Open Space Acquisition Grant Application

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Adopt Resolution No. 6 authorizing the Department of Community Development to pursue a grant from the Adams County Open Space grant program during the 2013 spring cycle in the amount of \$607,899 for the acquisition of the Big Dry Creek buffer property located at the southeast corner of 112th Avenue and Sheridan Boulevard for open space.

Summary Statement

- The Department of Community Development wishes to pursue a grant from the Adams County Open Space grant program for funding assistance with the acquisition of the 9.91-acre Big Dry Creek buffer property, which is located just south of Big Dry Creek at the southeast corner of 112th Avenue and Sheridan Boulevard.
- An appraisal, commissioned by the City in 2012, values the property at \$1,403,000 or \$3.25 per square foot. Staff has negotiated a purchase price of \$1,215,798 (\$2.82 per square foot) which is lower than appraised value and is contingent upon the approval of City Council and award of an Adams County grant. Staff recommends requesting \$607,899 from Adams County which represents 50% of the purchase price.
- Staff proposes providing matching funds in the amount of \$607,899 from a waiver of recovery fees that are owed to the City from improvements to Sheridan Boulevard and the construction of a water line to benefit this property.

Expenditure Required: Grant Request: \$607,899
Matching Funds - Fee Waiver of \$607,899

Source of Funds: Waiver of Recovery Funds

Policy Issue

Should the City attempt to seek assistance with the acquisition of the Big Dry Creek buffer parcel from the Adams County Open Space Grant Program?

Alternative

Council could choose not to pursue additional funding for the acquisition. This is not recommended because the City does not have the funds to purchase the Big Dry Creek buffer parcel without funding assistance from the Adams County Open Space program. This parcel has been identified as a high priority acquisition by the Open Space Board.

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 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 \$5.8 million for open space acquisitions from Adams County.

The Department of Community Development wishes to pursue a grant from the Adams County Open Space grant program for funding assistance with the acquisition of approximately 9.91 acres from the Hawn-Hewit families. The property is located just south of Big Dry Creek at the southeast corner of 112th Avenue and Sheridan Boulevard. The City currently owns the creek and a narrow amount of land (approximately 100 to 250 feet wide) around the creek as this was all that the City could afford when it originally purchased this area in 1992. This acquisition would widen the corridor on the south side of the creek to around 600 to 800 feet wide. This will assist the City in its goal of protecting at least 1,000 feet on each side of Big Dry Creek for a wildlife corridor per the Colorado Division of Wildlife recommendations. The proposed acquisition property consists of approximately 50% floodplain and 50% upland habitat.

The City initiated discussions with the landowners about selling a portion of this corner property and commissioned an appraisal that values the property at \$1,403,000. Staff proposes waiving recovery fees due on this property of \$21,258 for a water line and \$586,641 for improvements to Sheridan Boulevard between 107th Avenue and Big Dry Creek for a total of \$607,899 in addition to seeking a matching grant from Adams County. The recovery for Sheridan Boulevard north of Big Dry Creek would not be waived. The fee waiver will be considered an in-kind match by Adams County.

The landowners agreed to sell the property for \$1,215,798, which is \$187,202 less than appraised value. The purchase will be contingent upon a grant award from Adams County and City Council approval. Acquisition of this property will expand the existing Big Dry Creek open space corridor and provide additional upland wildlife habitat. The acquisition would preserve existing wetlands as well as a beautiful riparian corridor with huge trees along Cotton Creek. The existing Cotton Creek Trail crosses this property. The Open Space Advisory Board considers the acquisition of the Big Dry Creek buffer property a top priority.

This grant request supports the City’s Strategic Plan Goals of “Financially Sustainable City Government” and “Beautiful City” by 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

RESOLUTION

RESOLUTION NO. **6**

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION
TO PURSUE A GRANT REQUEST FROM THE
2013 ADAMS COUNTY OPEN SPACE GRANT PROGRAM
FOR THE BIG DRY CREEK BUFFER ACQUISITION**

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 Big Dry Creek Buffer property 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.

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 2013, requesting funding not to exceed \$607,899 towards the purchase of the Big Dry Creek Buffer property.

PASSED AND ADOPTED this 28th day of January, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

City of Westminster Big Dry Creek Buffer Proposed Open Space Acquisition

Sheridan Blvd

112th Ave

Vrain Dr

Wol

Big Dry Creek
Open Space

Cotton Creek






Wolf Way

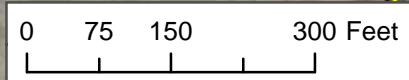
Big Dry Creek

Wetlands

9.91 Acres

Cotton Creek

-  Proposed Acquisition
-  Open Space
-  Parks
-  Existing Trails
-  Streams





Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Resolution Nos. 7 and 8 re Residential Competition Service Commitment Awards
Prepared By: Jana Easley, Principal Planner

Recommended City Council Action

1. Adopt Resolution No. 7 awarding Category B Service Commitments to the Bradburn East (TMUND), Winters (B-1), 128th & Huron (B-1), and The Residences at Park 12 Hundred (B-3) projects.
2. Adopt Resolution No. 8 awarding Category E Service Commitments to the Anthem Memory Care project.

Summary Statement

- The City received six Category B (new residential) and two Category E (new senior housing) applications for the 2013 competition. Please see the attached map for the locations and the background section for a summary of the submittals.
- Staff has reviewed the project applications and recommends awarding Service Commitments (SC) to five of the eight projects for the following reasons:
 - The Bradburn East (Traditional Mixed Use Neighborhood Development or TMUND) project had an average overall impression score of 5.8 out of 10 points and an average score of 113 out of 170 (66%) from the design jury. Staff believes that single family units would be good in the location proposed, despite several site planning issues that would need to be addressed during the Official Development Plan (ODP) process. Century Communities has built other single family homes in Bradburn and has become more familiar with the subdivision in the recent past.
 - The Anthem Memory Care senior housing project seems a good fit at the proposed location. The number of units proposed by Anthem seems reasonable given the size of the site. Staff believes that the use and proposed residential-style architecture would be compatible with the area.
 - In the multi-family category, staff recommends a partial award for The Residences at Park 12 Hundred. The Residences site is located close to the RTD Wagon Wheel Park-n-Ride bus station that would promote multi-modal transit, and apartments would provide a transition between the light industrial uses to the east and single family homes to the west.
 - The 128th and Huron site (northwest corner) layout appears to take into consideration views, open space preservation, and topography and scored well above the other two single family entries. Homes and lots would be similar in scale to the Home Farm Subdivision directly to the south. Some units would have walk-out basements.
 - The Winters application proposes homes on minimum 5,000 square foot lots. Given the lower density in the area, staff is supportive of awarding 24 Service Commitments (SCs) for homes on lots at least 12,000 square feet each, but not at a greater density.
- The attached resolutions would award a total of 336 SCs beginning in 2013, enough for 497 units at 0.35 SC per unit for senior family; 0.5 SC per unit for multi-family; and 1.0 SC per unit for single-family detached. Comprehensive Land Use Plan amendments and Preliminary and Official Development Plans would be required to obtain approval by December 31, 2014, or the SCs would expire unless extended by Council. These resolutions relate to the City's Growth Management Program and are based on the findings established in §11-3-1 of the Westminster Municipal Code.
- The attached resolutions are contingent upon ultimate City approval of any necessary documents and do not commit the City to approve any document or project as a result of these awards.

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

Policy Issue

As a result of the 2013 Service Commitments competition, should the City award Service Commitments as outlined below?

Alternative

Council has the option of not awarding Service Commitments to any of the projects. In this event, the property owners/developers could make a request during next year’s residential competition. The most significant outcome of this alternative would be that the projects could be delayed, which could result in discontinued interest in the site by the developer.

Background Information

As part of the City’s Growth Management Program, the intent of these SC competitions is for a limited number of new residential projects to proceed to the City’s development review process. Any project awarded SCs must process the required documents, including Comprehensive Land Use Plan (CLUP) amendments, if necessary. It is not necessary for applicants to process their CLUP amendments prior to the award of Service Commitments. The SC awards do not obligate the City to approve any required plan or document as a result of the award. If a project does not receive approval of any required documents, the SCs are returned to the water supply figures.

Council authorized the 2013 competition for all new residential and senior housing projects in October 2012. The total number of SCs available for this competition is 1,100, including 1,000 for new residential (Category B) and 100 for new senior housing (Category E).

As indicated in the table below, the projects that are recommended for award are requesting SCs beginning in the year 2013.

Project Type	Project Name/ Location	Developer	Acres	Gross DU/Acre	Score	# of SCs Requested	Recommended Award	Units Based on Award
TMUND	Bradburn East (SWC 120th & Lowell)	Century	10.2	6.1	n/a	62	62	62
SFD B-1	Winters (110th & Wadsworth Blvd.)	Lennar Homes	17.3	2.6	3475	45	24	24
SFD B-1	128th & Huron (NWC)	HEC Land Investments LLC	36.2	3.0	4950	107	107	107
SENIOR E	Anthem Memory Care (Church Ranch & Wadsworth Blvd.)	Anthem Memory Care LLC	4.8	12.6	2525	21	21	60
MULTI B-3	The Residences at Park 12 Hundred (Avaya)	IBC Holdings LLC	43.6	14.0	3750	304.5	122	244
TOTALS			112.0			539.5	336	497

Additional information about all of the submittals is detailed below:

Overview of each project:

Bradburn East

This project is proposed for a 10.15-acre site at the southwest corner of 120th Avenue and Lowell Boulevard, directly east of the Bradburn development. The existing project is platted for 118 townhome units. The request is to change from townhomes to 62 single family homes. The applicant (Century Communities) proposes removing the clubhouse and pool from the plan. However, the developer has told staff that the Bradburn Homeowners Association (HOA) may be receptive to allowing the homes to “annex” into the HOA, which would increase the amount of dues the HOA would receive and allow the residents to use the main Bradburn clubhouse and pool. No agreement has been reached with the HOA, to date. The Metro District owns and maintains the Bradburn Parks; however, Century is unsure whether this area could be included in the Metro District. Other options Century has suggested might be setting up a sub-HOA just for this area then paying a portion of dues to the Bradburn HOA and the remainder could go toward common area maintenance within this project. Of note, Century has attempted to use all of the existing street configurations and kept utility easements in place for this plan. This could be problematic due to the age of the facilities. Staff has advised the applicant of the potential issue.

TMUND projects must contain the following elements:

- Compact, Walkable Development: Bradburn is a compact, walkable community, and this project will add single family homes that can take advantage of the nearby offices, schools, parks, retail and restaurants.
- Mixed Use “Village” Center: Bradburn Village is the neighborhood’s commercial center.
- Pedestrian Oriented District: Bradburn is very pedestrian-oriented. Good pedestrian connections will be needed to integrate this area with the rest of Bradburn.
- Interconnected Street/Blocks: Bradburn has well-connected streets and blocks. Streets and blocks within this project are established.
- Narrow Streets: Most roadways in Bradburn are built, and streets within the project are partially built with curb and gutter. Alley-loaded garages are proposed for this development.
- Variety of Parks: The proposal includes two small park areas, with a smaller total amount of park space than the current plan. Staff would recommend keeping the size of the proposed park at the corner of 118th Place and Lowell Boulevard the same size as the current plan to act as a buffer to the abutting Academy School. Larger parks are located throughout Bradburn. Building and park layouts will be worked out through the development review process if the applicant is award SCs.

The scores ranged from 97 to 128 (out of 170), with an average score of 113. Concerns from the Design Jury include:

- the application was missing information
- alleys may become through streets
- the parks need to be better programmed and laid out more like in the original plan
- the usable yard space is too small and the current lot/house configurations don’t provide very family-friendly or child-friendly spaces
- the plan shows too little park on the southeast corner and some of the internal lot configurations
- the park at 118th and Lowell is critical to provide a buffer for the traffic from the charter school
- open spaces feel too private with homes facing on them
- traffic and school noise may impact homes along Lowell Boulevard
- homes need more variety
- houses should front on 120th Avenue like the project to the west
- the original plan (for townhomes) had some better features than this one

Many, if not all, of these issues could be addressed during the ODP process.

Winters

There are two existing undeveloped subdivisions at this site. Winters North includes 8 lots with a minimum lot size of 23,958 square feet. Winters South has 10 lots with a minimum lot size of 11,673 square feet. Over the past three years, the owner's consultant has asked if staff would support minimum 5,000 square foot lots. Staff has consistently stated they would not, but that they would support lot sizes comparable with the Green Knolls Subdivision to the west, which has average lot sizes of about 14,000 square feet and no lots less than 12,000 square feet. Community Development staff supports combining Winters North and Winters South with an R-2.5 CLUP designation and minimum 12,000 square foot lots and makes a recommendation of 24 SCs, which is an increase over the 18 lots that are currently platted.

128th & Huron (Northwest Corner)

Planning staff has met with the developer's consultant and expressed support of a product similar to Home Farm, which has a minimum lot size of 8,000 square feet and a CLUP designation of 3.5 dwelling units per acre. The actual gross density of Home Farm is 2.5 dwelling units per acre. The applicant is requesting an R-5 CLUP designation so that some lots can be smaller than 7,000 square feet. Staff is supportive of R-3.5 with a minimum lot size of 7,000 square feet. Overall, the project seems feasible and staff believes the minimum 7,000 square foot lots can be obtained through slight re-design of the layout. Staff would also recommend moving the homes on the southwest corner that seem separated from the other lots to adjoin the other lots and open up that corner for views and provide a more cohesive open space connection.

Anthem Memory Care

This project is proposed for the southwest corner of Church Ranch Boulevard and Wadsworth Boulevard. Staff has met with the Anthem group and is supportive of this use on this corner. The residential-like design will be compatible with existing uses (large lot residential in unincorporated Jefferson County to the southwest), Westcliff Subdivision to the southeast, and newer buildings within Westminster to the west (Primrose School, emergency veterinary and kennel, and mini-storage on Church Ranch Boulevard) that have residential design components. The use would provide Anthem with the ease of access and visibility that they need while adding a use to the area that would be less intensive than commercial and visually more compatible.

The Residences at Park 12 Hundred

This project is proposed for the northeast corner of 116th Avenue and Pecos Street. Staff has met with the property owner and conveyed support for multi-family on a portion of the Avaya site, specifically the southwest corner. The proposal does not clearly show how the existing Avaya building will operate and where truck traffic will be routed (preferably to Huron); however, the applicant has indicated verbally that there will be adequate room for truck traffic and heavy buffering between the residential and loading dock area. The parking for Avaya is also in question, although they claim that future changes to the Avaya building will warrant fewer spaces, and the parking for Avaya can be met with what would remain. Community Development staff recommends that an award be made for the west 244 units only.

Two other projects that are not being recommended for award at this time, but may be brought back to the City Council at a later date, include Trails at Tanglewood Creek (single family and multi-family) and Alpine Vista (senior housing). The Trails at Tanglewood Creek is proposed for an 86.28-acre site at the northeast corner of 128th Avenue and Huron Street. The Trails proposal included a multi-family portion, which staff has not been supportive of in the past on this site. Also, the application included a Comprehensive Land Use Plan amendment to R-5 for the single family, which does not have a minimum lot size. Proposed lots shown on the site plan are as small as 5,000 square feet. Staff is not supportive of lots less than 7,000 square feet, the minimum size for R-3.5, which was previously conveyed to the developer/applicant. The proposed site plan was poor – it did not take into consideration grades, view corridors, or the Big Dry Creek Wastewater Treatment Plant. Staff has requested the developer revise and resubmit the application (without the multi-family component, with single family lot sizes comparable to Home Farm, and a more appropriate layout given site opportunities and constraints) for review and reconsideration.

The Alpine Vista site is located at the northwest corner of 88th Avenue and Lowell Boulevard. The Alpine Vista application is currently on hold pending working out an agreement with the owner on past due improvements for the commercial site to the east that were not installed, but should have been, pursuant to the annexation agreement for the residential and commercial parcels and related ODP Waiver approved for the commercial site. This may come back to City Council later this year as well.

Notification letters were emailed on January 7, 2013, to the applicants indicating staff's recommendation for the City Council meeting. Because detailed site development plans are not reviewed as part of this competition process, and significant changes typically occur during the development review process, the sketch plans submitted for these competitions are not reviewed with City Council as part of these competitions. The developers have been informed that presentations will not be scheduled for the City Council meeting on January 28, since the developers would tend to focus on site plans not yet reviewed with the City. The developers were also notified that, while it is not required for them to attend the City Council meeting, they are welcome.

The Service Commitment competition meets Council's Strategic Plan Goals of "Vibrant Neighborhoods and Livable Communities" and "Beautiful and Environmentally Sensitive City."

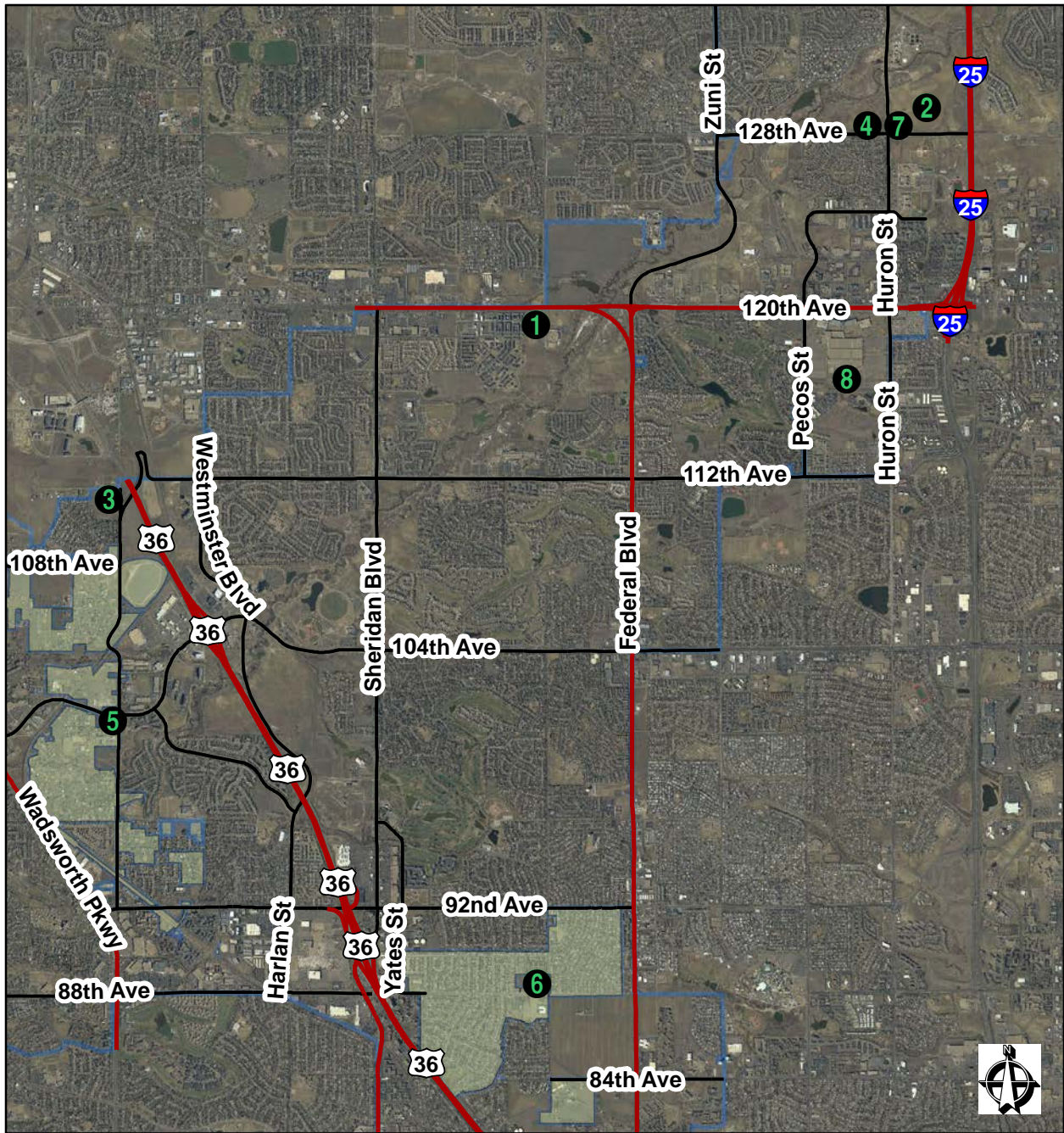
Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- A – Map of 2013 Service Commitment Entries
- Resolution (Category B)
- Resolution (Category E)

Attachment A - 2013 Service Commitment Competition Entries



- 1 TMUND Bradburn East
- 2 SFD B-1 Trails at Tanglewood Creek
- 3 SFD B-1 Winters
- 4 SFD B-1 128th & Huron
- 5 SENIOR E Anthem Memory Care
- 6 SENIOR E Alpine Vista
- 7 MULTI B-3 Trails at Tanglewood Creek
- 8 MULTI B-3 The Residences at Park 12 Hundred

RESOLUTION

RESOLUTION NO. 7

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION CONCERNING
CATEGORY B (NEW RESIDENTIAL SINGLE FAMILY AND MULTI-FAMILY)
COMPETITION AND SERVICE COMMITMENT AWARDS**

WHEREAS, the City of Westminster has adopted by Ordinance No. 3561 a Growth Management Program for the period 2011 through 2020; and

WHEREAS, the goals of the Growth Management Program include balancing growth with the City's ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types; and

WHEREAS, within the Growth Management Program there is a provision that Service Commitments for residential projects shall be awarded in Category B (new residential) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked within each standard by the degree to which it meets and exceeds the said criteria; and

WHEREAS, the City's ability to absorb and serve new single family detached (Category B-1) development is limited, and the City of Westminster has previously adopted Resolution No. 54, Series of 2003, specifying the various standards for new single family detached projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City's ability to absorb and serve new single family attached (Category B-2) development is limited, and the City of Westminster has previously adopted Resolution No. 55, Series of 2003, specifying the various standards for new single family attached projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City's ability to absorb and serve new multi-family development (Category B-3) is limited, and the City of Westminster has previously adopted Resolution No. 56, Series of 2003, specifying the various standards for new multi-family projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City's ability to absorb and serve new Traditional Mixed Use Neighborhood Development (Category B-4) is limited, and the City of Westminster has previously adopted Resolution No. 30, Series of 2006, specifying the various standards for new Traditional Mixed Use Neighborhood Development projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City of Westminster has previously allocated 1000 Service Commitments for the year 2013 for use in servicing new residential developments in Category B based on the criteria set forth in Section 11-3-1 of the Westminster Municipal Code; and

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

1. Category B Service Commitment awards are hereby made to the specific projects listed below as follows:

Service Commitment Category	Project Name (Location)	Award
Traditional Mixed Use Neighborhood Development, Category B-4	Bradburn East (SWC 120th Avenue & Lowell Blvd.)	62
Single Family Detached, Category B-1	Winters (SWC 111th Avenue & Wadsworth Blvd.)	24
Single Family Detached, Category B-1	128th & Huron (NWC 128th Avenue & Huron Street)	107
Multiple Family, Category B-3	The Residences at Park 12 Hundred (NWC 116th Avenue & Pecos Street)	122
	TOTAL	315

2. These Service Commitment awards to the projects listed above are conditional and subject to the following:
 - a. If applicable, the applicant must successfully amend the Comprehensive Land Use Plan.
 - b. The applicant must complete and submit an amended Preliminary Development Plan for the required development review processes.
 - c. The applicant must complete and submit proposed development plans in the form of an amendment to the Official Development Plan to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant as specified within the competition shall be included as part of the proposed development and listed on the Official Development Plan for the project.
 - d. Service Commitment awards for the projects listed above may only be used within the projects specified above.
 - e. These Service Commitment awards shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.
 - f. Each Service Commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density or proposed number of units.
 - g. The City of Westminster shall not be required to approve any Annexation, Establishment of Zoning, Preliminary Development Plan or amendment, Official Development Plan or amendment necessary for development of property involved in any Category B award nor shall any other binding effect be interpreted or construed to occur in the City as a part of the Category B award.
 - h. Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
 - i. The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that

significant changes to any such plans will be required once the City's development review process begins for any project.

- j. Awards shown for the year 2013 are effective as of the date of this Resolution (January 28, 2013) and a project must demonstrate continued progress or the service commitment award will expire unless extended by City Council.
 - k. In order to demonstrate continued progress on a project, the following deadlines and expiration provisions apply:
 - 1) The project must proceed with the development review process and receive approval for a Comprehensive Land Use Plan amendment, if required, by December 31, 2014.
 - 2) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2014, or the entire Service Commitment award for the project shall expire.
 - 3) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (by December 31, 2017), or the entire Service Commitment award for the project shall expire.
 - 4) Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no new building permit is issued for vertical improvements for the project during any consecutive 12-month period and the project is not deemed an "Active" development.
 - l. If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the Service Commitment supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.
 - m. This award resolution shall supersede all previous Service Commitment award resolutions for the specified project locations.
3. The Category B Service Commitment awards shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 28th day of January, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
City Attorney's Office

RESOLUTION

RESOLUTION NO. 8

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION CONCERNING
CATEGORY E (SENIOR HOUSING)
COMPETITION AND SERVICE COMMITMENT AWARDS**

WHEREAS, the City of Westminster has adopted by Ordinance No. 3561 a Growth Management Program for the period 2011 through 2020; and

WHEREAS, the goals of the Growth Management Program include balancing growth with the City’s ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types; and

WHEREAS, within the Growth Management Program there is a provision that Service Commitments for residential projects shall be awarded in Category E (Senior Housing) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked within each standard by the degree to which it meets and exceeds the said criteria; and

WHEREAS, the City’s ability to absorb and serve new senior housing development is limited, and the City of Westminster has previously adopted Resolution No. 39, Series of 1998, specifying the various standards for new senior housing projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City of Westminster has previously allocated 100 Service Commitments for the year 2013 for use in servicing new senior housing developments based on the criteria set forth in Section 11-3-1 of the Westminster Municipal Code; and

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

- 1. Category E Service Commitment awards are hereby made to the specific projects listed below as follows:

Service Commitment Category	Project Name (Location)	Award
Senior Housing, Category E	Anthem Memory Care (SWC Church Ranch Blvd. & Wadsworth Blvd.)	21
	TOTAL	21

- 2. These Service Commitment awards to the projects listed above are conditional and subject to the following:
 - a. The applicant must successfully amend the Comprehensive Land Use Plan to R-18.
 - b. The applicant must complete and submit a Preliminary Development Plan for the required development review processes.
 - c. The applicant must complete and submit proposed development plans in the form of an Official Development Plan to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant as specified within the competition shall be included as part of the proposed development and listed on the Official Development Plan for the project.
 - d. Service Commitment awards for the project listed above, if approved by the City, may only be used within the project specified above.

- e. This Service Commitment award shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.
 - f. Each Service Commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density or proposed number of units.
 - g. The City of Westminster shall not be required to approve any Annexation, Establishment of Zoning, Preliminary Development Plan or amendment, Official Development Plan or amendment necessary for development of property involved in this Category E award, nor shall any other binding effect be interpreted or construed to occur in the City as a part of the Category E award.
 - h. Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
 - i. The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
 - j. Awards shown for the year 2013 are effective as of the date of this Resolution (January 28, 2013) and a project must demonstrate continued progress or the service commitment award will expire unless extended by City Council.
 - k. In order to demonstrate continued progress on a project, the following deadlines and expiration provisions apply:
 - 1) The project must proceed with the development review process and receive approval for a Comprehensive Land Use Plan amendment to R-18 by December 31, 2014.
 - 2) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2014, or the entire Service Commitment award for the project shall expire.
 - 3) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (by December 31, 2017), or the entire Service Commitment award for the project shall expire.
 - 4) Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no new building permit is issued for vertical improvements for the project during any consecutive 12-month period and the project is not deemed an "Active" development.
 - l. If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the Service Commitment supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.
 - m. This award resolution shall supersede all previous Service Commitment award resolutions for the specified project locations.
3. The Category E Service Commitment awards shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 28th day of January, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
City Attorney's Office



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Councillor's Bill No. 7 re Amend Chapter 10 of Title V; Chapters 3, 12 and 13 of Title VI; and Chapter 1 of Title XI of the Westminster Municipal Code to Address the Legalization of Marijuana

Prepared By: Marty McCullough, City Attorney
Hilary Graham, Assistant City Attorney

Recommended City Council Action

Pass Councillor's Bill No. 7 as an emergency ordinance amending Chapter 10 of Title V; Chapters 3, 12 and 13 of Title VI; and Chapter 1 of Title XI of the Westminster Municipal Code to address the legalization of marijuana.

Summary Statement

- Colorado voters approved Amendment 64 in the November 2012 election, creating a limited right for adults to possess, grow, and consume recreational marijuana.
- Amendment 64 also contains provisions for the licensing of commercial marijuana businesses, which will go into effect in late 2013 and from which the City can choose to opt out.
- If City Council chooses to prohibit retail sales of recreation marijuana within the City, it may do so by amending Title V, Chapter 10, of the Westminster Municipal Code (the "Code"), which already prohibits medical marijuana dispensaries and cultivation facilities.
- Changes to the Code's criminal and land use provisions are required to recognize Amendment 64's personal right for adults to possess, grow, and consume limited amounts of recreational marijuana.
- Because of Amendment 64's conflict with federal law, there is uncertainty as to how statewide implementation of the amendment will proceed. Changes to state controlled substances statutes and the Clean Indoor Air Act to accommodate the amendment will likely be forthcoming in the 2013 legislative session. As such, there may be a need for additional Code revisions in the near future.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council exercise the local option to prohibit retail sale of recreational marijuana and make conforming changes to the City's criminal and land use code by adopting the attached emergency ordinance?

Alternatives

As to retail sales:

- Instead of adopting a prohibition against retail sales by ordinance, City Council could refer the question to voters to be decided at the 2014 general election (November).
- City Council could decide to permit retail sales within the City and, to that end, would need to adopt an appropriate licensing scheme. Additional Staff time would be required to analyze the impacts of allowing retail sales in the City, regarding both additional law enforcement and other Staff resources and potential fee and tax revenue. Staff believes, based on the experiences of other municipalities that permitted the commercialization of medical marijuana within their jurisdictions, that the resulting demand on police, code enforcement, legal, accounting and other limited resources would be significant. Notwithstanding the potential revenue, Staff believes that the commercialization of marijuana would not be consistent with City Council's Strategic Plan and the City's commitment to managing a sustainable workforce.

As to Amendment 64's personal right for adults to possess, grow, and consume limited amounts of recreational marijuana:

- It is Staff's opinion that the Code must be amended to allow adults to consume, possess and grow limited amounts of marijuana in private as permitted by Amendment 64. There is no acceptable alternative.

Background Information

In November 2012, the voters of the state of Colorado passed Amendment 64, which legalizes the possession and use of one ounce or less of marijuana by persons 21 years of age or older, and permits the limited growing of marijuana for personal use. A copy of Amendment 64 is attached here for your reference. Governor Hickenlooper formalized Amendment 64 into law on December 10, 2012, by executive order. Until Amendment 64's retail sales provisions come into play in late 2013, there is still no legal way to purchase marijuana for personal, non-medical use. However, the provisions legalizing limited possession, use and growing of marijuana by adults are mandatory, statewide, and are already in effect.

The Amendment also provides for the licensing and operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores to be located throughout the state pursuant to state and/or local regulations that are required to be enacted during 2013. Importantly, Amendment 64 allows local governments to prohibit, by ordinance or referendum, marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

Amendment 64 passed in the City with roughly 57% of votes in favor of the ballot measure. Because of how the ballot measure was worded, it is not possible to distinguish between support for the Amendment's personal right to keep and use marijuana, and support for the Amendment's commercial component.

In 2009, in the wake of the proliferation of the medical marijuana industry, City Council added a provision to Title XI of the City Code expressly prohibiting any land use in violation of state or federal law. *See* W.M.C. § 11-1-3(A)(6). In July of 2010, Ordinance No. 3534 was adopted, prohibiting medical marijuana dispensaries and cultivation facilities, as otherwise allowed by state law. These provisions are located in Title V, Chapter 10, of the Code, and are now being amended to also prohibit the activities addressed in Amendment 64: marijuana cultivation facilities, product manufacturing facilities, testing facilities, and retail marijuana stores that cultivate, produce, test, and sell marijuana for personal recreational use.

Staff believes, based on the experiences of other municipalities that permitted the commercialization of medical marijuana within their jurisdictions, that, should marijuana businesses be permitted within the City, the resulting demand on police, code enforcement, legal, accounting and other limited resources would be significant. Notwithstanding the potential revenue, Staff believes that the commercialization of marijuana would not be consistent with City Council's Strategic Plan and the City's commitment to managing a sustainable workforce. In the January 7, 2013, study session, Staff received direction to prepare this proposed ordinance effecting a local ban on marijuana businesses. If there is new interest in allowing such businesses, additional Staff time would be required to analyze the impacts of permitting retail sales in the City, regarding both additional law enforcement and other Staff resources, and potential fee and tax revenue.

Separately, it is Staff's opinion that the City must recognize the right created by Amendment 64 for adults to legally possess, use, and grow limited amounts of marijuana in private. To that end, it is necessary to amend portions of the Code that are in conflict with Amendment 64. Appropriate revisions to several chapters within Title VI of the Code and Chapter 1 of Title XI are proposed in the attached emergency ordinance to minimize the time in which the Code is out of compliance with state law. Police officers have been briefed on the topic and no enforcement action is being taken contrary to state law.

There are a few other notable aspects of Amendment 64 and the proposed emergency ordinance, as follows:

- Amendment 64 defines marijuana to exclude the weight of ingredients combined with marijuana to prepare topical or oral administrations, food, drink or other products. This is a significant change from the definition in state criminal law and the City Code in that it will prohibit using the total weight of a food product containing marijuana when charging a defendant with criminal possession of marijuana. The City Code definition is being amended to correspond with the Amendment 64 definition.
- Amendment 64 allows property owners to prohibit possession and use of marijuana on their private property. Violation of a private property owner's rules against possession and use will be a new form of trespass in Title VI, Chapter 3.
- Because it is the property owner who must prohibit possession and use of marijuana on their property, the City's drug-free zones, established in Section 6-12-4 of the Code, will no longer be effective. Instead, the trespass provision discussed above will apply when marijuana is used or possessed on private property contrary to the owner's rules.
- The City as property owner may prohibit possession and use of marijuana on City property. The emergency ordinance incorporates such a prohibition as to all City property and creates a criminal penalty for its violation.

- Amendment 64 prohibits “open” or “public” consumption of marijuana, but does not define those terms. To provide more clarity, the emergency ordinance amends the Clean Indoor Air Chapter (Title VI, Chapter 13, of the Code) to prohibit marijuana smoking in every place that tobacco smoking is currently prohibited. Other types of open and public marijuana consumption are still prohibited by Title VI, Chapter 12.
- The proposed amendments to the Clean Indoor Air Chapter will restrict marijuana smoking more than tobacco smoking because the City is exercising its ability under Amendment 64 to prohibit open and public marijuana consumption and because marijuana possession and use is still prohibited under federal law. As such, certain exceptions from the tobacco smoking ban contained within W.M.C. § 6-13-4, do not apply to allow marijuana smoking. The end result is that marijuana smoking may occur in a private home or residence and in a hotel or motel room. Yet, marijuana smoking will only be lawful in these locations if the private property owner does not prohibit it.
- Chapter 1 of Title XI is being revised to permit private residential possession, consumption and growing of marijuana as required by Amendment 64 and the previous medical marijuana amendment. All types of commercial uses involving marijuana are prohibited as violations of federal law or otherwise.
- The City as an employer can still prohibit on and off-duty use of marijuana and can still implement such a prohibition via drug testing.

The federal government has yet to formally weigh in on Amendment 64. It is unclear how Amendment 64's conflict with existing federal drug laws, which still treat marijuana as an illegal controlled substance, will play out. President Obama has made comments indicating that it will not be a federal priority to enforce federal marijuana prohibitions in states where voters have legalized it. Nonetheless, as a complex and novel issue, this topic will remain at the forefront. At a minimum, additional Code amendments will likely be needed after the General Assembly enacts statutory amendments in the next legislative session to implement Amendment 64.

The Code changes contained within the emergency ordinance further the Strategic Plan goal of a Safe and Secure Community by prohibiting marijuana businesses within the City, which businesses remain illegal under federal law, and by allowing municipal prosecution for marijuana use and possession in a manner consistent with Amendment 64.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Amendment 64
Emergency Ordinance

RECEIVED

#30-Final

JUN 03 2011

Colorado Secretary of State

Be it Enacted by the People of the State of Colorado

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 16. Personal use and regulation of marijuana

(1) Purpose and findings.

(a) IN THE INTEREST OF THE EFFICIENT USE OF LAW ENFORCEMENT RESOURCES, ENHANCING REVENUE FOR PUBLIC PURPOSES, AND INDIVIDUAL FREEDOM, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE USE OF MARIJUANA SHOULD BE LEGAL FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER AND TAXED IN A MANNER SIMILAR TO ALCOHOL.

(b) IN THE INTEREST OF THE HEALTH AND PUBLIC SAFETY OF OUR CITIZENRY, THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT MARIJUANA SHOULD BE REGULATED IN A MANNER SIMILAR TO ALCOHOL SO THAT:

- (I) INDIVIDUALS WILL HAVE TO SHOW PROOF OF AGE BEFORE PURCHASING MARIJUANA;
- (II) SELLING, DISTRIBUTING, OR TRANSFERRING MARIJUANA TO MINORS AND OTHER INDIVIDUALS UNDER THE AGE OF TWENTY-ONE SHALL REMAIN ILLEGAL;
- (III) DRIVING UNDER THE INFLUENCE OF MARIJUANA SHALL REMAIN ILLEGAL;
- (IV) LEGITIMATE, TAXPAYING BUSINESS PEOPLE, AND NOT CRIMINAL ACTORS, WILL CONDUCT SALES OF MARIJUANA; AND
- (V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

(c) IN THE INTEREST OF ENACTING RATIONAL POLICIES FOR THE TREATMENT OF ALL VARIATIONS OF THE CANNABIS PLANT, THE PEOPLE OF COLORADO FURTHER FIND AND DECLARE THAT INDUSTRIAL HEMP SHOULD BE REGULATED SEPARATELY FROM STRAINS OF CANNABIS WITH HIGHER DELTA-9 TETRAHYDROCANNABINOL (THC) CONCENTRATIONS.

(d) THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS SECTION THROUGHOUT THE STATE AND THAT, THEREFORE, THE MATTERS ADDRESSED BY THIS SECTION ARE, EXCEPT AS SPECIFIED HEREIN, MATTERS OF STATEWIDE CONCERN.

(2) Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES,

(a) "COLORADO MEDICAL MARIJUANA CODE" MEANS ARTICLE 43.3 OF TITLE 12, COLORADO REVISED STATUTES.

(b) "CONSUMER" MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO PURCHASES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR OLDER, BUT NOT FOR RESALE TO OTHERS.

(c) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE OR ITS SUCCESSOR AGENCY.

(d) "INDUSTRIAL HEMP" MEANS THE PLANT OF THE GENUS CANNABIS AND ANY PART OF SUCH PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION THAT DOES NOT EXCEED THREE-TENTHS PERCENT ON A DRY WEIGHT BASIS.

(e) "LOCALITY" MEANS A COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

(f) "MARIJUANA" OR "MARIHUANA" MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIHUANA CONCENTRATE. "MARIJUANA" OR "MARIHUANA" DOES NOT INCLUDE INDUSTRIAL HEMP, NOR DOES IT INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, OR CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.

(g) "MARIJUANA ACCESSORIES" MEANS ANY EQUIPMENT, PRODUCTS, OR MATERIALS OF ANY KIND WHICH ARE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING, COMPOSTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, VAPORIZING, OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING, OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY.

(h) "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO CULTIVATE, PREPARE, AND PACKAGE MARIJUANA AND SELL MARIJUANA TO RETAIL MARIJUANA STORES, TO MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

(i) "MARIJUANA ESTABLISHMENT" MEANS A MARIJUANA CULTIVATION FACILITY, A MARIJUANA TESTING FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE.

(j) "MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA; MANUFACTURE, PREPARE, AND PACKAGE MARIJUANA PRODUCTS; AND SELL MARIJUANA AND MARIJUANA PRODUCTS TO OTHER MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO RETAIL MARIJUANA STORES, BUT NOT TO CONSUMERS.

(k) "MARIJUANA PRODUCTS" MEANS CONCENTRATED MARIJUANA PRODUCTS AND MARIJUANA PRODUCTS THAT ARE COMPRISED OF MARIJUANA AND OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

(l) "MARIJUANA TESTING FACILITY" MEANS AN ENTITY LICENSED TO ANALYZE AND CERTIFY THE SAFETY AND POTENCY OF MARIJUANA.

(m) "MEDICAL MARIJUANA CENTER" MEANS AN ENTITY LICENSED BY A STATE AGENCY TO SELL MARIJUANA AND MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(n) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA FROM MARIJUANA CULTIVATION FACILITIES AND MARIJUANA AND MARIJUANA PRODUCTS FROM MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS.

(o) "UNREASONABLY IMPRACTICABLE" MEANS THAT THE MEASURES NECESSARY TO COMPLY WITH THE REGULATIONS REQUIRE SUCH A HIGH INVESTMENT OF RISK, MONEY, TIME, OR ANY OTHER RESOURCE OR ASSET THAT THE OPERATION OF A MARIJUANA

ESTABLISHMENT IS NOT WORTHY OF BEING CARRIED OUT IN PRACTICE BY A REASONABLY PRUDENT BUSINESSPERSON.

(3) Personal use of marijuana. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR THE LAW OF ANY LOCALITY WITHIN COLORADO OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) POSSESSING, USING, DISPLAYING, PURCHASING, OR TRANSPORTING MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA.

(b) POSSESSING, GROWING, PROCESSING, OR TRANSPORTING NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR FEWER BEING MATURE, FLOWERING PLANTS, AND POSSESSION OF THE MARIJUANA PRODUCED BY THE PLANTS ON THE PREMISES WHERE THE PLANTS WERE GROWN, PROVIDED THAT THE GROWING TAKES PLACE IN AN ENCLOSED, LOCKED SPACE, IS NOT CONDUCTED OPENLY OR PUBLICLY, AND IS NOT MADE AVAILABLE FOR SALE.

(c) TRANSFER OF ONE OUNCE OR LESS OF MARIJUANA WITHOUT REMUNERATION TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(d) CONSUMPTION OF MARIJUANA, PROVIDED THAT NOTHING IN THIS SECTION SHALL PERMIT CONSUMPTION THAT IS CONDUCTED OPENLY AND PUBLICLY OR IN A MANNER THAT ENDANGERS OTHERS.

(e) ASSISTING ANOTHER PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER IN ANY OF THE ACTS DESCRIBED IN PARAGRAPHS (a) THROUGH (d) OF THIS SUBSECTION.

(4) Lawful operation of marijuana-related facilities. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) MANUFACTURE, POSSESSION, OR PURCHASE OF MARIJUANA ACCESSORIES OR THE SALE OF MARIJUANA ACCESSORIES TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(b) POSSESSING, DISPLAYING, OR TRANSPORTING MARIJUANA OR MARIJUANA PRODUCTS; PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT MANUFACTURING FACILITY; OR SALE OF MARIJUANA OR MARIJUANA PRODUCTS TO CONSUMERS, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A RETAIL MARIJUANA STORE OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED RETAIL MARIJUANA STORE.

(c) CULTIVATING, HARVESTING, PROCESSING, PACKAGING, TRANSPORTING, DISPLAYING, OR POSSESSING MARIJUANA; DELIVERY OR TRANSFER OF MARIJUANA TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA TO A MARIJUANA CULTIVATION FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE; OR THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA CULTIVATION FACILITY OR IS ACTING

IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA CULTIVATION FACILITY.

(d) PACKAGING, PROCESSING, TRANSPORTING, MANUFACTURING, DISPLAYING, OR POSSESSING MARIJUANA OR MARIJUANA PRODUCTS; DELIVERY OR TRANSFER OF MARIJUANA OR MARIJUANA PRODUCTS TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA OR MARIJUANA PRODUCTS TO A RETAIL MARIJUANA STORE OR A MARIJUANA PRODUCT MANUFACTURING FACILITY; THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; OR THE PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT MANUFACTURING FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA PRODUCT MANUFACTURING FACILITY OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA PRODUCT MANUFACTURING FACILITY.

(e) POSSESSING, CULTIVATING, PROCESSING, REPACKAGING, STORING, TRANSPORTING, DISPLAYING, TRANSFERRING OR DELIVERING MARIJUANA OR MARIJUANA PRODUCTS IF THE PERSON HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA TESTING FACILITY OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA TESTING FACILITY.

(f) LEASING OR OTHERWISE ALLOWING THE USE OF PROPERTY OWNED, OCCUPIED OR CONTROLLED BY ANY PERSON, CORPORATION OR OTHER ENTITY FOR ANY OF THE ACTIVITIES CONDUCTED LAWFULLY IN ACCORDANCE WITH PARAGRAPHS (a) THROUGH (e) OF THIS SUBSECTION.

(5) Regulation of marijuana.

(a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE:

(I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

(III) QUALIFICATIONS FOR LICENSURE THAT ARE DIRECTLY AND DEMONSTRABLY RELATED TO THE OPERATION OF A MARIJUANA ESTABLISHMENT;

- (IV) SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS;
- (V) REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA AND MARIJUANA PRODUCTS TO PERSONS UNDER THE AGE OF TWENTY-ONE;
- (VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT;
- (VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA;
- (VIII) RESTRICTIONS ON THE ADVERTISING AND DISPLAY OF MARIJUANA AND MARIJUANA PRODUCTS; AND
- (IX) CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH REGULATIONS MADE PURSUANT TO THIS SECTION.

(b) IN ORDER TO ENSURE THE MOST SECURE, RELIABLE, AND ACCOUNTABLE SYSTEM FOR THE PRODUCTION AND DISTRIBUTION OF MARIJUANA AND MARIJUANA PRODUCTS IN ACCORDANCE WITH THIS SUBSECTION, IN ANY COMPETITIVE APPLICATION PROCESS THE DEPARTMENT SHALL HAVE AS A PRIMARY CONSIDERATION WHETHER AN APPLICANT:

(I) HAS PRIOR EXPERIENCE PRODUCING OR DISTRIBUTING MARIJUANA OR MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE IN THE LOCALITY IN WHICH THE APPLICANT SEEKS TO OPERATE A MARIJUANA ESTABLISHMENT; AND

(II) HAS, DURING THE EXPERIENCE DESCRIBED IN SUBPARAGRAPH (I), COMPLIED CONSISTANTLY WITH SECTION 14 OF THIS ARTICLE, THE PROVISIONS OF THE COLORADO MEDICAL MARIJUANA CODE AND CONFORMING REGULATIONS.

(c) IN ORDER TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED, NOTWITHSTANDING PARAGRAPH (a), THE DEPARTMENT SHALL NOT REQUIRE A CONSUMER TO PROVIDE A RETAIL MARIJUANA STORE WITH PERSONAL INFORMATION OTHER THAN GOVERNMENT-ISSUED IDENTIFICATION TO DETERMINE THE CONSUMER'S AGE, AND A RETAIL MARIJUANA STORE SHALL NOT BE REQUIRED TO ACQUIRE AND RECORD PERSONAL INFORMATION ABOUT CONSUMERS OTHER THAN INFORMATION TYPICALLY ACQUIRED IN A FINANCIAL TRANSACTION CONDUCTED AT A RETAIL LIQUOR STORE.

(d) THE GENERAL ASSEMBLY SHALL ENACT AN EXCISE TAX TO BE LEVIED UPON MARIJUANA SOLD OR OTHERWISE TRANSFERRED BY A MARIJUANA CULTIVATION FACILITY TO A MARIJUANA PRODUCT MANUFACTURING FACILITY OR TO A RETAIL MARIJUANA STORE AT A RATE NOT TO EXCEED FIFTEEN PERCENT PRIOR TO JANUARY 1, 2017 AND AT A RATE TO BE DETERMINED BY THE GENERAL ASSEMBLY THEREAFTER, AND SHALL DIRECT THE DEPARTMENT TO ESTABLISH PROCEDURES FOR THE COLLECTION OF ALL TAXES LEVIED. PROVIDED, THE FIRST FORTY MILLION DOLLARS IN REVENUE RAISED ANNUALLY FROM ANY SUCH EXCISE TAX SHALL BE CREDITED TO THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND CREATED BY ARTICLE 43.7 OF TITLE 22, C.R.S., OR ANY SUCCESSOR FUND DEDICATED TO A SIMILAR PURPOSE. PROVIDED FURTHER, NO SUCH EXCISE TAX SHALL BE LEVIED UPON MARIJUANA INTENDED FOR SALE AT MEDICAL MARIJUANA CENTERS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(e) NOT LATER THAN OCTOBER 1, 2013, EACH LOCALITY SHALL ENACT AN ORDINANCE OR REGULATION SPECIFYING THE ENTITY WITHIN THE LOCALITY THAT IS RESPONSIBLE FOR PROCESSING APPLICATIONS SUBMITTED FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT WITHIN THE BOUNDARIES OF THE LOCALITY AND FOR THE ISSUANCE OF SUCH LICENSES SHOULD THE ISSUANCE BY THE LOCALITY BECOME NECESSARY BECAUSE OF A FAILURE BY THE DEPARTMENT TO ADOPT REGULATIONS PURSUANT TO PARAGRAPH (a) OR BECAUSE OF A FAILURE BY THE DEPARTMENT TO PROCESS AND ISSUE LICENSES AS REQUIRED BY PARAGRAPH (g).

(f) A LOCALITY MAY ENACT ORDINANCES OR REGULATIONS, NOT IN CONFLICT WITH THIS SECTION OR WITH REGULATIONS OR LEGISLATION ENACTED PURSUANT TO THIS SECTION, GOVERNING THE TIME, PLACE, MANNER AND NUMBER OF MARIJUANA ESTABLISHMENT OPERATIONS; ESTABLISHING PROCEDURES FOR THE ISSUANCE, SUSPENSION, AND REVOCATION OF A LICENSE ISSUED BY THE LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i), SUCH PROCEDURES TO BE SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION; ESTABLISHING A SCHEDULE OF ANNUAL OPERATING, LICENSING, AND APPLICATION FEES FOR MARIJUANA ESTABLISHMENTS, PROVIDED, THE APPLICATION FEE SHALL ONLY BE DUE IF AN APPLICATION IS SUBMITTED TO A LOCALITY IN ACCORDANCE WITH PARAGRAPH (i) AND A LICENSING FEE SHALL ONLY BE DUE IF A LICENSE IS ISSUED BY A LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i); AND ESTABLISHING CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE OR REGULATION GOVERNING THE TIME, PLACE, AND MANNER OF A MARIJUANA ESTABLISHMENT THAT MAY OPERATE IN SUCH LOCALITY. A LOCALITY MAY PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES THROUGH THE ENACTMENT OF AN ORDINANCE OR THROUGH AN INITIATED OR REFERRED MEASURE; PROVIDED, ANY INITIATED OR REFERRED MEASURE TO PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT DURING AN EVEN NUMBERED YEAR.

(g) EACH APPLICATION FOR AN ANNUAL LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT SHALL BE SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL:

- (I) BEGIN ACCEPTING AND PROCESSING APPLICATIONS ON OCTOBER 1, 2013;
- (II) IMMEDIATELY FORWARD A COPY OF EACH APPLICATION AND HALF OF THE LICENSE APPLICATION FEE TO THE LOCALITY IN WHICH THE APPLICANT DESIRES TO OPERATE THE MARIJUANA ESTABLISHMENT;
- (III) ISSUE AN ANNUAL LICENSE TO THE APPLICANT BETWEEN FORTY-FIVE AND NINETY DAYS AFTER RECEIPT OF AN APPLICATION UNLESS THE DEPARTMENT FINDS THE APPLICANT IS NOT IN COMPLIANCE WITH REGULATIONS ENACTED PURSUANT TO PARAGRAPH (a) OR THE DEPARTMENT IS NOTIFIED BY THE RELEVANT LOCALITY THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) AND IN EFFECT AT THE TIME OF APPLICATION, PROVIDED, WHERE A LOCALITY HAS ENACTED A NUMERICAL LIMIT ON THE NUMBER OF MARIJUANA ESTABLISHMENTS AND A GREATER NUMBER OF APPLICANTS SEEK LICENSES, THE

DEPARTMENT SHALL SOLICIT AND CONSIDER INPUT FROM THE LOCALITY AS TO THE LOCALITY'S PREFERENCE OR PREFERENCES FOR LICENSURE; AND

(IV) UPON DENIAL OF AN APPLICATION, NOTIFY THE APPLICANT IN WRITING OF THE SPECIFIC REASON FOR ITS DENIAL.

(h) IF THE DEPARTMENT DOES NOT ISSUE A LICENSE TO AN APPLICANT WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION FILED IN ACCORDANCE WITH PARAGRAPH (g) AND DOES NOT NOTIFY THE APPLICANT OF THE SPECIFIC REASON FOR ITS DENIAL, IN WRITING AND WITHIN SUCH TIME PERIOD, OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) AND HAS ACCEPTED APPLICATIONS PURSUANT TO PARAGRAPH (g) BUT HAS NOT ISSUED ANY LICENSES BY JANUARY 1, 2014, THE APPLICANT MAY RESUBMIT ITS APPLICATION DIRECTLY TO THE LOCALITY, PURSUANT TO PARAGRAPH (e), AND THE LOCALITY MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE RESUBMITTED APPLICATION UNLESS THE LOCALITY FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME THE APPLICATION IS RESUBMITTED AND THE LOCALITY SHALL NOTIFY THE DEPARTMENT IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. IF AN APPLICATION IS SUBMITTED TO A LOCALITY UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL FORWARD TO THE LOCALITY THE APPLICATION FEE PAID BY THE APPLICANT TO THE DEPARTMENT UPON REQUEST BY THE LOCALITY. A LICENSE ISSUED BY A LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON AN ANNUAL BASIS ONLY UPON RESUBMISSION TO THE LOCALITY OF A NEW APPLICATION SUBMITTED TO THE DEPARTMENT PURSUANT TO PARAGRAPH (g). NOTHING IN THIS PARAGRAPH SHALL LIMIT SUCH RELIEF AS MAY BE AVAILABLE TO AN AGGRIEVED PARTY UNDER SECTION 24-4-104, C.R.S., OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION.

(i) IF THE DEPARTMENT DOES NOT ADOPT REGULATIONS REQUIRED BY PARAGRAPH (a), AN APPLICANT MAY SUBMIT AN APPLICATION DIRECTLY TO A LOCALITY AFTER OCTOBER 1, 2013 AND THE LOCALITY MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION UNLESS IT FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME OF APPLICATION AND SHALL NOTIFY THE DEPARTMENT IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. A LICENSE ISSUED BY A LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON AN ANNUAL BASIS IF THE DEPARTMENT HAS NOT ADOPTED REGULATIONS REQUIRED BY

PARAGRAPH (a) AT LEAST NINETY DAYS PRIOR TO THE DATE UPON WHICH SUCH SUBSEQUENT OR RENEWED LICENSE WOULD BE EFFECTIVE OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) BUT HAS NOT, AT LEAST NINETY DAYS AFTER THE ADOPTION OF SUCH REGULATIONS, ISSUED LICENSES PURSUANT TO PARAGRAPH (g).

(j) NOT LATER THAN JULY 1, 2014, THE GENERAL ASSEMBLY SHALL ENACT LEGISLATION GOVERNING THE CULTIVATION, PROCESSING AND SALE OF INDUSTRIAL HEMP.

(6) Employers, driving, minors and control of property.

(a) NOTHING IN THIS SECTION IS INTENDED TO REQUIRE AN EMPLOYER TO PERMIT OR ACCOMMODATE THE USE, CONSUMPTION, POSSESSION, TRANSFER, DISPLAY, TRANSPORTATION, SALE OR GROWING OF MARIJUANA IN THE WORKPLACE OR TO AFFECT THE ABILITY OF EMPLOYERS TO HAVE POLICIES RESTRICTING THE USE OF MARIJUANA BY EMPLOYEES.

(b) NOTHING IN THIS SECTION IS INTENDED TO ALLOW DRIVING UNDER THE INFLUENCE OF MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA OR TO SUPERSEDE STATUTORY LAWS RELATED TO DRIVING UNDER THE INFLUENCE OF MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA, NOR SHALL THIS SECTION PREVENT THE STATE FROM ENACTING AND IMPOSING PENALTIES FOR DRIVING UNDER THE INFLUENCE OF OR WHILE IMPAIRED BY MARIJUANA.

(c) NOTHING IN THIS SECTION IS INTENDED TO PERMIT THE TRANSFER OF MARIJUANA, WITH OR WITHOUT REMUNERATION, TO A PERSON UNDER THE AGE OF TWENTY-ONE OR TO ALLOW A PERSON UNDER THE AGE OF TWENTY-ONE TO PURCHASE, POSSESS, USE, TRANSPORT, GROW, OR CONSUME MARIJUANA.

(d) NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON, EMPLOYER, SCHOOL, HOSPITAL, DETENTION FACILITY, CORPORATION OR ANY OTHER ENTITY WHO OCCUPIES, OWNS OR CONTROLS A PROPERTY FROM PROHIBITING OR OTHERWISE REGULATING THE POSSESSION, CONSUMPTION, USE, DISPLAY, TRANSFER, DISTRIBUTION, SALE, TRANSPORTATION, OR GROWING OF MARIJUANA ON OR IN THAT PROPERTY.

(7) Medical marijuana provisions unaffected. NOTHING IN THIS SECTION SHALL BE CONSTRUED:

(a) TO LIMIT ANY PRIVILEGES OR RIGHTS OF A MEDICAL MARIJUANA PATIENT, PRIMARY CAREGIVER, OR LICENSED ENTITY AS PROVIDED IN SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE;

(b) TO PERMIT A MEDICAL MARIJUANA CENTER TO DISTRIBUTE MARIJUANA TO A PERSON WHO IS NOT A MEDICAL MARIJUANA PATIENT;

(c) TO PERMIT A MEDICAL MARIJUANA CENTER TO PURCHASE MARIJUANA OR MARIJUANA PRODUCTS IN A MANNER OR FROM A SOURCE NOT AUTHORIZED UNDER THE COLORADO MEDICAL MARIJUANA CODE;

(d) TO PERMIT ANY MEDICAL MARIJUANA CENTER LICENSED PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE TO OPERATE ON THE SAME PREMISES AS A RETAIL MARIJUANA STORE.; OR

(e) TO DISCHARGE THE DEPARTMENT, THE COLORADO BOARD OF HEALTH, OR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FROM THEIR STATUTORY AND CONSTITUTIONAL DUTIES TO REGULATE MEDICAL MARIJUANA PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(8) Self-executing, severability, conflicting provisions. ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING EXCEPT AS SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE CONFLICTING STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER STATE AND LOCAL PROVISIONS.

(9) Effective date. UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR, PURSUANT TO SECTION 1(4) OF ARTICLE V.

Proponent Representative 1

Name: Mason Tvert
Physical Address: 1441 Humboldt Street #101, Denver, Colorado 80218
Mailing Address: P.O. Box 40332, Denver, Colorado 80204
Phone: 303-861-0033
Fax: 303-861-0915
E-mail: mason@saferchoice.org

Proponent Representative 2

Name: Brian Vicente
Physical Address: 949 B Pennsylvania St., Denver, Colorado 80203
Mailing Address: P.O. Box 18768, Denver, Colorado 80218
Phone: 303-860-4501
Fax: 303-860-4505
E-mail: brian@sensiblecolorado.org

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **7**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN EMERGENCY ORDINANCE AMENDING TITLE V, CHAPTER 10; TITLE VI,
CHAPTERS 3, 12 AND 13; AND TITLE XI, CHAPTER 1, OF THE WESTMINSTER
MUNICIPAL CODE TO ADDRESS THE LEGALIZATION OF MARIJUANA**

WHEREAS, in the November, 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution ("Article XVIII, Section 14"), which authorizes and limits the sale of medical marijuana for use in the treatment of debilitating medical conditions;

WHEREAS, during the 2010 legislation session, the General Assembly considered and adopted the Colorado Medical Marijuana Code, Section 12-43.3-101, *et seq.*, C.R.S., which authorized a mechanism for the retail sale, distribution, cultivation and dispensing of medical marijuana via "Medical Marijuana Centers," and further authorized licensing mechanisms for "Optional Premises Cultivation Operations" and the issuance of "Medical Marijuana-Infused Products Manufacturers' Licenses";

WHEREAS, the Colorado Medical Marijuana Code specifically authorizes that the governing body of a municipality "may vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana infused products manufacturers' licenses";

WHEREAS, on July 12, 2012, the City adopted Ordinance No. 3534, prohibiting the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana infused products manufacturers' licenses within the City;

WHEREAS, on November 6, 2012, the registered electors of the State of Colorado voted to adopt Amendment 64, an amendment to the Colorado Constitution authorizing the personal use and regulation of marijuana;

WHEREAS, pursuant to Article XVIII, Section 16(5)(f) of the Colorado Constitution, the City may "prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance"; and

WHEREAS, after careful consideration of Article XVIII, Sections 14 and 16 of the Colorado Constitution, and after evaluating, *inter alia*, the measures' conflict with federal law and the potential secondary impacts associated with the retail sale, distribution, cultivation and dispensing of medical and recreational marijuana through marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, retail marijuana stores, medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, the City finds and determines that such land uses have an adverse effect on the health, safety and welfare of the City and the inhabitants thereof.

NOW THEREFORE THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Chapter Title of Title V, Chapter 10, W.M.C., is hereby AMENDED as follows:

| **MEDICAL AND RECREATIONAL MARIJUANA**

Section 2. Sections 6 and 7 of the Index for Title V, Chapter 10, are hereby AMENDED as follows:

| **5-10-6: ~~PENALTY; NUISANCE DECLARED~~ PERSONAL RECREATIONAL USE**

5-10-67: PENALTY; NUISANCE DECLARED

Section 3. Section 5-10-1, W.M.C., is hereby AMENDED BY THE ADDITION OF NEW DEFINITIONS as follows:

5-10-1: DEFINITIONS: (3534) The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Consumer” means a person twenty one (21) years of age or older who purchases marijuana or marijuana products for personal use by persons twenty one (21) years of age or older, but not for resale to others.

“Marijuana” means all parts of the plant Cannabis Sativa L., as further defined in Title VI, Chapter 12, of this Code.

“Marijuana Cultivation Facility” means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

“Marijuana Establishment” means a marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store.

“Marijuana Product Manufacturing Facility” means an entity licensed to purchase marijuana; manufacture, prepare and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

“Marijuana Products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

“Marijuana Testing Facility” means an entity licensed to analyze and certify the safety and potency of marijuana.

“Medical Marijuana” means marijuana that is grown and sold for a purpose authorized by Article XVIII, Section 14, of the Colorado Constitution.

“Medical Marijuana Center,” “Medical Marijuana-infused Products Manufacturer,” and “Optional Premises Cultivation Operation” shall have the same meanings as set forth in the Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., Article 43.3, C.R.S., as the same may, from time to time, be amended.

“Patient” and “Primary Caregiver” shall have the same meanings as set forth in Article XVIII, Section 14, of the Colorado Constitution.

“Person” means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

“Retail Marijuana Store” means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Section 4. Section 5-10-2, W.M.C., is hereby AMENDED BY THE ADDITION OF NEW SECTIONS (B) and (C) as follows:

5-10-2: FINDINGS: The City Council makes the following findings:

(A) The Colorado Medical Marijuana Code, Section 12-43-3-101, *et seq.*, C.R.S., clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14, of the Colorado Constitution.

(B) Article XVIII, Section 16, of the Colorado Constitution addresses personal recreational use of marijuana and allows municipalities to prohibit the operation of marijuana establishments through the enactment of an ordinance.

(C) As a matter of the City's local land use and zoning authority as a home rule municipality pursuant to Article XX, Section 6 of the Colorado Constitution, and consistent with the authorization provided by Article XVIII, Section 16 of the Colorado Constitution and the Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S. and after evaluating, inter alia, the measures' conflict with federal law and the potential secondary impacts associated with the retail sale, distribution, cultivation and dispensing of medical and recreational marijuana through marijuana establishments, medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, the City finds and determines that such land uses have an unacceptable adverse effect on the health, safety and welfare of the City and the inhabitants thereof.

(BD) This ordinance is necessary to protect and is enacted in furtherance of the public health, safety and welfare of the City.

(CE) This Chapter is intended to apply and shall apply to all property, businesses, and business enterprises operating within the City, whether stationary, mobile, or virtual.

Section 5. Section 5-10-3, W.M.C., is hereby AMENDED as follows:

5-10-3: USES PROHIBITED: It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation, ~~or~~ a medical marijuana-infused products manufacturing facility, or a marijuana establishment in the City.

Section 6. Sections 5-10-6, W.M.C., hereby AMENDS AND REPLACES THE FORMER SECTION, PENALTY; NUISANCE DECLARED, as follows:

5-10-6: PENALTY; NUISANCE DECLARED PERSONAL RECREATIONAL USE:

Nothing in this Chapter shall be construed to prohibit, regulate or otherwise impair the personal recreational use of marijuana by persons twenty-one (21) years of age or older, as defined by Article XVIII, Section 16, of the Colorado Constitution, provided that such personal use does not involve the sale of marijuana or the operation of a marijuana establishment within the City.

~~(A) It is unlawful for any person to violate any of the provisions of this Chapter. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine or imprisonment or both pursuant to Section 1-8-1, W.M.C. Each day that a violation of any of the provisions of this Chapter continues to exist shall be deemed a separate and distinct violation.~~

~~(B) The conduct of any activity or business in violation of this Chapter is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisance provided for in Chapter 4 of Title VIII of this Code.~~

Section 7. Section 5-10-7, W.M.C., formerly Section 5-10-6, W.M.C., is hereby AMENDED BY ITS NEW SECTION NUMBER ONLY as follows:

5-10-67: PENALTY; NUISANCE DECLARED:

(A) It is unlawful for any person to violate any of the provisions of this Chapter. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine or imprisonment or both pursuant to

Section 1-8-1, W.M.C. Each day that a violation of any of the provisions of this Chapter continues to exist shall be deemed a separate and distinct violation.

(B) The conduct of any activity or business in violation of this Chapter is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisance provided for in Chapter 4 of Title VIII of this Code.

Section 8. Section 6-3-5, Subsection (C), W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUB-SUBSECTION (5) as follows:

6-3-5: TRESPASSING: (1224 1593 2001 2056 2706 2782 3563)

(C) PRIMA FACIE EVIDENCE: It shall be prima facie evidence that consent is absent, denied, or withdrawn, when one (1) or more of the following events occur:

...

(5) The possession, consumption, use, display, transfer, distribution, sale, transportation or growing of marijuana, as that term is defined in Title VI, Chapter 12, of this Code, in violation of the rules, regulations or prohibitions of the owner, occupant, agent of the owner or occupant, or any other person having lawful control of a premises.

The enumeration in this subsection of the events constituting prima facie evidence shall not be construed to require any summons and complaint to specify one (1) or more provisions of this subsection.

Section 9. Sections 2 and 4 of the Index for Title VI, Chapter 12, are hereby AMENDED as follows:

6-12-2: POSSESSION AND GROWING

6-12-4: ~~DRUG FREE ZONES~~ PROHIBITION ON CITY PROPERTY

Section 3. Section 6-12-1, W.M.C., is hereby AMENDED as follows:

6-12-1: DEFINITIONS: (1590 2001 3646) The following words, terms and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Controlled Substance” shall mean a controlled substance, as that term is defined in Section 18-18-102(5), C.R.S., as may be amended, which term shall include controlled substance analog, as defined in Section 18-18-102(6)(A), C.R.S., as may be amended.

“Drug Paraphernalia” shall mean all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, possessing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of the State or this City. Drug paraphernalia includes, but is not limited to:

(1) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State or this City;

(2) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(3) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(4) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(5) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(6) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(7) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

- (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) Water pipes, which means pipes made of any substance with bowls large enough to hold water used for filtering the smoke to be inhaled;
- (c) Carburetion tubes and devices;
- (d) Smoking and c/carburetion masks;
- (e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
- (f) Miniature cocaine spoons and cocaine vials;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bongs; or
- (m) Ice pipes or chillers.

~~“Drug-Free Zone” shall mean:~~

~~(1) All areas of any public or private elementary, middle, secondary, or vocational school, or any public park;~~

~~(2) Any street, alley, parkway, sidewalk, playground, or other area accessible to the public that is within one thousand feet (1,000') of any such school or public park, including any structure that is within one thousand feet (1,000') of any such school or public park and that is accessible to the public for the purpose of sale, distribution, use or exchange of controlled substances in violation of Article 18 of Title 18 of the Colorado Revised Statutes; and~~

~~(3) Any school bus, as defined by State law, engaged in the transportation of persons who are students at any public or private elementary, middle, or secondary school. Measurements shall be made from the property line of any such school or public park.~~

~~“Enclosed” means within a structure having a roof, walls, windows or doors, all sides of which are or may be closed to the weather.~~

~~“Hashish” means the tetrahydrocannabinol-rich resinous material of the cannabis plant, which has been collected, dried, and compressed into any of a variety of forms, such as balls, cakes, or cookie-like sheets.~~

~~“Industrial Hemp” means the plant of the genus cannabis and any part of such plant, whether growing or not, with Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.~~

~~“Marijuana” or “Marihuana,” also known as Cannabis Sativa L., shall mean all parts of the plant Cannabis Sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds,~~

or its resin, including marijuana concentrate. It does not include industrial hemp:- fiber produced from the stalks, oil or cake made from the seeds of the plant; sterilized seed of the plant that is incapable of germination; or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product. .if these items exist apart from any other item defined in this Section as "Marijuana," or "Marijuana Concentrate."

“Marijuana Concentrate” shall mean hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinols.

Section 10. Section 6-12-2, W.M.C., is hereby AMENDED AND INCLUDES THE ADDITION OF NEW SUBSECTIONS (B), (C), AND (D) as follows:

6-12-2: POSSESSION AND GROWING: (1590)

(A) Any person under twenty one (21) years of age who possesses, uses, displays, purchases, or transports not more than one (1) ounce of marijuana commits a violation of this Code and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100).

(B) Any person twenty one (21) years of age or older who possesses, uses, displays, purchases or transports more than one (1) ounce but not more than two (2) ounces of marijuana commits a violation of this Code and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100).

(C) Any person twenty one (21) years of age or older who possesses, grows, processes, or transports more than six (6) marijuana plants but not more than twelve (12) marijuana plants, commits a violation of this Code and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding the limits in Section 6-12-2(B) above, a person twenty one (21) years of age or older may possess on the premises where the marijuana plants are growing and for personal use only the marijuana produced by no more than six (6) marijuana plants.

(D) Any person who grows marijuana in a place that is not enclosed or locked, or grows marijuana in an open or public manner, commits a violation of this Code and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100).

Section 11. Section 6-12-3, W.M.C., is hereby AMENDED as follows:

6-12-3: DISPLAY, CONSUMPTION, OR USE: Any person who openly and publicly displays, consumes, or uses not more than one (1) ounce of marijuana, commits a violation of this Code and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars (\$100) or, at a maximum, by a fine of not more than one hundred dollars (\$100) and by imprisonment for fifteen (15) days; except that transportation of marijuana plants for personal use shall be permitted as set forth in Article XVIII, Section 16, of the Colorado Constitution.

Section 12. Section 6-12-4, W.M.C., is hereby AMENDED as follows:

6-12-4: ~~DRUG-FREE ZONES~~PROHIBITION ON CITY PROPERTY: (2001) It shall be unlawful to possess, consume, use, display, transfer, distribute, sell, purchase, transport or grow any amount ~~not more than one (1) ounce~~ of marijuana within a drug-free zone on any property owned, leased or controlled by the City. A violation of this Section is a criminal offense, punishable by a fine or imprisonment or both, as provided in Section 1-8-1, W.M.C.

Section 13. Section 6-13-1, W.M.C., is hereby AMENDED AND INCLUDES THE ADDITION OF A NEW SUBSECTION (B) as follows:

6-13-1: LEGISLATIVE INTENT: (3289)

(A) It is the finding and declaration of the City of Westminster that it is in the best interest of the people

of this City to protect nonsmokers from involuntary exposure to environmental ~~tobacco~~-smoke in most indoor areas open to the public, public meetings, food service establishments and places of employment. The City further finds and determines that a balance should be struck between the health concerns of non-consumers of tobacco and marijuana products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco and marijuana products in certain designated public areas and in private places. Therefore, the City hereby declares that the purpose of this Chapter is to preserve and improve the health, comfort, and environment of the people of this City by limiting exposure to tobacco and marijuana smoke.

(B) Following adoption of Article XVIII, Section 16, of the Colorado Constitution, legalizing certain recreational use and possession of marijuana, the City finds and determines that there is a need to regulate the open and public consumption of marijuana.

Section 14. Section 6-13-2, W.M.C., is hereby AMENDED as follows:

6-13-2: DEFINITIONS: (3289)

“Airport Smoking Concession” shall mean a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.

“Auditorium” shall mean the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

“Bar” shall mean any indoor area that is operated and licensed under Article 47 of Title 12, C.R.S., and Title V, Chapter 14, W.M.C., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

“Cigar-Tobacco Bar” shall mean a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income or fifty thousand dollars (\$50,000) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent (5%) of its total annual gross income or fifty thousand dollars (\$50,000) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition, regardless of sales figures.

“Employee” shall mean any person who:

- (a) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
- (b) Provides uncompensated work or services to a business or nonprofit entity.

“Employee” shall include every person described above, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

“Employer” shall mean any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. "Employer" includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

“Entryway” shall mean the outside of the front or main doorway leading into a building or facility that is not exempted from this Chapter under Section 6-13-4, W.M.C. "Entryway" also includes the area of public or private property within a specified radius outside of the doorway. The specified radius shall be fifteen feet (15’).

“Environmental ~~Tobacco~~ Smoke,” ~~“ETS,”~~ or “Secondhand Smoke” shall mean the complex mixture formed from the escaping smoke of a burning tobacco or marijuana product, also known as “side stream smoke,” and smoke exhaled by the smoker.

“Food Service Establishment” shall mean any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

“Indoor Area” shall mean any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

“Local Authority” shall mean a county, city and county, city, or town.

“Marijuana” or “Marihuana” means all parts of the plant Cannabis Sativa L., as further defined in Title VI, Chapter 12, of this Code.

“Place of Employment” shall mean any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

“Public Building” shall mean any building owned or operated by: (1) The state, including the legislative, executive, and judicial branches of state government; (2) Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or (3) Any other separate corporate instrumentality or unit of state or local government.

“Public Meeting” shall mean any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of this State.

“Smoke-Free Work Area” shall mean an indoor area in a place of employment where smoking is prohibited under this Chapter.

“Smoking” shall mean the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana.

“Tobacco” shall mean cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. “Tobacco” also includes cloves and any other plant matter or product that is packaged for smoking.

“Tobacco Business” shall mean a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

“Work Area” shall mean an area in a place of employment where one (1) or more employees are routinely assigned and perform services for or on behalf of their employer.

Section 15. Section 6-13-3, W.M.C., is hereby AMENDED as follows:

6-13-3: GENERAL SMOKING RESTRICTIONS: (3289)

(A) Except as provided in Section 6-13-4, W.M.C., and in order to reduce the levels of exposure to environmental ~~tobacco~~-smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

- (1) Public meeting places;
 - (2) Elevators;
 - (3) Government-owned or -operated means of mass transportation, including, but not limited to, buses, vans, and trains;
 - (4) Taxicabs and limousines;
 - (5) Grocery stores;
 - (6) Gymnasiums;
 - (7) Jury waiting and deliberation rooms;
 - (8) Courtrooms;
 - (9) Child day care facilities;
 - (10) Health care facilities, including hospitals, health care clinics, doctor's offices, and other health care related facilities;
 - (11) (a) Any place of employment that is not exempted.
(b) In the case of employers who own facilities otherwise exempted from this Chapter, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental ~~tobacco~~-smoke. Every employee shall have a right to work in an area free of environmental ~~tobacco~~-smoke.
 - (12) Food service establishments;
 - (13) Bars;
 - (14) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
 - (15) Indoor sports arenas;
 - (16) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
 - (17) Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests;
 - (18) Bowling alleys;
 - (19) Billiard or pool halls;
 - (20) Facilities in which games of chance are conducted;
 - (21) The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
 - (22) Public buildings;
 - (23) Auditoria;
 - (24) Theaters;
 - (25) Museums;
 - (26) Libraries;
 - (27) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools;
 - (28) Other educational and vocational institutions; and
 - (29) The entryways of all buildings and facilities listed in paragraphs (1) to (28) of this subsection
- (A).

(B) A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four inches (4") by six inches (6") in size stating: "Smoking allowed. Children under eighteen (18) years of age must be accompanied by a parent or guardian."

Section 16. Section 6-13-4, W.M.C., is hereby AMENDED AND INCLUDES THE ADDITION OF A NEW SUBSECTION (B) as follows:

6-13-4: EXCEPTIONS TO SMOKING RESTRICTIONS: (3289)

(A) This Chapter shall not apply to prohibit marijuana or tobacco smoking in the following places; provided, however, that these exceptions shall not apply to allow marijuana smoking if such use has been prohibited by as permitted by 6-3-5(C)(5), W.M.C.:

(1) Private homes and, private residences, ~~and private automobiles;~~ except that ~~this Chapter's~~ smoking shall apply be prohibited if any such home or, residence, ~~or vehicle~~ is being used for child care or day care, ~~or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;~~

(2) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent.

(B) This Chapter shall apply to prohibit marijuana smoking in the following locations, but tobacco smoking may be conducted in the following places in compliance with Section 6-13-5 below:

(1) A private vehicle unless the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(2) A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees;

(3) A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000);

(4) Limousines under private hire;

(5) Any retail tobacco business;

(6) A cigar-tobacco bar;

(7) An airport smoking concession;

(8) The outdoor area of any business;

(9) The retail floor plan, as defined in Section 12-47.1-509, C.R.S., of a licensed casino.

Section 17. Section 6-13-5, W.M.C., is hereby AMENDED as follows:

6-13-5: OPTIONAL PROHIBITIONS: (3289)

(A) The owner or manager of any place not specifically listed in Section 6-13-3, W.M.C., including a place otherwise exempted under Section 6-13-4, W.M.C., may post signs prohibiting smoking ~~or providing smoking and nonsmoking areas.~~ Such posting shall have the effect of including such place, ~~or the designated nonsmoking portion thereof,~~ in the places where smoking is prohibited or restricted pursuant to this Chapter. The owner or manager of any place not specifically listed in Section 6-13-3 may post signs designating permissible tobacco smoking areas but may not allow smoking of marijuana.

Section 18. Section 11-1-3, Subsection (A), Sub-subsection (6) W.M.C., is hereby AMENDED as follows:

11-1-3: VIOLATIONS: (2534 2797 3491 3497 3634)

(A) Unless otherwise permitted by this Code, it shall be unlawful for any person to:

...

(6) Use, occupy or authorize the use or occupancy of any land or building for any use that is unlawful under any state or federal law; provided, however, that this provision shall not apply to

[uses within any residential zoning district deemed to be permitted under Article XVIII, Sections 14 or 16, of the Colorado Constitution.](#)

Section 19. Emergency. As a result of the constitutional amendment approved by Colorado voters at the November 6, 2012, general election legalizing possession and use of certain amounts of recreational marijuana, known as Amendment 64 or Article XVIII, Section 16, of the Colorado Constitution, which amendment conflicts with existing provisions of the Westminster Municipal Code and allows municipalities to prohibit by ordinance the operation of marijuana establishments, and due to the immediate need to make conforming changes to the Westminster Municipal Code to comply with the constitutional amendment, 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 28, 2013, 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 20. 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 28th day of January, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Councillor's Bill No. 8 re Citywide Radio P25 Digital Radio Communications Backbone System and Related Subscriber Equipment

Prepared By: Lee Birk, Chief of Police
Russ Bowers, Public Safety Communications Administrator

Recommended City Council Action

1. Pass Councillor's Bill No. 8 as an emergency Ordinance transferring \$1,077,552 from the General Capital Outlay Replacement Fund into the General Capital Improvement Fund.
2. Authorize Staff to reallocate \$400,000 from the Firefighting Simulator/Burn Building capital project currently appropriated within the General Capital Improvement Fund (GCIF) into the Citywide Radio Replacement within the GCIF.
3. Based on a recommendation of the City Manager, City Council finds the public interest will best be served by authorizing the City Manager to execute:
 - a. a sole source purchase and sale agreement, in substantially the same form as attached, with Cassidian Communications for the P25 digital radio communications infrastructure system for a total of \$1,900,380, and Council hereby approves and authorizes the same.
 - b. a P25 digital radio communications system maintenance agreement with Cassidian Communications, in substantially the same form as attached, that will cost \$175,000 in the first year following the warranty year, increasing annually based on the CPI-U not to exceed 5% annually, for up to nine years contingent upon annual appropriation, and Council hereby approves and authorizes the same.
 - c. a sole source purchase and sale agreement, in substantially the same form as attached, with Avtec, Inc., for the purchase of P25 Consoles for a total of \$383,595, and Council hereby approves and authorizes the same.
 - d. a sole source contract in a form acceptable to the City Attorney's Office with Frontier Radio Communications for the towers and site development for an amount not to exceed \$80,000, plus a contingency of \$20,000, and Council hereby approves and authorizes the same.

Summary Statement

- The City of Westminster currently operates a Harris Radio Communications system that is 20 years old. The system is antiquated, has reached an end of life status, and many components are manufacturer discontinued. The system is jointly owned by the cities of Westminster and Arvada and its operation is governed by an IGA adopted in 1992 and amended in 1994.

- This system provides emergency and non-emergency radio service to the Police and Fire Departments and is also utilized by other City Departments, including Parks, Recreation and Libraries and Public Works and Utilities. The radio system serves Arvada in a very similar capacity, except that the Arvada Fire Department (AFD) is a Special District and is not a partner or part owner of the system. Instead, they are a user of the system and their participation is governed by a User Agreement executed in 2007.
- City Council has identified replacement and upgrade of the radio system as a high priority item on the Strategic Plan’s 2012-2013 Management Agenda and started appropriating funds into a capital project account in 2011 as part of a multi-year effort to accumulate funds to accomplish this objective.
- In April of 2012, both cities jointly issued and received a Request for Information (RFI) from prospective radio vendors. Staff has closely reviewed the responses and engaged in follow-up discussions and negotiations with a specific vendor, Cassidian Communications (Cassidian). Westminster Staff believes that Cassidian offers the very best radio system for the City at an extremely competitive price and Staff recommends approving a sole source contract for this project with Cassidian.
- The City of Arvada notified the City on December 14, 2012 that they have elected to discontinue the radio system partnership and will be moving in an independent direction.
- Staff reviewed this proposal with City Council at the Post City Council meeting on January 14, 2013.

Expenditure Required: \$2,383,975 Cassidian P25 System Infrastructure, Consoles, Tower Site Development and Contingency

Source of Funds: General Capital Improvement Fund (General and Public Safety Tax),
General Capital Outlay Replacement Fund (GCORF – Public Safety Tax)

Policy Issue

Should the City proceed with the sole source purchase and installation of the Cassidian P25 digital interoperable simulcast radio system and related subscriber equipment and purchase consoles from Avtec and utilize Frontier Radio Communications for the installation of the towers and site development?

Alternatives

1. City Council could choose to delay the replacement of this radio system until some future date. Staff does not recommend this alternative because timely system replacement is critical for both Public Safety and other City operations. In addition, the purchase costs are very competitive for a limited time and will increase significantly beyond the limited time offer.
2. City Council could direct Staff to prepare an RFP to solicit other proposals and choose to select a different vendor. Staff believes that the recommended vendor offers unique system design that meets or exceeds the demands of the City's infrastructure to include an open architecture design that guarantees compatibility with many other radios and interfaces. This approach provides the City with significant cost savings, along with operational flexibility and choice. Cassidian has also expressed an interest in designating this installation as a model show place site for their equipment and technology, including using Westminster as a Beta test site and be a participant on their Research and Development Board.

Background Information

The City's radio system functions as the City's main communication backbone to Police, Fire, Public Works and Utilities, and Parks, Recreation and Libraries, and other departments and facilities located throughout Westminster and beyond the City limits when mutual aid events occur. This basic system has been in continuous operation 24 hours per day, seven days a week, for 20 years. The City's communications equipment provides the critical link for public safety employees and other city employees to the Public Safety Dispatch Center and between each other in the field.

The City's current radio system was manufacturer discontinued in 2010, which means that there is very limited technical support and a marked scarcity of parts. The original design of this aging system is essentially a one of a kind hybrid, making it a custom system. This has resulted in challenging and expensive service issues. Additional shortcomings of the existing system are insufficient radio coverage in certain areas of the City as well as potential single points of failure.

In 2011, City Council started appropriating funds into a capital project account as part of a multi-year effort to accumulate funds for replacement of this system. The intent of the replacement project is to provide a P25 digital interoperable simulcast radio system with state of the art technology that will provide for enhanced radio coverage and reliable and dependable service. P25 is an industry standard that ensures that radios from various manufacturers can communicate with each other. The recommended replacement will provide enhanced, digital based communications, as well as state of the art monitoring and control to the transmission sites and subscriber equipment.

Our current radio system is jointly owned by both the cities of Westminster and Arvada and the costs of the system are shared equally. Ownership and operational issues are governed by an original Intergovernmental Agreement (IGA) issued in 1992 and amended in 1994. Both cities have recognized the need to replace the current radio system and to upgrade to a P25 system. Both cities collaborated to jointly issue a Request for Information (RFI) to prospective radio vendors in April of 2012. Prior to the RFI, Arvada and Westminster jointly funded an independent radio engineering firm to study the topography and related radio frequency coverage compatibility from a number of pre-determined potential radio transmission sites. The pre-validated sites were identified in the RFI.

Five responses were received to the RFI. Four of those responses were from firms with the experience and technology to meet the City's needs. Those respondents were Cassidian, Harris, Motorola and Tait. Due to the nature of this project, each proposal varied in some aspects of design, number of proposed transmit and receive sites, equipment options and other requirements, making strict comparisons difficult. The proposals ranged from three to five radio transmission sites and the price range was from \$4.9 million to \$7 million for a combined system serving both cities. Cassidian was the lowest initial proposal at \$4.9 million for the combined two city system.

As Westminster Staff closely reviewed the proposals, Cassidian stood out for a number of reasons besides the initial costs. In Staff's opinion, their system design offers more redundancy and fail safe features. It is a purely digital system and the open design of the system allows for non-proprietary purchase options, which would save the City significant financial resources. Unlike the other respondents to the RFI, Cassidian does not manufacture radios for United States' customer use, so there is no incentive to push or restrict radio purchases to the Cassidian brand and they guarantee compatibility with a number of radios of different manufacturers. This would allow the City to pursue less costly radio options that still meet operational needs for different departments. Replacement switches, servers and other key components can be purchased from other vendors through competitive bidding and are not restricted to only Cassidian manufacture. Servers and switches can be extremely expensive components and the open architecture of the Cassidian system will result in substantive dollar savings. Staff believes the Cassidian proposal offers the lowest on-going maintenance and long term cost of ownership option.

Cassidian is also offering a 10 year, non-obsolescence technology guarantee for both hardware and software components of their system, and radio coverage guarantees of 95% for open areas and 90% for buildings. The annual system ownership and equipment maintenance is estimated to cost \$175,000 in the first year, with annual escalators tied to the Consumer Price Index for the Denver-Boulder metropolitan area capped at a maximum of 5% increase in any given year. One benefit of this new radio system is the elimination of the Eldorado Mountain transmitter site, which includes the elimination of the City's share of \$30,000 per year lease payment (total cost is \$60,000 per year and is shared 50/50 with Arvada). This lease payment, and other funds previously allocated for the current radio system maintenance cost, will be reallocated to cover this annual maintenance contract cost by the Police and Fire Departments. It is anticipated that this new annual maintenance contract will be cost neutral for 2013 and 2014 based on the adopted budget.

Staff also became aware that Cassidian, who does not currently have a public safety radio system installation in Colorado, was looking for a site in Colorado to serve as a showcase and model site for their product. While they do not have a public safety radio installation in Colorado, Cassidian is well known to Staff as they are the City's current provider for the E911 phone system. Numerous agencies throughout Colorado utilize their E911 phone system. Cassidian is among the largest radio system manufacturers in the world, number two behind Motorola, and they are now aggressively marketing in North America. Through negotiations with Cassidian Staff was able to negotiate a reduced price of \$3.5 million from Cassidian's original \$4.9 million proposal for a combined three site radio system serving both Westminster and Arvada. Cassidian also presented an option for a two site system that would serve only Westminster should Westminster choose to go first or alone. This pricing discount was offered through December 18, 2012. To secure this pricing discount, the City Manager signed a non-binding letter of intent with Cassidian subject to City Council authorization during the month of January.

The City of Arvada undertook an independent review of the proposals and a review of their options, including dissolving the current partnership and securing a radio system independently or with different Jefferson County agency partners. On December 14, 2012, the City of Arvada notified Staff of their decision to dissolve the current partnership and of their intent to secure radio services independently of Westminster.

In light of Arvada’s decision, a Westminster-only radio system would require only two transmission sites versus three. The overall cost of the project would drop from approximately \$3.5 to \$2.4 million. However, Westminster would absorb 100% of the acquisition costs versus a 50-50% cost split if the two cities had pursued the combined two city, three site option. The costs included in the recommended project include acquisition of the Cassidian Radio System Infrastructure, required P25 consoles, tower site development and contingency funds. All the RFI responses require new consoles. The Cassidian option provides the opportunity to purchase consoles competitively outside of the Cassidian package. Staff has determined that the overall cost of purchase and on-going maintenance of the Avtec P25 consoles is more cost effective by purchasing the consoles directly from Avtec, rather than part of the Cassidian package. Consequently, Staff will be utilizing GSA pricing in dealing directly with Avtec regarding the proposed console purchases. Staff will also pursue possible console funding through the E911 Authority Board, which potentially could reduce or eliminate the City’s console costs.

Total system costs include:

\$1,900,380	Cassidian P25 System Infrastructure
\$ 383,595	Avtec P25 Consoles (GSA pricing direct with Avtec)
\$ 80,000	Tower/Site Development
<u>\$ 20,000</u>	Tower Site Contingency
\$ 2,383,975	Total Radio System Infrastructure
<u>\$ 996,200</u>	P25 Portable/Mobile Radios *
\$ 3,380,175	Total Expenditure

* (Staff would return for City Council’s consideration of a radio replacement purchase at a later date)

A total of \$643,423 has been accumulated to date for this radio replacement. An additional \$263,000 is included within the Adopted 2013 Budget and another \$294,000 is included in the 2014 Budget. However, if this project proceeds in 2013 as recommended the 2014 funds would be available for other uses to be evaluated during the mid-year budget review during the summer of 2013. Staff recommends utilizing \$1,077,552 from the General Capital Outlay Replacement Fund-Public Safety Tax (GCORF-PST) balance, which currently has approximately \$1.96 million available, to assist with funding this project. In addition, Staff recommends reallocating \$400,000 from the Firefighting Simulator/Burn Building project, which has a balance of \$522,000. The Fire Department has identified other fire simulator options that are more cost effective than constructing a separate facility and recommends utilizing part of these funds for the radio replacement system and will return with a proposed use for the remaining funds.

The total funding for the radio system replacement project is proposed as follows:

\$ 643,423	Previous funded authorized in the CIP
\$ 263,000	Adopted 2013 Budget
\$ 1,077,552	GCORF-PST balance
<u>\$ 400,000</u>	Firefighting Simulator/Burn Building CIP project
\$ 2,383,975	Total Project Cost (including contingency)

It is important to note that regardless of what vendor or manufacturer is chosen for a P25 Radio system, it will be necessary to purchase all new hand held portable radios and mobile vehicle installed radios to meet the P25 standard. There are currently 760 handheld, mobile or fixed radios in utilization citywide from the golf courses, water treatment facilities, parks and utilities crews to police and fire personnel and vehicles. The cost to replace all of these radios is estimated at \$996,200. These radio purchases would be pursued competitively and would not be required until the new radio system is scheduled to go live. Staff would return for City Council’s consideration of a radio replacement purchase at a later date. Also, radio selection and pricing can be selective and vary by operation, as not all City radios will need to meet the specifications and requirements demanded of public safety radios.

Staff is also currently pursuing, with previous City Council authorization, two grants to purchase radios. One grant is with the Department of Homeland Security Regional Grant for \$276,500 for the purchase of 200 portable radios for the Police Department. The second grant is with the Federal Emergency Management Agency (FEMA) Assistance to Firefighter Grant for \$144,604 towards the purchase of 22 mobile and 54 portable radios. Staff expects to be notified in early 2013 if the City has been successful with these grant applications. Should the City be awarded the total of \$421,104 in grant funds, this will significantly reduce the costs in acquiring new radios. The funds for the total radio replacement purchases (i.e., the \$996,200) have not been completely accumulated and Staff is identifying options to fully fund this replacement in 2013 should the Cassidian radio system replacement proceed.

Based on City Council’s direction at the Post City Council meeting January 14, 2013, Staff has brought forward the attached contracts for City Council’s official consideration to proceed with an independent purchase of the radio system. Staff from both Westminster and Arvada are committed to working cooperatively through the transition to ensure that both cities maintain effective public safety radio systems through the process of transitioning to independent systems. Staff is also in the process of commencing discussions with other jurisdictions in the area about their potential interest in partnering with the City of Westminster as a radio system user with the objective of sharing costs. If the City moves forward with the Cassidian replacement project now, that will not preclude one or multiple partners from joining Westminster to expand the system to serve multiple communities. Staff recognizes the cost savings and benefits that could be achieved through a cooperative venture such as this, while maintaining the City’s best interests.

The recommended City Council action acknowledges Staff’s official recommendation to select Cassidian Communications and their partners Avtec, Inc., and Frontier Radio Communications for the purchase, installation and ongoing maintenance of a P25 digital radio system. Staff went through an extensive RFI process as noted previously and believes the information gathered and negotiated through that process has identified the best product for the City, especially given the City’s desire to utilize an open design environment for the radio communications system. The open source environment was only offered by Cassidian through the RFI and allows for non-proprietary purchase options, which would save the City significant financial resources. As noted, this open design allows for different radio manufacturers, replacement switches, servers and other key components to be purchased through competitive bidding and is not restricted to only Cassidian manufacture. Staff believes the Cassidian proposal offers the lowest on-going maintenance and long term cost of ownership option.

Given the time sensitive nature of the offer by Cassidian Communication for the current pricing (i.e., by the end of January 2013), an emergency ordinance is requested to move \$1,077,552 from the General Capital Outlay Replacement Fund-Public Safety Tax (GCORF) capital account for capital outlay to the General Capital Improvement Fund (GCIF) for the Citywide Radio Replacement project to close the funding gap in order for this purchase to occur.

In addition, Staff is requesting authorization to reallocate \$400,000 previously appropriated within the GCIF for the Firefighting Simulator/Burn Building to the Citywide Radio Replacement project within the GCIF.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers from GCORF	7500.45000.0450	\$0	<u>\$1,077,552</u>	\$1,077,552
Total Change to Revenues			<u>\$1,077,552</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Firefighting Simulator/Burn Building	80775025744.80400.8888	\$522,000	<u>(\$400,000)</u>	\$122,000
Citywide Radio Replacement	81275020911.80400.8888	906,423	<u>1,477,552</u>	2,383,975
Total Change to Expenses			<u>\$1,077,552</u>	

Total appropriations of the GCORF Fund do not change; however, a reallocation of budget between expenditure accounts in the fund is shown below for informational purposes:

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Capital Outlay-PST	80645010911.80400.8888	\$1,959,714	<u>(\$1,077,552)</u>	\$882,162
Transfers GCIF	45010900.79800.0750	0	<u>1,077,552</u>	1,077,552
Total Change to Expenses			<u>\$0</u>	

This project achieves the City Council’s Strategic Plan goals of a Financially Sustainable City Government and a Safe and Secure Community through well-maintained infrastructure and providing efficient, cost-effective internal and external services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Cassidian Communications – Purchase & Sale Contract
- Cassidian Communications – Maintenance Contract
- Avtec, Inc., - Console Purchase Contract
- Emergency Ordinance



PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”) is made as of this ___ day of ___, 2013 (“Effective Date”) between City of Westminster, Colorado, with an address of 4800 W. 92nd Ave, Westminster, CO 80031 (“Customer”) and Cassidian Communications, Inc., with offices at 42505 Rio Nedo, Temecula, CA 92590 (“Cassidian Communications”).

RECITALS

A. WHEREAS, Cassidian Communications is the manufacturer, developer, distributor and/or integrator of certain equipment, software, and services used in the provision of mission critical communication systems;

B. WHEREAS, Cassidian Communications and Customer desire to enter into an agreement whereby Cassidian Communications will provide to Customer a COR^{P25} Public Safety Grade Radio Communications System, including hardware (“Hardware”), Software (as defined below) (the Hardware and Software are collectively referred to as “System”) and implementation services (“Services”), all of which are more fully described in the Proposal, attached hereto and incorporated herein as **Exhibit A** (the “Proposal”) and consistent with the Technology Partnership Program, attached hereto and incorporated herein as **Exhibit B** (“TPP”), at the price and on the payment terms set forth herein; and

C. WHEREAS, Cassidian Communications and Customer further desire to define and establish their respective rights, responsibilities, duties, and obligations as provided herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. Scope of Agreement. Customer shall purchase from Cassidian Communications and Cassidian Communications shall furnish, deliver and implement the System and the Services for the System in accordance with the Proposal and this Agreement (“Project”). The Project excludes hardware, software, implementation and maintenance services related to the Avtec Dispatch Console Subsystem (“Avtec Subsystem”) that was provided in the Proposal, and the Proposal is hereby amended to conform to such exclusion, provided, however, Cassidian Communications agrees that the implementation of its System shall be performed in a manner that effectively and efficiently integrates the Avtec Subsystem as contemplated by Avtec’s Statement of Work dated March 1, 2012 (Version 1.0).

2. Price and Payment.

A. Price.

(1) **System Price.** The total price for the System and Services (as defined below) shall be the amount of One Million Nine Hundred Thousand Three Hundred Eighty Dollars (\$1,900,380.00) (“System Price”). The System Price excludes: (a) Total P25 Dispatch Costs; and (b) Total P25 Dispatch Professional Services Costs, that were provided in the Proposal and the Proposal is hereby amended to conform to such exclusion. The Annual Maintenance/Extended Support for Years 2-10 P25 Dispatch is hereby deleted in its entirety in the Proposal.

(2) **Option.** So long as Customer is not in breach of this Agreement, Cassidian Communications shall grant to Customer an option to purchase additional hardware, software and implementation services as further described in **Exhibit C** (“Option”), attached hereto and incorporated herein. The Option must be exercised within ninety (90) days after the date of the Notice to Proceed. Upon exercise of the Option, the price of the additional hardware, software and implementation services shall then be included in the System Price.

B. Payment Terms. Customer shall pay to Cassidian Communications the System Price as provided in the Proposal:

(1) Fifteen percent (15%) of the System Price upon contract execution or receipt of the purchase order, whichever occurs earlier.

(2) Ten percent (10%) of the System Price upon completion of Preliminary Design Review.

(3) Ten percent (10%) of the System Price upon completion of Final Design Review.

(4) Fifteen percent (15%) of the System Price upon completion of Factory Acceptance.

(5) Twenty-five percent (25%) of the System Price upon completion of Site Acceptance.

(6) Five percent (5%) of the System Price upon completion of System Acceptance.

3. Term of Agreement. This Agreement shall commence on the Effective Date and terminate one (1) year from the date of System Acceptance (the “Term”), unless earlier terminated in accordance with the provisions of this Agreement.

4. Termination of Agreement; Breach.

A. This Agreement may be terminated by either party, effective upon dispatch of notice as provided in **Section 18** hereof to the other party, upon the occurrence of any of the following events:

(1) The filing of any voluntary petition in bankruptcy or for any similar relief by the other party;

(2) The filing of any involuntary petition in bankruptcy or its equivalent against the other party, which is not dismissed within sixty (60) days from the filing thereof; or

(3) The appointment of a receiver or the equivalent for the other party or for the property of the other party by any court of competent jurisdiction, which receiver shall not have been dismissed within sixty (60) days from the date of such appointment.

B. Cassidian Communications may terminate this Agreement in whole or in part, for default or breach by Customer. If the default is reasonably capable of cure, Cassidian Communications shall give Customer written notice in accordance with **Section 18** herein and thirty (30) calendar days from the date of the notice to cure. If Customer fails to cure the breach within the 30-day cure period, automatic termination of the Agreement shall be effective on the 31st calendar day. Cassidian Communications shall not have any other liability arising out of the incident of termination of this Agreement. Accordingly, this provision does not preclude a party’s liability for claims arising out of, in connection with or related to this Agreement generally. In the event of termination by Cassidian Communications for default or breach

by Customer, Cassidian Communications shall be entitled to payment of the applicable payment milestone for the System plus an amount equal to the net profit Cassidian Communications would have earned but for Customer's default or breach. Cassidian Communications' remedies are cumulative and shall be in addition to all other rights and remedies provided by law.

C. Notwithstanding anything herein to the contrary, if, prior to System Acceptance (as defined below), Customer fails to meet the agreed upon project schedule as described in the Proposal for a period of thirty (30) days beyond the scheduled performance date, for reasons other than Force Majeure (as provided in **Section 17**), or delays caused by Cassidian Communications' failure to meet its obligations to Customer, then Customer shall be considered in breach of contract and shall be provided with a thirty (30) day notice to cure. Customer's failure to cure its default within thirty (30) days of its receipt of Cassidian Communications' notice to cure shall result in Cassidian Communications' right to terminate this Agreement. In no event shall any warranty provided herein be extended as a result of Customer's failure to meet the agreed upon project schedule.

D. Customer may terminate this Agreement in whole or in part, for default or breach by Cassidian Communications. If the default is reasonably capable of cure, Customer shall give Cassidian Communications written notice in accordance with **Section 18** herein and thirty (30) calendar days from the date of the notice to cure. If Cassidian Communications fails to cure the breach within the 30-day cure period, automatic termination of the Agreement shall be effective on the 31st calendar day. In the event of termination of this Agreement for default or breach by Cassidian Communications, Customer's exclusive remedy shall be pro-rata reimbursement of any uncompleted portion of the applicable payment milestone of the System Price.

5. Invoicing

Except as otherwise provided herein, all payments shall be made in accordance with Cassidian Communications' invoices and payable net thirty (30) days. Any amounts past due shall be charged with interest and shall accrue at the maximum rate permitted by applicable law.

6. Customer Obligations.

A. Customer's obligations set forth in the Agreement and all Exhibits hereto shall be performed by Customer in a timely and proper manner in order to permit Cassidian Communications to perform its obligations timely under this Agreement and all Exhibits hereto.

B. Subject to reasonable notice and opportunity to address potential confidentiality and officer safety concerns, in addition to the obligations specifically identified in the Proposal, and as a partner with Cassidian Communications in the TPP, Customer shall also have the following additional obligations upon System Acceptance, which shall survive the expiration or termination of this Agreement:

(1) Customer shall allow Cassidian Communications reasonable use of the System as a reference and showcase system, to the extent such use does not interfere with Customer's use of the System.

(2) Customer will reasonably cooperate with Cassidian Communications and permit access to the System and Customer's facilities and personnel in order for Cassidian Communications to allow the System to be featured in Cassidian Communications advertisements.

(3) Customer will reasonably cooperate with Cassidian Communications and permit access to the System and Customer's facilities and personnel in order for Cassidian Communications to photograph and video Customer personnel using the System.

(4) Customer will reasonably cooperate with Cassidian Communications and permit access to the System and Customer's facilities and personnel in order for Cassidian Communications to bring potential customers for site visits and tours of the System.

(5) Customer will reasonably consider requests by Cassidian Communications to test new tools and products, monitor System performance and validate new software releases on the System.

7. Delivery, Title and Risk of Loss. Cassidian Communications shall deliver the System FOB Destination. Title to the Hardware shall pass to Customer upon delivery to the Customer; provided, however, that in the event of termination by Cassidian Communications pursuant to **Section 4**, title will immediately revert to Cassidian Communications. Title to any System components licensed to Customer, including but not limited to Software, shall remain with Cassidian Communications or Cassidian Communications' licensors as applicable. Customer shall bear and insure against the risk of loss of or damage to the System upon receipt of the System.

Except for damaged or defective goods, if Customer fails to accept delivery of mutually agreed upon shipment, Cassidian Communications may place the shipment in storage at the place of manufacture or elsewhere. In such event (a) Cassidian Communications shall notify Customer of the placement of System in storage; and (b) Customer shall reimburse Cassidian Communications for all expenses incurred by Cassidian Communications, including expenses related to preparation for and placement into storage, handling, demurrage, inspection, preservation and insurance upon Cassidian Communications' submission of the invoices therefor.

8. Changes

Any changes in the Project to be performed or provided by Cassidian Communications hereunder shall be mutually agreed upon between Customer and Cassidian Communications. All change orders shall be in writing and describe in reasonable detail the desired changes ("Change Request"). Any Change Request for additional equipment or services outside of the Proposal shall be considered upscope and shall result in additional costs to Customer. Upon Cassidian Communications' receipt of the Change Request, Cassidian Communications shall provide a written proposal to include changes related to price, schedule and availability of resources as soon as reasonably feasible ("Change Proposal"). A Change Proposal shall not become effective unless and until (a) the price adjustments, the schedule of payments, the extension of time and all other terms as may be affected have been mutually agreed upon by the Customer and Cassidian Communications (acting reasonably and in good faith in negotiating all such terms); and (b) such terms are reduced to writing and signed by an authorized representative of Customer and Cassidian Communications (a "Change Order"). Any Change Order shall be automatically incorporated as an amendment to this Agreement.

9. Acceptance.

A. **Acceptance Tests.** Cassidian Communications shall deliver Cassidian Communication's proposed detailed and itemized system acceptance tests and performance standards (the outline of which was provided to the Customer in the Proposal) for Customer's review and approval, which approval shall not be unreasonably withheld, not more than thirty (30) days after the completion of the Customer Design Review ("Acceptance Tests").

Cassidian Communications shall notify Customer that the System is ready for system acceptance at least ten (10) days before commencement of the Acceptance Tests. Customer and Cassidian Communications shall jointly commence the Acceptance Tests on the date specified in Cassidian Communications' notice (or other mutually agreeable date) and a Customer's representative and Cassidian Communications' representative shall sign off on the form provided as part of the test procedure whether each item of the test was passed or failed. Customer shall reasonably cooperate in conducting the Acceptance Tests, and shall make its representative available to conduct such Acceptance Tests in a timely manner. Cassidian Communications shall not proceed with testing unless accompanied by the Customer's representative; provided, however, if Customer does not make its representative available to conduct the Acceptance Tests in a timely manner, Cassidian Communications may proceed with conducting the Acceptance Tests and immediately forward the test results to Customer. If a portion of the System being tested does not pass the Acceptance Tests, Cassidian Communications shall correct the portion of the System at no additional cost to Customer as soon as practicable. Upon correction, the Acceptance Tests for the applicable part of the System shall be repeated in accordance with the procedures set forth in this Section.

B. **Performance Period.** The sole criteria for the system acceptance shall be uninterrupted compliance with all Acceptance Test items, with no service-affecting events for a period of thirty (30) consecutive days ("Performance Period"), provided further, however, in the event of any non-compliance with Acceptance Test items, or any service-affecting event during the Performance Period, an additional thirty (30) day Performance Period shall commence. System Acceptance shall not occur until uninterrupted performance of the system in compliance with this paragraph is achieved for a period of thirty (30) days. In the event System Acceptance is not achieved within six (6) months from the date of the initial Acceptance Test, Customer may terminate this Agreement without further obligation or liability to Cassidian Communications. In such event, Customer and Cassidian Communications will cooperate in good faith in the removal and return to Cassidian Communications of its equipment and the restoration of Customer's preexisting system.

C. **Performance Security.** Prior to commencing any of the Services to be performed under this Agreement, Cassidian Communications shall deliver to the Customer a letter of credit in a form substantially the same as attached as **Exhibit D**. Provided that Customer otherwise complies with the provisions of Section 9 of this Agreement, in the event Cassidian Communications is unable to achieve System Acceptance in accordance with the provisions of Section 9 of this Agreement, Customer shall be entitled to the full amount of said letter of credit and to use the proceeds in any manner or for any purpose that customer may in its sole discretion deem appropriate.

10. Sale and Grant of License. Cassidian Communications agrees to provide the System in accordance with the Agreement and concurrently herewith grants to Customer a license to use the computer software identified therein (the "Software") in accordance with the terms and conditions of this Agreement and Cassidian Communications' End User License Agreement attached hereto and incorporated herein as **Exhibit E**.

11. Warranties and Disclaimer.

A. Hardware and Software Warranty. Hardware provided by Cassidian Communications is covered by the warranty described in the Proposal. Cassidian Communications software is covered by the warranty as described in Cassidian Communications' End User License Agreement.

B. Remedies. Cassidian Communications' entire liability and Customer's exclusive remedy based on breach of warranty shall be limited to replacement or repair of the nonconforming hardware and/or software at Cassidian Communications' election. Any replacement shall be warranted for the remainder of the original warranty period or thirty (30) days following System Acceptance, whichever is longer.

C. Disclaimer of Warranties. **THE WARRANTIES IN THIS AGREEMENT AND IN THE EXHIBITS HERETO, IF ANY, ARE GIVEN IN LIEU OF AND EXPRESSLY EXCLUDE ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION: (A) ANY WARRANTY THAT THE SYSTEM IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT, FIRMWARE AND SOFTWARE CONFIGURATIONS; (B) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY OF INFORMATIONAL CONTENT OR INFRINGEMENT. EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS AGREEMENT, IF ANY, THE SYSTEM IS PROVIDED "AS IS" AND WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT ARE WITH THE CUSTOMER.**

12. Limitation of Liability. **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CASSIDIAN COMMUNICATIONS, ITS AFFILIATES, AGENTS, SUPPLIERS OR SUBCONTRACTORS SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, SERVICE LEVEL, RESPONSE TIME, MAINTENANCE, INTERRUPTION OF BUSINESS, OR FOR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. CUSTOMER'S EXCLUSIVE REMEDY FOR CASSIDIAN COMMUNICATIONS' BREACH OF CONTRACT OR BREACH OF WARRANTY ARE PROVIDED IN SECTIONS 4(D) AND 11(B), RESPECTIVELY. IN NO EVENT SHALL CASSIDIAN COMMUNICATIONS', ITS AFFILIATES', AGENTS', SUPPLIERS' OR SUBCONTRACTORS' COLLECTIVE TOTAL LIABILITY EXCEED THE SYSTEM PRICE. CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE PRICE CHARGED FOR THE SYSTEM AND/OR SERVICES WOULD BE HIGHER.**

13. Interference. Radio system coverage and performance are subject to degradation due to anomalous propagation and interference beyond the reasonable control of Cassidian Communications. After System Acceptance, Cassidian Communications shall not be responsible for degradation or disruption of service caused by operation of other radio systems or by natural phenomena or other interference over which Cassidian Communications has no reasonable control. In the event of a case of degradation after System Acceptance due to interference by an outside party, Cassidian Communications shall provide engineering support to Customer, at Customer's expense to support Customer's effort in resolving the interference issue with the outside party.

14. Confidentiality and Nondisclosure.

A. Confidential Information. By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Such Confidential Information may include, but shall not be limited to the following types of information (whether or not reduced to writing): Proprietary system protocols, trade secrets, inventions, drawings, file data,

documentation, diagrams, specifications, know-how, processes, formulas, models, flow charts, software in various stages of development, source codes, object codes, research and development procedures, test results, product features and functionality (current and pending development), marketing techniques and materials, marketing and development plans, price lists, pricing policies, business plans, information relating to customers and/or suppliers' identities, characteristics and agreements, financial information and projections, and employee files and other related or similar information. Confidential Information shall also include all reports, summaries, compilations, analyses, notes or other information prepared by the recipient that are based on or reflect any Confidential Information. It is the express intent of this Section that neither party disclose to any third party any Confidential Information, however, a party may disclose such information to contractors of a party who, by virtue of the duties assumed by such contractors, have a need to know such information, provided that prior to such disclosure the party has obtained from the contractor a written agreement to abide by confidentiality obligations substantially equivalent to those stated herein.

B. Nondisclosure. A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the receiving party in breach of this Agreement; or (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the other party; or (e) is required to be disclosed by law. The parties agree, both during the term of this Agreement and for a period of three (3) years after termination of this Agreement, to hold each other's Confidential Information in confidence. The parties agree to use reasonable efforts to avoid making the other's Confidential Information available in any form to any third party and to avoid using the other's Confidential Information for any purpose other than the implementation of this Agreement or in the exercise of rights conferred by this Agreement. Each party agrees to use the same degree of care that it uses to protect its own confidential information of a similar nature and value, but in no event less than a reasonable standard of care, to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement. Each party agrees that it shall not reverse-engineer, decompile or disassemble any portion of the System disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the other party. Each party represents that it has an appropriate agreement with each of its employees who may have access to any Confidential Information that is sufficient to enable it to comply with all of the terms of this Section.

C. Injunctive Relief. Customer acknowledges and agrees that unauthorized use or disclosure of Confidential Information could cause irreparable harm and significant injury to Cassidian Communications for which Cassidian Communications would have no adequate remedy at law. Therefore, Cassidian Communications shall have the right, in addition to any other rights Cassidian Communications may have at law or in equity, to seek immediate injunctive relief enjoining any such unauthorized use or disclosure of Confidential Information.

15. Compliance with Laws. Customer acknowledges, agrees and warrants that Customer shall maintain compliance with all applicable laws, rules and regulations, in connection with this Agreement or Customer's relationship with Cassidian Communications.

16. Export Controls. Certain Cassidian Communications products are subject to export controls by the U.S. Department of Commerce ("DOC"), under the Export Administration Regulations ("EAR"). Violation of U.S. law is strictly prohibited. Customer shall comply with the requirements of the EAR and all applicable international, national, state, regional and local laws and regulations, including any

applicable import and use restrictions. Customer shall not export or re-export, directly or indirectly, any Cassidian Communications products to any country outlined in the EAR nor to any person or entity on the DOC Denied Persons, Entities and Unverified Lists, the U.S. Department of State's Debarred List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists. Furthermore, Customer shall not export or re-export any Cassidian Communications products to any military entity not approved under the EAR or to any other entity for any military purpose.

17. Force Majeure. Neither party shall be liable for the delay or failure to perform its obligations (excluding payment obligations) caused by circumstances beyond their reasonable control.

18. Notices. All notices given under this Agreement shall be in writing and shall be delivered to the addresses specified below. Notices shall be effective upon receipt, and shall be deemed to have been received as follows: (i) if personally delivered, when delivered; (ii) if by certified mail return receipt requested, on the date it is officially recorded as delivered to or refused by the intended recipient by return receipt or equivalent; or, (iii) if by expedited messenger service (e.g. FedEx), when delivered as confirmed by delivery receipt.

For Customer:

Name: Westminster Police Department
Address: 9110 Yates Street
Westminster, CO 80031
Attn: Russ Bowers
Tel: (303) 658-4364
Fax: (303) 706-3907

Copy to: Westminster City Attorney
Address: 4800 West 92nd Avenue
Westminster, CO 80031
Tel: (303) 658-2232
Fax: (303) 706-3920

For Cassidian Communications:

Name: Cassidian Communications, Inc.
Address: 42505 Rio Nedo Street
Temecula, CA 92590
Attn: Bob Freinberg, President
Tel: (951) 719-2100
Fax: (951) 296-2727

Copy to: Legal Department
Address: 42505 Rio Nedo Street
Temecula, CA 92590
Tel: (951) 719-2100
Fax: (951) 296-2727

19. Amendment or Waiver. No provision of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment or modification is in writing and contains the signature of an authorized representative of the party against whom it is sought to be enforced. For purposes of this Section, an electronic mail shall not constitute a writing.

20. Severability. If any part, term or provision of this Agreement is held to be void, illegal or unenforceable, the validity of the remaining portions or provisions shall not be affected thereby.

21. Governing Law, Attorneys' Fees. The validity, performance, and all matters relating to this Agreement, its Exhibits, and any amendment hereto shall be governed by the laws of the State of Colorado without reference to conflicts of law principles. The parties hereby consent to jurisdiction and venue in the federal and state courts of the State of Colorado. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover

reasonable attorney's fees and other costs incurred in the action or proceeding, both at trial and on appeal, in addition to any other relief to which the prevailing party may be entitled. Anything herein to the contrary, prior to the bringing of any legal action, the parties agree to first attempt to resolve the dispute underlying such action in good faith through mediation using a professional mediator mutually agreed upon by the parties. In the event either or both parties determine that mediation is not practical due to the running of any applicable statute of limitations, the parties agree to seek in good faith an extension of time from the court to allow the parties a reasonable opportunity to mediate the dispute.

22. Assignment and Subcontracting. Cassidian Communications may assign any of its rights and duties or obligations under this Agreement to third parties, and Cassidian Communications shall have the right to subcontract all or portion of the Services provided hereunder. This Agreement and all of the rights, duties and obligations under it may not be sublicensed, assigned or otherwise transferred by Customer without the prior written consent of Cassidian Communications.

23. Authority. Each party hereto represents and warrants that (i) it has obtained all necessary approvals, consents and authorizations of third parties and governmental authorities to enter into this Agreement and to perform and carry out its obligations hereunder; (ii) the persons executing this Agreement on its behalf have express authority to do so, and, in so doing, to bind the party thereto; (iii) the execution, delivery, and performance of this Agreement does not violate any provision of any bylaw, charter, regulation, or any other governing authority of the party; and (iv) the execution, delivery and performance of this Agreement has been duly authorized by all necessary governmental or corporate action and this Agreement is a valid and binding obligation of such party, enforceable in accordance with its terms.

24. Survival of Provisions. The parties agree that where the context of any provision indicates an intent that it shall survive the term of this Agreement then it shall survive.

25. Entire Agreement. This Agreement and the Exhibits hereto shall constitute the entire understanding between the parties concerning the subject matter hereof and supersede all prior discussions, agreements and representations, whether oral or written and whether or not executed by Customer and Cassidian Communications.

26. Captions. Article and section headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

27. Conflicts. Customer and Cassidian Communications acknowledge and agree that, in the event of a conflict between any provisions of this Agreement, the Exhibits attached hereto, the Proposal or any other ancillary document or agreement related to this Agreement, the order of precedence shall be:

1. This Agreement, and any amendments hereto
2. Exhibit E- End User License Agreement
3. Exhibit B - Technology Partnership Program
4. Exhibit C - Option
5. Exhibit A – Proposal
6. Exhibit D – Letter of Credit

28. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Once fully executed, it shall become effective as of the Effective Date stated above. Delivery of an executed signature page of this Agreement by facsimile transmission or

electronic photocopy (i.e., "pdf") shall be equally effective as manual delivery of an original signed counterpart hereof.

IN WITNESS THEREOF, this Agreement has been duly executed by the parties and effective on the date first written above.

CUSTOMER

By: _____

Name: _____

Title: _____

CASSIDIAN COMMUNICATIONS

By: _____

Name: _____

Title: _____

List of Exhibits

Exhibit A	Proposal to City of Westminster dated September 19, 2012.
Exhibit B	Technology Partnership Program
Exhibit C	Option
Exhibit D	Form of Letter of Credit
Exhibit E	End User License Agreement

EXHIBIT A

Proposal to City of Westminster dated September 19, 2012

[To Be Attached Upon Definitization of the Agreement]

EXHIBIT B

Technology Partnership Program

**1. Cassidian Communications
Technology Partnership Program Description**

1.1 Technology Partnership Program

Cassidian Communications (“Cassidian”) recognizes the importance of having a strategic relationship with a Premier Customer in the State of Colorado and is therefore offering the following benefits to the City of Westminster (“Westminster”) in exchange for Westminster establishing a technology partnership program (“TPP”) with Cassidian.

Cassidian hereby offers to Westminster the following:

- Geographical redundancy is included in Cassidian’s base proposal¹
- The Maintenance Agreement’s CPI inflation index will be capped at 5% per annum
- Portable COR^{P25} system will be loaned to Westminster during its “Radio Subscriber RFP process” to allow the cities to evaluate the performance of various 3rd party radio subscribers²
- Console subsystem will be commercially unbundled from Cassidian’s base proposal to provide Westminster the option to procure the technology directly through a 3rd party if desired.³
- Rich Cagle, VP Sales Cassidian Communications, will be designated as the Westminster EMT Sponsor⁴

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¹ Westminster shall be responsible for ensuring that backhaul infrastructure requirements are provided in accordance with the technical specifications submitted in Cassidian proposals.

² If Westminster’s production COR^{P25} system is live and operational, the production COR^{P25} system will be used to evaluate 3rd party radios in lieu of the portable COR^{P25} system.

³ Cassidian’s Maintenance Agreement applies only to Cassidian-delivered equipment. Technology procured directly from 3rd parties is not eligible for protection pursuant to Cassidian’s Maintenance Agreement or technological obsolescent coverage.

⁴ Cassidian’s appointment of an executive management team (“EMT”) member shall be at Cassidian’s sole discretion without limitations.

The TPP provides certain rights for both Westminster and Cassidian. Under the TPP, Westminster will allow the project to be featured in Cassidian’s advertisements, allow Cassidian to photograph and video Westminster’s personnel using the Cassidian COR^{P25} digital system, and allow Cassidian to bring potential customers for site visits and tours of Westminster’s Cassidian COR^{P25} digital system. Additionally, Westminster would agree to allow Cassidian to test new tools and products, monitor system performance, and validate new software releases on the System.

1.2 Technology Partnership: A Win-Win Relationship with Clear Benefits

The TPP is a mutually-beneficial relationship between Westminster and Cassidian. This innovative approach should have the following benefits:

1. *Westminster shall maximize the system capabilities while minimizing the system cost through competitive procurement of radio, components, and services.*

2. *Cassidian's 24/7 support through our national service centers will provide peace of mind while the geographical proximity of Cassidian's teaming partner, Frontier Communications, will provide rapid access to experienced technical assistance and support services.*

3. *Cassidian will typically host business activities with and around its technology partners. For example, ribbon cuttings, user group meetings, site visits for potential customers, and more. These activities should drive incremental commerce within Westminster's communities.*

4. *Cassidian's engagement with Westminster doesn't simply end because the project is complete. Cassidian will assign both a Care Manager and Sales Executive to assist Westminster with planning, supporting, and evolving its investment in mission critical communications throughout Westminster's economic investments in Cassidian's technologies and services.*

5. *Cassidian will identify and connect a senior decision maker within Cassidian with a similar ranking executive with common business interests within Westminster to develop a deeper understanding of each other's businesses, to facilitate customer satisfaction, and to provide a point of escalation during critical periods.*

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Cassidian's EMT Sponsor will meet with Westminster at least once a year to discuss how to improve the joint business value generated through the technology partnership program.

Cassidian fully understands that today's environment demands new ways of delivering the sophisticated systems that meet the stringent communication needs of the public safety community. Cassidian brings together the necessary technology, flexibility, creativity, and implementation capabilities to deliver a unique total solution—a solution that makes economic as well as technical and functional sense.

It is Cassidian's commitment to quality and innovation that has made us a world leader in the Public Safety Marketplace. Cassidian is committed to providing Westminster with timely system completion and ongoing support.

EXHIBIT C

Option

[To be attached upon Definitization of the Agreement]

EXHIBIT D
Form of Letter of Credit

IRREVOCABLE LETTER OF CREDIT

Date of Issue: _____
Issuing Bank: _____
Letter of Credit No.: _____
Amount: _____

City of Westminster (“City”)
4800 West 92nd Avenue
Westminster, CO 80031

Ladies and Gentlemen:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of _____ U.S. dollars.

Funds under this credit are available to you by your draft or drafts drawn at sight on us containing the number of this Letter of Credit as set forth above.

Partial drawings are permitted.

The sole condition for payment of any draft drawn under this Letter of Credit is that the draft be accompanied by a letter, on the City’s letterhead, signed by the City Manager or the Acting City Manager, stating that CASSIDIAN COMMUNICATIONS INC., its successor, transferee, or assign, has failed to perform in accordance with the provisions of Section 9 of that certain **PURCHASE AGREEMENT** dated the _____ day of _____, 20____.

Demands for payment by the City pursuant to this Letter of Credit shall be deemed timely if deposited in the U.S. Mail prior to its date of expiration, affixed with first-class postage, and addressed to the above letterhead address.

This Letter of Credit shall have an initial term of one (1) year from its Date of Issue, but shall be deemed automatically extended without amendment or other action by either party for additional periods of one year from the present or any future expiration date hereof, unless we provide the City with written notice, by registered mail, return receipt requested, at least ninety (90) days prior to the expiration date, that we do not wish to extend this Letter of Credit for an additional period. After receipt by the City of such notice, the City may draw hereunder, on or before the then-applicable expiration date, and for the then-remaining available amount by means of the City’s sight draft, drawn on the issuing bank, accompanied by a letter, on the City’s letterhead, signed by the City Manager or Acting City Manager stating the following:

We are in receipt of written notice from [NAME OF BANK] of its election not to renew its Letter of Credit No. [FILL IN] for an additional term of one (1) year and [FILL IN], its successor, transferee, or assign, is still obligated to the City under the [PRIVATE/PUBLIC] Improvements Agreement for the [NAME] Subdivision, and an acceptable replacement Letter of Credit has not been received.

EXHIBIT E

P25 END USER SOFTWARE LICENSE TERMS AND CONDITIONS

IMPORTANT: Read the text of this license carefully. The grant of the right to use the Software is made solely on condition that the Licensee agrees to the terms of the License. If the Licensee does not agree to the terms of the License, it is not authorised to use the Software.

1. PURPOSE

1.1 The following terms and conditions (hereinafter the “**License**”) set forth the terms and conditions according to which Cassidian Communications, Inc. and its affiliates (hereinafter "Cassidian Communications") grants to the end user of Products (hereinafter the “**Licensee**”) the right to use the Software.

1.2 The provisions of this License may be supplemented or amended only by a written agreement between Cassidian Communications and the Licensee in order to be valid. Each such written agreement modifies this License only to the extent express written provisions depart from the terms and conditions specified herein. All other terms and conditions shall apply as set forth herein.

1.3 This License also applies to software that Cassidian Communications purchases from third parties and delivers to the Licensee in connection with or as part of the delivery of Products, considering that there is no specific license terms and conditions applying to the use of such third party software by the Licensee.

2. DEFINITIONS

For the purposes of this License, the terms set forth below shall have the following meanings:

- Affiliate:** shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with, such person or entity
- Hardware:** shall mean the hardware of the Product on which the Software is designed to function.
- License** shall mean this APCO 25 End User Software License Terms and Conditions.
- Licensee** shall mean the entity which makes, or intends to make use of Products either as legal owner having purchased the Products outright or pursuant to the terms of a leasehold agreement.
- Products** shall mean APCO 25 equipment (including without limitation network infrastructure components and terminals) furnished directly or indirectly

by Cassidian Communications and incorporating or interfacing with the Software implemented in such equipment.

Software shall mean the software developed or acquired by Cassidian Communications and delivered to the Licensee. It includes (i) the machine-executable object code version of the user-loadable programs of the Products; (ii) the microcode (firmware) embedded in the Products; (iii) any dialogue protocol for external application furnished to the Licensee as part of a Product to ensure communications between the Hardware and external servers for storage and/or processing purposes (iv) all related user documentation furnished to the Licensee in readable-by-man or by-machine form and designed to explain the functioning or the utilisation of the software; (v) any update or revision of these programs or the microcode delivered to the Licensee regardless of the form in which the Software is delivered (e.g. separate physical media, on-line); and (vi) any copy of these items.

3. SCOPE OF LICENSE

3.1 Cassidian Communications hereby grants the Licensee a non-sublicensable, non-transferable and non-exclusive license to use Software exclusively on the Products for which the Software is supplied in consideration of the monies paid by the Licensee and in strict compliance with the terms and conditions of this License. The License does not extend any rights to the Licensee in respect of the source code of the Software and is without prejudice to any license fees provided for in the agreement under which the right to use the Software or the Products are acquired.

3.2 In the absence of a specification in a separate agreement of the applications, number of Products, level of functionality or capacity that the license is granted for, the license shall be strictly limited to such applications and number of Products as well as the level of functionality and capacity for which the Software is initially delivered.

3.3 The Licensee may use the Software only on and exclusively for the Products it is intended and in its own internal (business) operations. The Licensee will not permit any other person to use the Software, except such use as is necessarily afforded to subscribers of the network system of which the Products form a part and in such case the Licensee shall ensure, under its exclusive responsibility, that such subscribers comply with the provisions of this License. The Licensee will not rent the Software or make it available on a time-sharing basis.

3.4 The Licensee may make one back-up copy of each user-loadable program and any related update or revision in order to replace an authorised existing copy. The Licensee will reproduce all confidentiality and proprietary notices on each of these copies. Except to the extent permitted by applicable mandatory law, the Licensee may not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software.

3.5 In the event that the Licensee intends to connect the Product and/or Software to equipment and/or software not furnished by Cassidian Communications, the Licensee agrees to (1) obtain written approval from Cassidian Communications, such approval not be unreasonably withheld, and (2) obtain all administrative, regulatory and other authorisations at its own expense so that these equipment and/or software will conform to the regulations in effect in the countries concerned. In any case, the Licensee shall assume the consequences of the compatibility or lack of compatibility of the equipment or software

with the Product and/or Software. In the event Cassidian Communications is to intervene, the Licensee shall bear all costs relating to the putting back into operation of the system on which Product and Software are implemented. Licensee shall not directly or indirectly use the Products, Software or any associated confidential and proprietary information of Cassidian Communications to create, modify or enhance any Software programs or user documentation provided under this Agreement. Any such creation, modification or enhancement of the Software by Licensee, its employees, agents or consultants is deemed to constitute a material breach of Licensee's obligations under this Agreement, and shall entitle Cassidian Communications to immediately terminate this Agreement and Licensee's right to use the Software.

3.6 The Licensee promises to maintain all logos, trademarks, symbols used by Cassidian Communications to identify its Software. The various distinctive signs, copyrights, and other intellectual property rights must also appear on the display screen of the Software and on the backup copy.

4. OWNERSHIP

Title to the Software and all patents, copyrights, design rights, trade secrets, trademarks and other proprietary rights in or related to the Software are and will remain the exclusive property of Cassidian Communications' licensors, whether or not specifically recognized or perfected under the laws of the country where the Software is located. The Licensee will not take any action that jeopardizes such proprietary rights or acquire any right in the Software, except the limited use rights specified in this License. Cassidian Communications' licensors will own all rights in any copy, translation, modification, adaptation or derivation of the Software, including any improvement or development thereof. If Licensee questions, attacks, contests or in any other manner impugns the validity of the Licensed Software or its registrations, Cassidian Communications' licensor's rights in and to the Software, or in and to the license herein granted, including, but not limited to, in any action in which enforcement of the provisions of this Agreement is sought, the same shall be deemed a material breach of this Agreement and shall entitle Cassidian Communications to immediately terminate this Agreement and Licensee's right to use the Software.

5. INDEMNITY

5.1 Subject to the terms of this License, Cassidian Communications undertakes to indemnify the Licensee for any direct cost, loss or damage finally awarded by a competent court in the applicable jurisdiction, or by Cassidian Communications-approved settlement agreements, amounts arising out of infringement of copyrights of third parties by the Software, provided that:

(i) in case of any claim of infringement, the Licensee shall immediately notify Cassidian Communications and afford Cassidian Communications with every possibility to, at Cassidian Communications' option (and at no cost to the Licensee) (a) modify the Software so as to make it non-infringing, (b) obtain a license from the owner of the right that is alleged to be infringed by the Software and/or (c) defend itself against the claim of infringement;

(ii) the foregoing shall not apply in cases where (and to the extent that) the claim for infringement is based on any modification of the Software, combination of the Software with other equipment (whether hardware or software) or if the infringement results from compliance by Cassidian Communications with any part of the specification that is required by the Licensee; and

(iii) to the extent that a third party makes a claim of infringement against Cassidian Communications, or any of its affiliates, based on the exceptions specified in the foregoing subparagraph (ii) above, the Licensee shall indemnify Cassidian Communications for any direct cost, loss or damage

finally awarded by a competent court or arbitral tribunal in the applicable jurisdiction or by Licensee approved settlement amounts arising out of such action, subject to the same conditions (mutatis mutandis) as are specified in sub-paragraph (i) above.

5.2 Licensee shall indemnify and save and hold Cassidian Communications and Cassidian Communications' Licensors harmless from and against any and all liabilities, claims, causes of action, suits, damages and expenses, including reasonable attorneys' fees and expenses, which Cassidian Communications or Cassidian Communications' Licensors suffer, become liable for, or may incur or be compelled to pay by reason of any acts, whether of omission or commission, that may be committed or suffered by Licensee or any of its servants, agents, contractors or employees in connection with Licensee's breach or performance of this Agreement or in connection with its use of the Licensed Software.

6. CONFIDENTIALITY

6.1 The Licensee acknowledges that the Software incorporates confidential and proprietary information developed or acquired by Cassidian Communications' licensors. The Licensee will take all reasonable precautions necessary to safeguard the confidentiality of the Software, including (i) those taken by the Licensee to protect its own confidential information but in no event less that reasonable care; and (ii) those which Cassidian Communications or its licensors may reasonably request from time to time. The Licensee will not allow the removal or defacement of any confidentiality or proprietary notice placed on items of Software.

6.2 The Licensee will not disclose, in whole or in part, any Software to any person, except to those of its employees, agents or consultants who require access for the Licensee's authorized use of the Software. Before disclosing any of these items to such parties, the Licensee will require that they expressly (i) recognize the confidential and proprietary rights in the Software of Cassidian Communications or its licensors; and (ii) agree to comply with the use and non-disclosure restrictions applicable to the Software under this License.

6.3 The Licensee will have no confidentiality obligation with respect to any portion of the Software that (i) the Licensee independently knew or developed before receiving the Software (as proven by the written records of the Licensee); (ii) the Licensee lawfully obtained from a third party under no obligation of confidentiality; or (iii) became available to the public other than as a result of an act or omission of the Licensee or any of its employees, agents or consultants.

6.4 Cassidian Communications' licensors may be provided with a copy of this End User License Agreement, including all Annexes.

7. LIMITATION OF LIABILITY

7.1 Cassidian Communications may not be held liable for defects or dysfunction of the Software and/or the Product due to (i) lack of qualification and competence on the part of the personnel assigned to use it, and/or (ii) changes made by the Licensee, a third party other than Cassidian Communications or not previously certified in writing by Cassidian Communications, and/or (iii) software and/or equipment not supplied and installed by Cassidian Communications.

7.2 The Licensee expressly acknowledges that it has received from Cassidian Communications, as part of its duty of providing advice, all the necessary information that will enable the Licensee to evaluate the

suitability of the Software for its needs and to take any and all useful precautions for installation, execution, use, and display of the Software.

7.3 CASSIDIAN COMMUNICATIONS SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING WITHOUT LIMITATION, ANY LOSS OF DATA OR LOSS OF PROFITS) PERTAINING IN ANY WAY TO THE SOFTWARE, OR TO ANY OF CASSIDIAN COMMUNICATIONS' OBLIGATIONS UNDER THIS LICENSE, EVEN IF CASSIDIAN COMMUNICATIONS HAS BEEN MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES.

7.4 NOTWITHSTANDING CLAUSE 7.3, THE LIABILITY OF CASSIDIAN COMMUNICATIONS SHALL, IN ANY EVENT, NEVER EXCEED THE AMOUNT OF MONEY PAID BY THE LICENSEE FOR THE SOFTWARE AT THE TIME OF OCCURRENCE OF THE EVENT GIVING RISE TO LIABILITY ON THE PART OF CASSIDIAN COMMUNICATIONS.

7.5 CASSIDIAN COMMUNICATIONS MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY WARRANTIES AS TO RIGHTS OF THIRD PARTIES OR NON INFRINGEMENT) WITH RESPECT TO THE SOFTWARE, ALL OF WHICH ARE PROVIDED "AS-IS".

7.6 LICENSEE HEREBY RELEASES CASSIDIAN COMMUNICATIONS' LICENSORS FROM ALL OBLIGATIONS, LIABILITIES, CLAIMS, OR DEMANDS WITH RESPECT TO THE SUBJECT MATTER OF SUCH END USER LICENSE AGREEMENT. IN NO EVENT WILL CASSIDIAN COMMUNICATIONS' LICENSORS HAVE ANY OBLIGATION TO INDEMNIFY END USER. THESE PROVISIONS HAVE BEEN NEGOTIATED BY CASSIDIAN COMMUNICATIONS AND END USER AND REFLECT A FAIR AND ACCEPTABLE ALLOCATION OF RISK.

8. AUDIT

Cassidian Communications reserves the right to appoint, at its own expense, at any given time during the term of this License, an independent auditor in charge of verifying that the use of the Software by the Licensee complies with the terms of the License. The Licensee hereby duly accepts that Cassidian Communications is entitled to exercise such right.

9. TERM AND TERMINATION

9.1 The Licensee's right to use the Software will terminate automatically if the Licensee ceases to own, possess or operate the Products for which the Software has been delivered.

9.2 The rights granted to the Licensee under this License may be terminated by Cassidian Communications upon a material breach by the Licensee of any terms or conditions contained herein which is not remedied by the Licensee within a reasonable period specified by Cassidian Communications in a written notice drawing attention to the breach and requiring it to be remedied.

9.3 Termination by Cassidian Communications shall be made by written notice that is delivered to the Licensee not less than thirty (30) days prior to the effective date of termination specified in the notice. Said notice of termination shall be without effect if the Licensee cures all breaches that gave rise to termination prior to the effective date of termination.

9.4 Upon termination by Cassidian Communications or expiration, all rights granted in respect of the Software to the Licensee under this License will immediately cease and the Licensee shall make no further use of the Software. Termination shall be without prejudice to any accrued rights and liabilities of the parties at the date of termination.

9.5 This Agreement is effective as of the date last executed below. The term of this Agreement shall be a period of one (1) year from the effective date (the "Initial Term"), unless terminated earlier as provided herein. Thereafter, this Agreement shall automatically renew and continue in force on a year-to-year basis ("Extended Term") until terminated by either party as provided herein.

10. APPLICABLE LAW

The validity, construction and performance of this License shall be governed by the laws of the State of California without reference to conflicts of law principles. The parties hereby consent to jurisdiction and venue in the federal and state courts of the State of California.

11. DISPUTE RESOLUTION

11.1 Any dispute, controversy or claim arising under, out of or relating to this License and any subsequent amendments of this License, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the American Arbitration Association Commercial Arbitration Rules and Mediation Procedures.

11.2 Notwithstanding anything herein to the contrary, each of the parties to this Agreement acknowledges that a breach of this Agreement may cause the other party irreparable harm which may not be adequately compensated by money damages. In the event of a breach or threatened breach by a party, a party shall be entitled to seek injunctive or other equitable relief in any court of competent jurisdiction.

12. MISCELLANEOUS

12.1 Any notice given by one Party or the other shall be deemed properly given if specifically acknowledged by the receiving Party in writing or when delivered to the recipient by certified or registered mail, by overnight courier or by confirmed facsimile transmission to the following addresses:

If to Cassidian Communications	If to the Licensee
Cassidian Communications 42505 Rio Nedo, Temecula, CA 92590 Telefax: (951) 296-2727 Attn: Legal Department	

Or to such other address or addresses as a Party shall designate by notice given in such manner to the other Party.

12.2 This License states the entire agreement between the Parties hereto relating to the subject matter hereof and supersede all prior communications, whether written or oral, between the Parties prior to the date of this License which shall be cancelled and superseded by this License.

12.3 If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby. The invalid provision shall be replaced by a valid one which achieves to the extent possible the original purpose and commercial goal of the invalid provision.

12.4 For the avoidance of any doubt, the Parties shall not be required by any provision of this License or of the agreements mentioned herein to do or refrain from doing, any act or any thing where so doing (or so refraining) would contravene the provisions of any applicable mandatory law or regulation issued by competent authority; and shall not be regarded as having breached this License by reason of not having done (or having refrained from doing) such act or thing contravening such applicable mandatory law or regulation. Nothing contained in this License or any of the agreements mentioned herein shall require any of the Parties to do anything or procure that their Affiliates do anything that would conflict with any regulatory license or conditions with which that Party or Affiliate must comply.

12.5 No failure to exercise, nor any delay in exercising, on the part of either Party, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof or the exercise of any other right or remedy.

12.6 Licensee acknowledges that the Software may be subject to export restrictions of countries where the Licensee is located, incorporated or doing business. Licensee shall fully comply with all applicable export license restrictions and requirements as well as with laws and regulations relating to the importation of the Software and shall procure any necessary governmental authorizations, including without limitation any necessary licenses, approvals, permissions or consents, where necessary for re-exportation of the Software.

12.7 Neither Party may assign this License in whole or in part to a third party without the other Party's prior written consent, except that Cassidian Communications may assign this License to an Affiliate.

12.8 Any terms and conditions that by their nature or otherwise reasonably should survive a cancellation or termination of this License shall also be deemed to survive. Such terms and conditions include but are not limited to clauses: 4 Ownership, 5 Indemnity, 6 Confidentiality, 7 Limitation of Liability, 10 Applicable Law, and 11 Dispute Resolution.

12.9 The Appendices attached hereto shall be deemed subject to the terms of this Agreement. Headings are used for purposes of reference only and shall not affect the interpretation of this Agreement.

12.10 For U.S. Government Licensee(s): Restricted Rights

The Licensed Software and associated hardware and documentation are provided with RESTRICTED RIGHTS. With respect to any acquisition of the Licensed Software by or for any unit or agency of the United States Government ("Government"), the Licensed Software shall be classified as "commercial computer software," as that term is defined in the applicable provisions of the Federal Acquisition Regulation ("FAR") and supplements thereto, including the Department of Defense (DoD) FAR Supplement ("DFARS"). The Licensed Software was developed entirely at private expense and no part of the Licensed Software was first produced in the performance of a Government contract. If the Licensed Software is supplied for use by the in the Department of Defense ("DoD"), the Licensed Software is delivered subject to the terms of this License and either in accordance with Supplement to the Federal Acquisition Regulations ("DFARS") in paragraph 252.227-7013(c)(1)(ii). If the Licensed Software supplied to any unit or agency of the U.S. Government other than DoD, the

Government's rights in the Licensed Software shall be as defined in this License and in subparagraphs (c)(1) or (c)(2) of FAR 52.227-19. Commercial Computer Software - Restricted Rights; or FAR 52.227-14, Rights in General Data Alternative III, as applicable. For purposes of such regulations the contractor shall be deemed to be Cassidian Communications, 42505 Rio Nedo, Temecula, CA 92590.

IN WITNESS WHEREOF this Agreement has been duly signed and executed by the Parties hereto in two original copies on the date written above.

Cassidian Communications, Inc.

[Licensee]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



MAINTENANCE SERVICES AGREEMENT

This Maintenance Services Agreement ("Agreement") is made as of this ____ day of _____, 2013 ("Effective Date") between the City of Westminster, Colorado with an address of 4800 W. 92nd Ave., Westminster, CO 80031 ("Customer") and Cassidian Communications, Inc., a California corporation, with offices at 42505 Rio Nedo Street, Temecula, CA 92590 ("Cassidian Communications").

RECITALS

WHEREAS, Customer and Cassidian Communications entered into that certain Purchase Agreement dated _____, 2012 ("Purchase Agreement");

WHEREAS, the Purchase Agreement provided that Cassidian Communications provide the COR^{P25} Public Safety Grade Radio Communications System, including hardware, software, and implementation services ("System");

WHEREAS, the System is unique and requires specialized personnel to provide maintenance services for the System, to support, as necessary, the compatibility of equipment, software and software upgrades, accessories and replacement parts that only Cassidian Communications could provide as further described in the Maintenance Support Plan, attached hereto as **Exhibit A** and incorporated herein ("Services"); and

WHEREAS, Customer desires to purchase the Services from Cassidian Communications, and Cassidian Communications desire to provide the Services to Customer, on the terms and conditions as provided herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. **Scope of Agreement:** This Agreement sets forth the terms and conditions governing the purchase of the Services by Customer. Subject to the terms and conditions contained herein, Cassidian Communications shall provide the Services as required or identified in the Maintenance Support Plan. Notwithstanding anything to the contrary in any provision of or exhibit to this Agreement or the Purchase Agreement, for a period of ten (10) years commencing at System Acceptance, for so long as this Agreement remains in effect, Cassidian Communications covenants to maintain the technical capability and availability of parts necessary to maintain the System in substantially the same physical and operational condition as the System's condition at System Acceptance.

2. **Term of Agreement.** This Agreement shall commence on the Effective Date and expire ____ (____) years from the Effective Date, unless earlier terminated in accordance with the provisions of this Agreement ("Initial Term"). This Agreement may be renewed and continue in force on a year-to-year basis ("Extended Term") upon written notice to Cassidian Communications sixty (60) days prior to the expiration of the Initial Term or any subsequent Extended Term and on terms and conditions as mutually agreed to between the Customer and Cassidian Communications.

3. **Termination of Agreement.** Either party may terminate this Agreement immediately, in whole or in part, for default or breach subject to the following provisions. If the default or breach is reasonably capable of cure, the non-defaulting party shall give the other party written notice in accordance with **Section 11** herein and thirty (30) calendar days from the date of the notice to cure. In the event of a

breach or default by one party and termination of this Agreement results, the other party shall be entitled to any and all remedies available under applicable law. Except as otherwise provided for herein, neither party shall have any other liability arising out of the incident of termination of this Agreement. Accordingly, this provision does not preclude a party's liability for claims arising out of, in connection with or related to this Agreement generally. Notwithstanding the foregoing provisions regarding termination, as set forth in this **Section 3**, or the provisions regarding expiration, as set forth in **Section 2** of this Agreement, neither expiration nor termination of this Agreement for any reason shall relieve either party of the warranty and confidentiality obligations set forth in this Agreement and the attachments hereto. Upon termination of this Agreement, any Cassidian Communications obligation to provide Services shall immediately terminate.

4. **Prices and Payment.** The total price for the Services shall be the amount as follows ("Maintenance Services Price"):

(a) **Maintenance Services Price.** Customer shall pay to Cassidian Communications the Maintenance Services Price as follows:

(i) **First Maintenance Services Annual Payment.** Customer shall pay to Cassidian Communications the amount of _____ Dollars (\$_____), as adjusted by the change in the Consumer Price Index as of September, 2012 and the latest value published thirty (30) days prior to the date that the first payment is due ("First Maintenance Services Annual Payment"). In no event shall the First Maintenance Services Annual Payment be less than the maintenance service price provided in the Proposal.

"Consumer Price Index" or "CPI" shall mean and refer to that table in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, commonly known as the "Consumer Price Index for all Urban Consumers." The First Maintenance Services Annual Payment shall be due on the first anniversary date of the date of System Acceptance.

(ii) **Maintenance Services Annual Payment.** For each subsequent year thereafter up to and through _____ (____) years from the date of System Acceptance, Customer shall pay to Cassidian Communications the amount paid in the previous year adjusted by the change in the CPI for the immediately preceding year ("Maintenance Services Annual Payment"); provided, however, and except as otherwise provided for herein, the Maintenance Services Annual Payment shall be no less than 1.00 times nor greater than 1.05 times the prior year's Maintenance Services Annual Payment.

Cassidian Communications shall invoice Customer thirty (30) days prior to each anniversary of the date of System Acceptance. The applicable Maintenance Services Price shall be due from Customer thirty (30) days from the invoice date. Maintenance Services shall commence on the first anniversary date of the date of System Acceptance and receipt of all payments due to Cassidian Communications.

5. **Taxes.** Unless otherwise specified, prices shown do not include applicable federal, state, or local sales tax, transportation tax, or other tax which is required to be imposed upon the items ordered by reason of their sale or delivery. Such tax, if any, will be charged and listed as separate items on the invoice unless Customer furnishes Cassidian Communications applicable tax-exemption certificates.

6. **Default and Late Charges.** Cassidian Communications may cancel the Agreement for default if: (a) the Customer breaches any material provision of this Agreement, or (b) Customer becomes insolvent or a petition under any bankruptcy act or similar statute is filed by or against Customer and is not vacated within thirty (30) days after such filing. Cancellation shall be effective upon Customer's receipt of a written cancellation notice issued by Cassidian Communications. All invoices not paid when due will be subject to a monthly service charge of one and a half percent (1.5%) of the unpaid balance or the maximum rate permitted by law.

7. **Warranty Disclaimer.**

THE WARRANTIES IN THIS AGREEMENT, IF ANY, ARE GIVEN IN LIEU OF AND EXPRESSLY EXCLUDE ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION: (A) ANY WARRANTY THAT THE SYSTEM IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR ARE COMPATIBLE WITH ALL EQUIPMENT,

FIRMWARE AND SOFTWARE CONFIGURATIONS; AND (B) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY OF INFORMATIONAL CONTENT OR INFRINGEMENT. EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS AGREEMENT, IF ANY, CASSIDIAN COMMUNICATIONS' SYSTEM IS PROVIDED "AS IS" AND WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE CUSTOMER.

8. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CASSIDIAN COMMUNICATIONS, ITS AFFILIATES, AGENTS, SUPPLIERS OR SUBCONTRACTORS, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR ANY OTHER LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE SERVICES, EVEN IF CASSIDIAN COMMUNICATIONS, ITS AFFILIATES, AGENTS, SUPPLIERS OR SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CASSIDIAN COMMUNICATIONS', ITS AFFILIATES', AGENTS', SUPPLIERS' OR SUBCONTRACTORS' COLLECTIVE TOTAL LIABILITY EXCEED THE AMOUNT PAID BY CUSTOMER TO CASSIDIAN COMMUNICATIONS FOR THE SERVICES, IN THE MOST RECENT FULL CALENDAR YEAR FROM WHICH THE CLAIM AROSE. CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE SERVICES WOULD BE HIGHER.

9. **Force Majeure.** Neither party shall be responsible or liable for any loss or damage occasioned by such party's inability to perform any of its obligations herein where such inability was caused by fire, strike, flood, acts of God, explosions, civil or military authority, insurrection or civil disorder, embargoes, and acts of terrorism and governmental responses thereto.

10. **Confidentiality and Nondisclosure.**

A. **Confidential Information.** By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Such Confidential Information may include, but shall not be limited to the following types of information (whether or not reduced to writing): Proprietary system protocols, trade secrets, inventions, drawings, file data, documentation, diagrams, specifications, know-how, processes, formulas, models, flow charts, software in various stages of development, source codes, object codes, research and development procedures, test results, product features and functionality (current and pending development), marketing techniques and materials, marketing and development plans, price lists, pricing policies, business plans, information relating to customers and/or suppliers' identities, characteristics and agreements, financial information and projections, and employee files and other related or similar information. Confidential Information shall also include all reports, summaries, compilations, analyses, notes or other information prepared by the recipient that are based on or reflect any Confidential Information. It is the express intent of this Section that neither party disclose to any third party any Confidential Information, however, a party may disclose such information to contractors of a party who, by virtue of the duties assumed by such contractors, have a need to know such information, provided that prior to such disclosure the party has obtained from the contractor a written agreement to abide by confidentiality obligations substantially equivalent to those stated herein.

B. **Nondisclosure.** A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the receiving party in breach of this Agreement; or (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the other party; or (e) disclosure is required by law. The parties agree, both during the term of this Agreement and for a period of three (3) years after termination of this Agreement, to hold each other's Confidential Information in confidence. The parties agree to use reasonable efforts to avoid making the other's Confidential Information available in any form to any third party and to avoid using the other's Confidential Information for any purpose other than the implementation of this Agreement or in the exercise of rights conferred by this Agreement. Each party agrees to use the same degree of care that it uses to protect its own confidential information of a similar nature and value, but in no event less than a

reasonable standard of care, to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement. Each party agrees that it shall not reverse-engineer, decompile or disassemble any Product disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the other party. Each party represents that it has an appropriate agreement with each of its employees who may have access to any Confidential Information that is sufficient to enable it to comply with all of the terms of this Section.

11. **Notices.** All notices given under this Agreement shall be in writing and shall be delivered either by (i) personal delivery; (ii) expedited messenger service; (iii) postage prepaid return receipt requested certified mail; or, (iv) facsimile confirmed by postage prepaid U.S. mail, addressed to the party or parties for whom it is intended, at the addresses specified on below. Notice by certified mail or expedited messenger service shall be effective on the date it is officially recorded as delivered to or refused by the intended recipient by return receipt or equivalent. All other notices given under this Agreement that are delivered in person or by facsimile shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of actual receipt of delivery.

For Customer:

Name: Westminster Police Department
Address: 9110 Yates Street
Westminster, CO 80031
Attn: Russ Bowers
Tel: (303) 658-4364
Fax: (303) 706-3907

With a copy to:

Name: Westminster City Attorney
Address: 4800 West 92nd Avenue
Westminster, CO 80031
Tel: (303) 658-2232
Fax: (303) 706-3920

For Cassidian Communications:

Name: Cassidian Communications, Inc.
Address: 42505 Rio Nedo Street
Temecula, CA 92590
Attn: Bob Freinberg, CEO
Tel: (951) 719-2100
Fax: (951) 296-2727

With copy to:

Name: Cassidian Communications, Inc.
Address: 42505 Rio Nedo Street
Temecula, CA 92590
Attn: Legal Department
Tel: (951) 719-2100
Fax: (951) 296-2727

12. **Amendment or Waiver.** No provision of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment or modification is in writing and contains the Manual Signature of the party against whom it is sought to be enforced. For purposes of this Agreement, a Manual Signature shall mean a pen and ink signature made by an authorized representative of the parties on a typed or printed amendment, waiver or modification.

13. **Severability.** In the event any one or more of the provisions of this Agreement is held to be unenforceable under applicable law, (i) such unenforceability shall not affect any other provision of this Agreement; (ii) this Agreement shall be construed as if said unenforceable provision had not been contained herein; and (iii) the parties shall negotiate in good faith to replace the unenforceable provision by such as has the effect nearest to that of the provision being replaced.

14. **Governing Law, Consent to Jurisdiction and Attorneys' Fees.** The validity, performance, and all matters relating to this Agreement, its Exhibits and any amendment thereto shall be governed by the laws of the State of Colorado without reference to conflicts of law principles. The parties hereby consent to jurisdiction and venue in the federal and state courts of the State of Colorado. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in the action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

15. **Assignment and Subcontracting.** Cassidian Communications may assign any of its rights and duties or obligations under this Agreement to third parties and Cassidian Communications shall have the

right to subcontract all or a portion of the Services provided hereunder. This Agreement and all of the rights, duties and obligations under it may not be subcontracted, assigned or otherwise transferred by Customer without the prior written consent of Cassidian Communications.

16. **Authority.** Each party hereto represents and warrants that (i) it has obtained all necessary approvals, consents and authorizations of third parties and governmental authorities to enter into this Agreement and to perform and carry out its obligations hereunder, (ii) the persons executing this Agreement on its behalf have express authority to do so, and, in so doing, to bind the party thereto; (iii) the execution, delivery, and performance of this Agreement does not violate any provision of any bylaw, charter, regulation, or any other governing authority of the party; and (iv) the execution, delivery and performance of this Agreement has been duly authorized by all necessary partnership or corporate action and this Agreement is a valid and binding obligation of such party, enforceable in accordance with its terms.

17. **Interpretation.** The parties understand and acknowledged that this Agreement is the product of negotiations between the parties hereto and represented by counsel. Any rules of construction relating to interpretation against the drafter of an agreement are expressly waived and shall not apply to this Agreement.

18. **Survival of Provisions.** The parties agree that where the context of any provision indicates an intent that it shall survive the term of this Agreement then it shall survive.

19. **Entire Agreement.** This Agreement and the Exhibits hereto shall constitute the entire understanding between the parties concerning the subject matter hereof and supersede all prior discussions, agreements and representations, whether oral or written and whether or not executed by Customer and Cassidian Communications.

20. **Conflicts.** Customer and Cassidian Communications acknowledge and agree that, in the event of a conflict between any provision of this Agreement and the Exhibits attached hereto, the terms of this Agreement shall control.

21. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Once fully executed, it will become effective as of the Effective Date stated above. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic photocopy (i.e., "pdf") shall be equally effective as manual delivery of an original signed counterpart hereof.

CUSTOMER

Signature: _____
Print Name: J. Brent McFall
Title: City Manager

CASSIDIAN COMMUNICATIONS, INC.

Signature: _____
Print Name: _____
Title: _____

Exhibit A
Maintenance Support Plan

[To Be Inserted]



Statement of Work (“SOW”) for GSA orders between Avtec, Inc. (“Avtec”) and The City of Westminster, CO “Customer”

General Information

The SOW and any accompanying Attachments are intended to define the responsibilities, deliverables, pricing, schedule and any additional terms specific to this Console System implementation. Any modifications to this SOW shall be made in writing using the Change Order form included as Attachment B and signed by both Parties.

Summary

Avtec Inc. will provide Customer with the materials and services detailed in this SOW to implement and support a Scout Console system integrating with the Cassidian P25 Radio Frequency Subsystem via Avtec’s P25 Console Subsystem Interface.

Other Documents

The following Documents provide information with regards to the technical aspects of the project. ***No commercial terms and conditions contained in these documents are applicable to the project nor are any customer pre-printed Purchase Order Terms and Conditions accepted.***

The order of precedence for any conflicting language or obligations is as follows:

1. GSA Contract Terms and Conditions
2. Avtec Quotation #2012-1751 (Pricing)

Customer’s use of any hardware or software products provided to Customer by Avtec shall be subject to the terms and conditions of the Avtec End User License Agreement attached hereto as “Attachment D” and incorporated herein. The terms of the End User License Agreement shall be effective and binding on the parties hereto upon execution of this SOW by Customer.

Project Start Date

Work on the project will begin at an agreed upon time subsequent to receipt of Purchase Order and after this Statement of Work is executed.

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Qualified Personnel

As part of this proposal, Avtec will install, test and cutover the Scout system. Avtec shall provide qualified personnel to support all project management, engineering, installation, documentation, testing and training requirements specified under this agreement and as specified in Quote #2012-1751.

Project Management

As part of this proposal, Avtec will be the primary installer of the purchased Scout system. Avtec will assign a project manager (PM) who will manage the project. The PM will act as a single point of contact for the implementation of this SOW. The PM will be responsible for contract administration, scheduling and monitoring progress of the deliverables. The PM will attend regularly scheduled project calls and present regular status reports of the implementation tasks to the Customer Lead Project Manager. All formal communications are to be channeled through the PM.

Should Customer elect to include a local Channel Partner, Frontier Radio Communications, "Frontier", to act as the primary installation and support contractor, Avtec's role will be solely support of the activities of Frontier during implementation. All formal communications and activities will be coordinated through Frontier.

Payments and Milestones

 As per Quote #2012-1751 and GSA Contract

Pricing and Equipment Lists are detailed in Avtec's quotation. Payment Milestones are agreed upon as follows:

1. Payment terms and conditions are per Avtec's existing GSA Contract.
2. Customer will be invoiced for all equipment upon shipment of Scout system, payment terms are Net30 from invoice date.
3. Customer will be invoiced for all Avtec services upon completion of installation, payment terms are Net30 from invoice date.

Avtec Professional Services Pricing

The following defines the breakdown of Avtec Professional Services contained within line item #35 of Quote 2012-1751:

1. Develop Statement of Work, System Design Documentation, and Site Visits (\$16,129.92).
2. Project management, system staging and configuration, services provided at Avtec Factory (\$16,129.92).
3. System design and test plan creation/execution, (\$13,105.56)



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4. Console System installation, Integration and Cutover Support, (\$30,243.60)
5. 5 Day On-Site, Operator, Administrative and Technical Training, (5,040.60)

Total of Professional Services as defined in Quote 2012-1751 = \$80,649.60

Avtec Responsibilities (Avtec Direct Installation)

As described in the submitted price quotation, Avtec has included the following services, (services and/or level of services may change in the event Frontier is primary provider for installation, test and cutover, see next section):

1. Project Management
 - a. Collaborate with Customer to create project plan and schedule
 - b. Attend regular calls/meetings
 - c. Issue weekly status reports to Customer Project Manager
2. Site Survey
 - a. Avtec may survey the facilities where the equipment will be installed to provide information on site-specific requirements.
3. Provide Customer with requirements for all Avtec furnished equipment, including Physical, Environmental, Electrical, Computer, and Network specifications.
4. Submit detailed design information pertaining to the Scout console system to Customer
5. Procure Avtec-furnished equipment
6. Conduct Customer Workshop
 - a. Attended by Customer representatives with Operational authority from each user group
 - b. Review System capabilities and Operational requirements
 - c. Review Operational processes and fit with new equipment
 - d. Develop and document User interfaces
 - e. Make decisions on console system configuration
 - f. Training curriculum development?
7. Factory Staging
8. Create configuration databases and IP address scheme
9. Execute agreed-upon system tests
10. Delivery
 - a. Package equipment for shipping
 - b. Ship equipment per Customer requirements
11. Unpack equipment and dispose of packing materials
12. Install Avtec provided equipment
13. Physical installation
 - a. Install Avtec furnished equipment in designated locations
 - b. Label cables with a unique identifier conforming to Customer requirements.
 - c. Supply as-Built documentation including cross-reference of cable material, connectors,

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- to/from information and Avtec part numbers for replacement.
- d. Software installation on computers (may occur during staging)
- 14. Console and gateway configuration Piloting/Testing
- 15. Preparation for placing system into service
- 16. Training
 - a. Maintenance/Administration
 - b. Operator
- 17. Cutover Assistance
- 18. Providing as-built documents
- 19. Review of Project with customer PM and presentation of Acceptance documents
- 20. Introductions and hand-off of system to Avtec Customer Support organization

Avtec Responsibilities (Support of Local Channel Partner) (Local Service Provider Install/Test/Cutover/Support)

1. Project Management
 - a. Support Services to be provided to local service provider as acting prime.
 - b. Avtec to assist in equipment delivery and support requirements through local service provider.
2. Site Survey
 - a. Avtec may survey the facilities where the equipment will be installed to provide information on site-specific requirements. This will be coordinated with and through the local service provider.
3. Provide Customer/Local Service Provider with requirements for all Avtec furnished equipment, including Physical, Environmental, Electrical, Computer, and Network specifications.
4. Support local service provider with detailed design review of information pertaining to the Scout console system.
5. Procure Avtec-furnished equipment.
6. Conduct Customer Workshop
 - a. Service may be provided by local service provider.
7. Factory Staging
8. Support/execute agreed-upon system tests with local service provider (mandatory part of Avtec purchased services)
9. Delivery to location specified by Customer/local service provider.
 - a. Package equipment for shipping
 - b. Ship equipment per Customer/local service provider requirements
10. Support local service provider install of Avtec provided equipment (part of Avtec support services included with proposal).
11. Physical installation (part of Avtec support services included with proposal)
 - a. Support local service provider install Avtec furnished equipment in designated locations
 - b. Cabling and labeling of cables to be provided by local service provider.
 - c. Support local service provider as-Built documentation including cross-reference of cable material, connectors, to/from information and Avtec part numbers for replacement.

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- d. Support local service provider software installation on computers.
- 12. Support local service provider console and gateway configuration (part of Avtec support services included with proposal).
- 13. Support local service provider in preparation for placing system into service (part of Avtec support services included with proposal).
- 14. Training (part of Avtec support services included with proposal).
 - a. Maintenance/Administration
 - b. Operator
- 15. Cutover Assistance (part of Avtec support services included with proposal).

Customer Responsibilities

- 1. Facility Preparation
 - 1.1. Environmental – provide adequate physical conditions (including furniture, racks, shelves, etc.), ventilation, heating, and cooling per Scout system requirements.
 - 1.2. Wiring - installation and testing of building wiring as required, including all necessary protective devices and grounding, for network, power, and telephony. Provide a tested point of demarcation for all wiring.
 - 1.3. Electrical Power – Provide adequate electrical power at each equipment location. Scout hardware components supplied by Avtec run on 110/220VAC, 50-60Hz.
 - 1.4. Networking – provide all required network interfaces including Ethernet and Telephony circuits. Configure networking to supply IP transport per Scout requirements.
 - 1.5. Site Access – provide access to all locations as required for Avtec site surveys
- 2. Customer furnished Equipment
 - 2.1. Design, furnish and install all required networking infrastructure to support Scout system applications, per Scout requirements.
 - 2.2. Furnish any accessories not provided by Avtec
- 3. Installation
 - 3.1. Provide keys, site access, and or escorts to the equipment rooms and cabling installation areas. (Normal access hours are to be negotiated between Customer and Avtec.)
 - 3.2. Assist Avtec with any access credentials required by third parties, such as TSA or Airport Authorities.
 - 3.3. If required, provide a secure room at the installation site with a dial out phone during the implementation phase of the project. (This room will be used by the Avtec personnel for its operations; for temporary storing Scout system components and securing test equipment and tools.)
 - 3.4. Facilitate scheduling installation and cutover planning with Operations personnel.

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4. Training

4.1. Provide adequate facilities for on-site maintenance and operator training

4.2. Schedule personnel for uninterrupted training sessions.

5. Cutover and Acceptance

5.1. Decommission and disposal of existing equipment.

Customer Supplied Equipment

- Uninterruptable Power supplies as required.
- Ethernet Network equipment with adequate connection ports.

Avtec Supplied Products

- Scout software licenses, hardware, installation materials per attached Proposal 2012-1965.

Limitations of Proposed Solution

- As a fully detailed specification has not been provided as part of this proposal process, Avtec has provided a Scout System Overview Document and Scout P25 Trunking Gateway Capabilities Guide. These documents outline Scout's current capabilities and identify those features being delivered as part of this proposal.

After Acceptance Customer Support

After System Acceptance, the standard warranty period begins.

After the initial warranty, Avtec offers a support package called TSP (Technical Support Program) for an annual fee based on the system cost. If TSP is purchased, then Customer is eligible to purchase an extended hardware maintenance plan at the time of original system purchase. TSP includes:

- Software Maintenance (patches and bi-annual upgrades)
- Factory Support during Business hours
- Emergency Factory Support 24x7
- Annual Factory Training classes

Annual TSP cost and extended hardware maintenance (EXP) per year, for second year and beyond, will be based on final configuration as defined in proposal #2012-1751.



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Avtec may adjust this price based on change orders during system implementation and system expansion purchases.

Customer agrees to be invoiced on an annual basis for TSP, beginning with the expiration of the original warranty.

_____ (Customer Initials)

Customer declines the Avtec TSP Program. Customer acknowledges that if TSP is not purchased, Customer may only receive support at an hourly rate, subject to minimum charges, and that upgrades are only available by purchasing a new license to the software at then current rates.

_____ (Customer Initials)

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After Acceptance Customer Support

Technical support service will be discussed annually with Customer if self-supporting or with a local certified service provider if appointed. The objective of this meeting is to confirm that service levels have been achieved and review roles and responsibilities. The service definition will be formally reviewed as well as this agreement and will be updated accordingly.

Customer Requirements

- Customer will be responsible to supply an on-site Technical support person with current training certification on the Avtec system, if Customer is self-supporting. That person(s) will be responsible to communicate and work toward problem resolution with the Avtec Technical Support Team.
- If local service provider is utilized, local provider must be Avtec certified and under good standing with Avtec.
- Customer will maintain an adequate supply of critical spare parts as recommended by Avtec.

Avtec Inc. Responsibilities

- Avtec will provide telephone Technical Support for Customer and/or local certified service provider, provided Customer has an active Support contract, during Avtec’s normal Operating hours (defined below).
- Avtec will provide telephone Technical Support for Customer and/or local certified service provider for Critical Priority issues (defined below), provided customer has an active Support contract, at any time.
- Avtec will provide part replacement service (RMA Support) for Customer and/or local certified service provider, during Avtec’s normal Operating hours (defined below).
- 90% of the calls will be answered within 60 seconds during Avtec business hours.
- 90% of calls will be answered within 180 seconds after hours and weekends.
- Each Support call will be logged and assigned a priority status, Critical, Urgent, and Normal. The following are responses based on the priority;

Priority:	Critical
Definition	Customer’s system is substantially degraded and normal operations are not possible.
Response Time	30 Minutes
Resolution Commitment	Issue will be worked continuously until resolution
Escalation Process	If Customer Support Team is unable to resolve within 1 hour they will escalate to the appropriate member of the engineering team. Escalation to Management Team in 2 hours if issue is still unresolved. A determination of additional resources will be made at that time.

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	Update to customer will be made every 2 hours until resolution.
Call Closure Requirement	Call will be closed when system is running without impact for 48 hours and customer is satisfied with resolution.

Priority:	Urgent
Definition	Limited impact, able to work but with limitations
Response Time	60 Minutes
Resolution Commitment	Issue will be worked on a priority basis
Escalation Process	If Customer Support Team is unable to resolve within 1 business day they will escalate to the appropriate member of the engineering team. Escalation to Management Team in 3 business days if issue is still unresolved. A determination of additional resources and time frame of resolution will be made at that time. Update to customer will be made as new information is made available until resolution.
Call Closure Requirement	Call will be closed when system is running without impact for 48 hours and customer is satisfied with resolution.

Priority:	Normal
Definition	No impact to business, questions or informational
Response Time	1 Business Day
Resolution Commitment	Issue will be queued for resolution based on workload and other priority cases.
Escalation Process	If Customer Support Team is unable to resolve within 5 business days they will escalate to the appropriate member of the engineering team. Escalation to Management Team in 10 business days if issue is still unresolved. A determination of additional resources and time frame of resolution will be made at that time.
Call Closure Requirement	Call will be closed when customer accepts resolution.

RMA Support:

- RMA repair request is made from Customer form complete RMA is processed within 4 hours.
- RMA advance replacement request is made from Customer, form complete and RMA is processed within 2 hours.

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Contacts & Operating Hours

Contact Phone Numbers & Email:

- 803.892.2181 ext. 201
- 800.543.3034
- CustomerSupport@avtecinc.com
- RMARequest@avtecinc.com

Location of Service Delivery:

- 4335 Augusta Highway
- Gilbert, SC 29054 USA

Hours of Operation:

- Business hours support: Monday – Friday 8:00 AM– 5:00 PM EST
- After hours support: Monday – Friday 5:00 PM – 7:59 AM EST, 24 hour coverage Saturday, Sunday and Holidays

Avtec Holiday List

- New Years Day
- Memorial Day
- July 4th
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving day
- Christmas Eve
- Christmas Day

Escalation Contact:

Customer Support Manager:

- Dawn Fisher
- 803.892.2181 ext. 312
- dfisher@avtecinc.com

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Authorization

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this Statement of Work.

City of Westminster, CO

Avtec, Inc.

Full name

Full name

Title

Title

Signature

Signature

Date

Date

Attachments

Attachment A to SOW: Acceptance

Attachment B to SOW: Change Order

Attachment C to SOW: Quotation

Attachment D to SOW: End User License Agreement

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Attachment A

Avtec Console System Acceptance

Pursuant to the Agreement between Avtec and City of Westminster, CO, all the deliverables described in the Statement of Work dated Month ____, 2012 have been inspected and have been fully and finally accepted by City of Westminster, CO and the work has been fully and satisfactorily completed.

City of Westminster, CO

Avtec, Inc.

Full name

Full name

Title

Title

Signature

Signature

Date

Date

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Attachment B Change Order

THIS CHANGE ORDER # _____, dated as of _____, 20____ (the "Change Order Effective Date") amends the Statement of Work by and between Avtec, and City of Westminster, CO effective as of _____, 2012 (the "Statement of Work"). Terms outlined in this Change Order shall take precedence over similar terms outlined in the Statement of Work .

Change Requested By (Name/ Title/ Company): _____

Change Description

(Insert a detailed description of the change. Describe the specific area of the Statement of Work or the Work Order being modified.)

Change Justification

(Insert a detailed description of why the change is required. Indicate benefits gained or risk mitigated by making the change.)

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Change Area of Impact	Yes/ No	Detailed Description of Impact
Scope		
Risk		
Schedule		
Resources		
Financial Impact*		
Other		

*If there is a financial impact, please provide additional information below:

Additional Cost: _____

Funding Provision: _____

Party Responsible for Cost: _____

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Change Order as of the Change Order Effective Date.

AVTEC, INC.

CITY OF WESTMINSTER, CO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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Attachment C
Quotation
(See attached)

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Attachment D

AVTEC END USER LICENSE AGREEMENT

(Customer referred to herein as “You”)

IMPORTANT: PLEASE READ THIS END USER LICENSE, LIMITED WARRANTY AND LIMITATION OF LIABILITY AGREEMENT (THE “AGREEMENT”) CAREFULLY. WHETHER YOU ARE ACTING FOR YOURSELF INDIVIDUALLY OR AS A REPRESENTATIVE OF AN ENTITY, YOU ARE REFERRED TO IN THIS AGREEMENT AS “YOU”. YOU MAY BE READING THIS AGREEMENT ONLINE, OR AS AN ELECTRONIC DOCUMENT INCLUDED WITH AN AVTEC, INC. (“AVTEC”) SOFTWARE PRODUCT, OR AS A PHYSICAL DOCUMENT PACKAGED WITH AN AVTEC HARDWARE OR SOFTWARE PRODUCT (SUCH SOFTWARE, IN EACH CASE, IS HEREINAFTER REFERRED TO IN THIS AGREEMENT AS THE “SOFTWARE”, AND “PRODUCT” SHALL REFER TO ANY HARDWARE OR SOFTWARE FURNISHED BY AVTEC). THE TERM “SOFTWARE” SHALL INCLUDE COMPUTER PROGRAMS OFFERED AS STAND ALONE PRODUCTS AS WELL AS FIRMWARE OR OTHER SOFTWARE EMBEDDED IN AVTEC HARDWARE PRODUCTS. THE TERM “SOFTWARE” SHALL ALSO INCLUDE ANY USER DOCUMENTATION THAT IS PART OF OR SUPPLIED WITH THE SOFTWARE OR OTHERWISE MADE AVAILABLE BY AVTEC TO AUTHORIZED END USERS OF THE SOFTWARE. YOU ARE ENTITLED TO THE BENEFITS OF THIS AGREEMENT ONLY IF YOU ARE THE ORIGINAL AND REGISTERED PURCHASER OF THE APPLICABLE AVTEC PRODUCT, AND YOU PURCHASED THAT PRODUCT FROM AVTEC, AN AUTHORIZED AVTEC DEALER OR SYSTEMS INTEGRATOR, OR OTHER AVTEC-APPROVED SOURCE (“APPROVED SOURCE”). IF YOU DO NOT SATISFY THE FOREGOING CONDITIONS YOU ARE NOT LICENSED TO USE OR KEEP A COPY OF THE SOFTWARE NOR ENTITLED TO THE BENEFITS OF AVTEC’S LIMITED WARRANTY SET FORTH BELOW.

ASSUMING YOU SATISFY THE FOREGOING CONDITIONS, YOU ACCEPT AND AGREE TO THIS AGREEMENT IF YOU EITHER: (1) ACCEPT THIS AGREEMENT WITH A MOUSE-CLICK OR SIMILAR ACTION PRIOR TO DOWNLOADING THE SOFTWARE OR INSTALLING THE SOFTWARE ON A COMPUTER; (2) ACQUIRED THE SOFTWARE STORED ON ELECTRONIC STORAGE MEDIA SUCH AS CD-ROM OR DVD AND YOU BREAK THE SEAL ON THE PACKAGE CONTAINING THE ELECTRONIC STORAGE MEDIA; (3) YOU INSTALL OR USE THE SOFTWARE ON A COMPUTER, OR (4) YOU USE THE HARDWARE PRODUCT ON WHICH THE SOFTWARE CAME INSTALLED.

IN SOME CASES THE SOFTWARE MAY BE PURCHASED AS PART OF A LARGER SYSTEM TO WHICH A SEPARATE SOFTWARE LICENSE APPLIES. IN SUCH CASE, THE TWO LICENSES SHALL BE CONSTRUED AS COMPLEMENTARY SUCH THAT AVTEC ENJOYS THE MAXIMUM RIGHTS AND BENEFITS OF BOTH, AND IF THERE IS ANY CONFLICT BETWEEN THE TWO LICENSES SUCH CONFLICT SHALL BE RESOLVED BY GIVING EFFECT TO THE PROVISION IN EITHER LICENSE THAT IS MOST FAVORABLE TO AVTEC (AS DETERMINED BY



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form; (iv) publish or distribute to any third party any results of benchmark tests run on the Software; (v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise; (vi) disclose, provide, distribute or otherwise make available trade secrets contained within the Software in any form to any third party, including but not limited to publicly displaying and/or performing the software, and You shall implement reasonable security measures to protect such trade secrets; (vii) duplicate or make copies of the Software other, except that You may make one (1) copy per Physical Business Location for backup purposes only (such backup copy only to be installed after the original has been destroyed); (viii) remove, alter, obscure, reduce in size or otherwise modify any copyright, trademark, or other proprietary notices appearing on or in the Software in any form or format (including without limitation screen displays); or take any action which jeopardizes Avtec's proprietary rights or acquire any right in the Software. For purposes of this paragraph, a "Physical Business Location" is a main office or branch office in which Your licensed computer(s) or CPU(s) is/(are) physically located.

In certain cases Software provided to You may include functionality, capabilities or capacities exceeding those purchased by You and constituting separate Product(s) in their own right. This license does not extend to such separate Product(s) unless and until such time as You purchase such Product(s). You shall not access or use any such additional functionality, capabilities or capacities constituting separate Product(s) not covered by this license. Any unlicensed use of such additional functionality, capability or capacity shall (without limiting Avtec's other rights and remedies in respect of such unauthorized use) obligate You to pay to Avtec upon demand Avtec's then applicable list price for the corresponding Product(s).

This Agreement and the license granted herein shall remain effective until terminated. You may terminate this Agreement and the license at any time by destroying all copies of Software in Your possession. This Agreement and the license shall terminate immediately and without the requirement of any notice if You fail to comply with any provision of this Agreement. Upon termination, You shall destroy all copies of Software and Documentation in Your possession or control, including without limitation deleting the Software from all computers, hard drives or other electronic devices. All confidentiality obligations of You, restrictions and limitations on use of the Software, limitations of liability, and warranty limitations and disclaimers shall survive termination of this Agreement.

2. Right to Audit. Avtec may audit Your use of the Software on 15 days' advanced written notice. You will cooperate with the audit, including by providing access to any books, computers, records or other information that relates or may relate to the use of the Software. Such audit will not reasonably interfere with Your business activities. If the audit reveals unauthorized use of the Software, You shall

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reimburse Avtec for the reasonable cost of the audit, in addition to such other rights and remedies as may be available to Avtec. Avtec shall not conduct an audit more than once per year.

3. Export. The Software and its constituent technology, or direct products thereof, may be subject to export control laws and regulations of the United States or other countries. You shall comply with such laws and regulations governing export, re-export, import, transfer and use of the Software at Your own cost and expense.

4. Limited Warranty as to Products. Avtec warrants that, at the time of delivery, the Software shall not infringe the United States patent rights or copyrights of any other Person. This warranty shall not apply to any infringement resulting from either: (i) operation or use of the Software or Product with a third party product not provided by Avtec or approved in writing by Avtec; (ii) operation or use of the Software or Product other than in accordance with Avtec's written specifications therefor; (iii) alteration or modification of the Software or Product by You or anyone other than Avtec without Avtec's prior written authorization; or (iv) any infringement arising from a built to order product produced substantially in accordance with specifications provided by You, in whole or in part, regardless of any prior notice or knowledge possessed by Avtec as to the existence or possibility of such infringement.

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such action or proceeding in any other forum. You and Avtec each consent to service of process by U.S. mail in connection with any such litigation or proceedings.

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BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **8**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

**A BILL FOR AN EMERGENCY ORDINANCE
AMENDING THE 2013 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2013 ESTIMATED
REVENUES IN THE FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2013 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3655 is hereby increased by \$1,077,552. This appropriation is due to the receipt of funds from a transfer.

Section 2. The \$1,077,552 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 G-I dated January 28, 2013 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Capital Improvement Fund	<u>\$1,077,552</u>
Total	<u>\$1,077,552</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. A timely radio system replacement is critical for both Public Safety and other City operations. The City has an opportunity to take advantage of a very competitive purchase price that is available for a limited time and will increase significantly beyond the limited time offer. Funds were previously appropriated into the General Capital Outlay Replacement Fund from public safety tax revenues for future equipment replacement, such as this radio system replacement. It is hereby declared that an emergency exists and that this ordinance for reallocating funds for the acquisition of a replacement radio system is immediately necessary to preserve the financial well-being of the City through timely execution of contracts for the purchase of a replacement system at the January 28, 2013, City Council meeting. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on January 28, 2013, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL, AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 28th day of January, 2013.

ATTEST:

Mayor

City Clerk



Agenda Item 11 A

Agenda Memorandum

City Council Meeting
January 28, 2013



SUBJECT: Second Reading of Councillor’s Bill No. 6 Amending Title I, Chapter 10, Westminster Municipal Code regarding Percentage of Votes Cast for a Candidate to be Elected Mayor

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Pass Councillor’s Bill No. 6 on second reading amending Westminster Municipal Code section 1-10-1 subsection (A) by removing the requirement that a candidate secure an excess of 40% of the voter margin to be elected to the Office of the Mayor.

Summary Statement

- At the January 7, 2013, City Council Study Session, Staff reviewed the implications, including the potential \$100,000 budgetary impact, in the event of a run-off election for the Office of Mayor.
- As the November 2013 Biennial Municipal Election approaches, Staff and the Election Commission have heightened awareness of the potential for a Mayoral run-off election. A runoff election would need to be conducted if the top candidate did not receive at least 40% of the votes. Amendments to election laws enacted by the State and Federal governments since the provisions for a run-off were adopted locally would require the City to conduct a separate run-off election resulting in substantial expense and effort.
- Removing the excess of 40% requirement voter margin for seating the Mayor and replacing it with language stating that the candidate receiving the most votes will be elected Mayor will eliminate the need for conducting a run-off election.
- This Councillor’s Bill was passed on first reading at the meeting of January 14, 2013.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **6**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Atchison - Lindsey

A BILL

**FOR AN ORDINANCE AMENDING SECTION 1-10-1 OF THE WESTMINSTER MUNICIPAL
CODE CONCERNING ELECTION OF MAYOR**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-10-1, subsection (A), W.M.C., is hereby AMENDED as follows:

1-10-1: ELECTION AND TERM LIMITATION OF MAYOR: (2308 3064 3129)

(A) The Mayor shall be elected for a four- (4) year term by a vote of the electorate at a regular City election. ~~To be elected, a~~The candidate ~~must receive~~receiving the largest percentage at least forty percent (40%) of the votes cast ~~for the office of Mayor at such election shall be elected to the office of Mayor.~~~~If no candidate receives at least forty percent (40%), the two candidates with the highest number of votes for Mayor shall participate in a run-off election, which shall be held at the earliest possible date after the regular City election, and subject to the rules and procedures for municipal elections adopted by the City, as applicable.~~ The successful candidate ~~in the run-off election~~ shall take office at the first regular Council meeting following the ~~run-off~~ election. Until the newly elected Mayor takes office, the previous Mayor shall continue in office.

Section 2. Section 1-10-2, subsection (A), W.M.C., is hereby AMENDED as follows:

1-10-2: MAYOR PRO TEMPORE: (1699 2308)

(A) The City Council shall, at its first meeting following each regular City election, ~~or at the first regular meeting following a run-off election if applicable,~~ and after the newly elected Mayor and Councillors take office, elect one (1) Councillor to serve as Mayor Pro Tempore for a term of two (2) years expiring at the first City Council meeting following the next regular City election.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 14th day of January, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of January, 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, January 28, 2013

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (January 14, 2013)
- 3. Purpose of Special WHA Meeting is to consider**
 - A. Resolution No. 52 re South Westminster Arts Group Lease of Rodeo Market and Vehicle Service Center Properties
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, JANUARY 14, 2013 AT 8:55 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter and Board Members Atchison, Briggs, Kaiser, Major and Lindsey. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Administrative Secretary.

MINUTES OF PRECEDING MEETING

Board Member Briggs moved, seconded by Major, to approve the minutes of the meeting of August 27, 2012 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 50 AUTHORIZING 2012 BUDGET SUPPLEMENTAL APPROPRIATION

Board Member Major moved, seconded by Kaiser, to adopt Resolution No. 50 authorizing a supplemental appropriation of \$248,105 to the 2012 Westminster Housing Authority budget. On roll call vote, the motion passed unanimously.

RESOLUTION NO. 51 APPROVING THE 2013 WESTMINSTER HOUSING AUTHORITY BUDGET

Secretary's Note: At his request, a copy of an email from Dino Valente dated January 14, 2013, is attached hereto and incorporated herein as an official part of the record.

It was moved by Vice Chairman Winter, seconded by Major, to adopt Resolution No. 51 approving the 2013 Westminster Housing Authority Budget.

Responding to a question from the Authority regarding Mr. Valente's email, Mr. McFall reported that the 2013 budget contained no funding for the project to which he referenced.

At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to conduct, it was moved by Kaiser, seconded by Major, to adjourn. The motion carried and the meeting adjourned at 8:59 p.m.

Chairperson

ATTEST:

Administrative Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
January 28, 2013



SUBJECT: Resolution No. 52 re South Westminster Arts Group Lease of Rodeo Market and Vehicle Service Center Properties

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Adopt Resolution No. 52 authorizing the Executive Director to execute a one-year lease for the South Westminster Arts Group for the use of properties located at 3915 West 73rd Avenue, 3630 W. 73rd Avenue, and 7287 Lowell Boulevard.

Summary Statement

- The Westminster Housing Authority (WHA) Board is requested to approve a one-year lease between the Authority and the South Westminster Arts Group (SWAG) to utilize the Rodeo Market building and adjoining property located at 3915 West 73rd Avenue and 7287 Lowell Boulevard commonly known as the Vehicle Service Center (VSC). The lease amount is proposed to be \$10.00 per year.
- SWAG will use the space to facilitate cultural activities such as art shows, theatrical performances, community meetings and programming that support the growth of non-profit cultural activities and arts businesses in South Westminster.
- SWAG would be responsible for paying water, sewer, electric and gas utility costs in full for the period of the lease.
- The WHA would provide a cash grant in the amount of \$10,000 to cover the cost of utilities. Having the grant on SWAG's books will assist it in pursuing and securing grant funds from other governmental and foundation sources, in particular the Scientific and Cultural Facilities District (SCFD).
- The WHA would be responsible for paying costs associated with repairs to the facilities and watering of the lawn area immediately east of the Rodeo Market building.
- SWAG will be responsible for general maintenance and upkeep of the buildings and property covered by the lease.

Expenditure Required: \$10,000

Source of Funds: 2013 WHA Budget

Policy Issue

Should the Westminster Housing Authority continue to lease the Rodeo Market and Vehicle Service Center buildings and properties to the non-profit South Westminster Arts Group (SWAG) for \$10.00 per year and provide a \$10,000 cash grant to provide funding for payment of utility costs?

Alternatives

1. Do not lease the premises to SWAG. This alternative is not recommended given the tremendous strides SWAG has made in attracting artistic talent, raising community goodwill, and promoting arts related activities. A failure to lease the premises to SWAG could result in the demise of the organization and potentially negatively impact the positive strides made to date.
2. Lease the premises with a required higher financial contribution from SWAG. This alternative is not recommended because SWAG is attempting to establish a higher level of cultural activity using only existing minimal resources. If it is required to pay higher rent and utility costs, a lease would be financially infeasible at this time.

Background Information:

In an effort to increase non-profit arts-related activity in the City, staff has worked to create arts business incubator opportunities by identifying potential spaces in which arts activities could be conducted on a temporary or permanent basis. An initial result of this effort was the creation of the South Westminster Arts Group (SWAG), which works with local Westminster artists to create and sustain a community-based arts network. The City further facilitated the establishment of the 73rd Avenue Community Theater operated out of the Vehicle Service Center (VSC) building at 7287 Lowell Boulevard, and acquired the Rodeo Market property at 3915 West 73rd Avenue in 2005 with the proposed concept of establishing a community arts center. The interior of the Rodeo Market building was remodeled and the exterior front façade restored to accommodate a gallery and class space. Upon completion of the improvements, SWAG was invited to open the gallery and operate classes in the space. SWAG has been operating for six years, with just over four years having been operated out of the Rodeo Market building. SWAG remains instrumental in ensuring the continued presence of the theater and operating a community artist gallery that has hosted many art exhibitions since its opening in September 2008. This helped attract three local art galleries that have opened nearby, which along with the member gallery at the Rodeo Market, conduct monthly art walks and other arts related programs throughout the year. SWAG also assumes the lead for coordinating an annual arts fair in the spring and the Orchard Festival in the fall, which have drawn up to 1,000 people to the South Westminster neighborhood and continues to grow.

Since 2008, SWAG entered into a lease agreement with the WHA to operate the Rodeo Market facility as a gallery and arts center, and the VSC as a community theater. Since its inception, SWAG has had limited financial capacity with which to operate, including an inability to pay rent and the cost of utilities. This limitation, in part, has been a product of SWAG's inability to pursue substantial grant and donation resources until such time as it was able to attain its official status as a 501(c)3 non-profit organization and then attain eligibility with prospective donors thereafter. Knowing this financial limitation, and in an effort to assist SWAG in continuing and growing its successful arts endeavors in the South Westminster neighborhood, the WHA has leased the premises to SWAG annually for a nominal annual fee of \$1.00. In addition, the WHA has assumed responsibility for major maintenance and repair of the facilities, and also has paid for the cost of water, sewer, electric, and gas utilities serving the buildings, which is rather significant. The estimated WHA expenditure on water, sewer, electric and gas in 2012 was about \$8,800.

SWAG continues to work diligently on enhancing its financial capacity. The organization did obtain its official status as a 501(c)3 non-profit, thereby allowing it to pursue grants from larger organizations, including the Denver Metro Area Scientific and Cultural Facilities District (SCFD). SWAG will also surpass the "waiting period" requirement imposed by the SCFD to become an entity eligible to apply for

funding in 2013. SWAG will be eligible to apply for SCFD funding in late 2013 for possible funding in 2014. SWAG's ability to secure funding from the SCFD, however, remains premised, in significant part, on a local government commitment towards the organization through the provision of "cash" contributions provided on a regular basis. While the WHA's contributions through the nominal lease provided to SWAG and payment of the utility costs are significant, the SCFD does not recognize this "in-kind" assistance as part of a local government "cash" match. To date, the City has also not been able to provide any "cash" contribution to SWAG given its continuing budgetary limitations.

Staff proposes that this funding dilemma be remedied by reworking the lease agreement with SWAG for 2013. In the past, WHA has annually assumed direct responsibility for payment of the facilities' utilities (estimated at about \$8,800 in 2012). As proposed, the lease for 2013 would require SWAG to assume responsibility for payment of the utility bills rather than the WHA. To assist SWAG in covering the cost of the utilities for the year, the WHA would provide a lump-sum "grant" to cover the estimated cost. Staff is proposing a \$10,000 grant to cover anticipated increases in water, gas and electric rates. This approach would provide several benefits to WHA and SWAG including:

- SWAG would receive a cash contribution that could be critical to being successful in leveraging funding from other grant sources, including the SCFD;
- Putting the utilities in SWAG's name would increase its credit worthiness as a non-profit organization;
- The City would be removed from the responsibility of managing and paying the bills; and,
- SWAG would have more of an incentive to keep utility costs in check.

The 2013 WHA budget has sufficient funds in its utility account to provide the grant.

The proposed 2013 lease agreement would also require SWAG to pay a nominal \$10.00 fee for the year. The WHA will continue to be responsible for major maintenance and repair items. Per the lease, SWAG will also be required to carry its own liability insurance in addition to the coverage obtained by the WHA through CIRSA

The approval of the proposed lease to SWAG meets the City's Strategic Plan Goal of creating "Vibrant Neighborhoods and Commercial Areas," with the Objective to "develop Westminster as a cultural art community."

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments
- Resolution
- Lease Agreement

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **52**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2013

**A RESOLUTION
APPROVING A LEASE BETWEEN THE WESTMINSTER HOUSING AUTHORITY
AND THE SOUTH WESTMINSTER ARTS GROUP FOR
3915 WEST 73RD AVENUE AND 7287 LOWELL BOULEVARD**

WHEREAS, the Westminster Housing Authority owns property located at 3915 West 73rd Avenue and 7287 Lowell Boulevard (“the Premises”); and

WHEREAS, the South Westminster Arts Group is a non-profit organization dedicated to promoting community arts activities and providing an incubator for artists’ businesses; and

WHEREAS, the South Westminster Arts Group proposes to use the Premises to promote community arts activities, including operation of a community theater, art shows, meetings, classes and programming that support the growth of non-profit cultural activity and artists’ businesses; and

WHEREAS, the attached Lease Agreement would allow the South Westminster Arts Group to operate out of the Premises.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Westminster Housing Authority that the Executive Director is hereby authorized to execute and the Authority Clerk to attest the attached Lease Agreement, or a substantially similar form of Lease Agreement as approved by the Authority Attorney.

PASSED AND ADOPTED this 28th day of January, 2013.

Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

Authority Attorney

LEASE AGREEMENT

This **Lease** is made between the **WESTMINSTER HOUSING AUTHORITY**, a Colorado public housing authority (hereinafter called “Lessor” or “Authority”), and **SOUTH WESTMINSTER ARTS GROUP**, a Colorado nonprofit corporation (hereinafter called “Lessee” or “SWAG”).

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

1. Premises. The Premises consist of the buildings and property located at 3915 West 73rd Avenue and 7287 Lowell Boulevard.

2. Term and Rent. Lessor demises the above Premises for a term of one year, commencing 12:00 a.m. on January 1, 2013, terminating 12:00 a.m. on January 1, 2014, or sooner as provided herein (hereinafter, the “Term”), for a nominal rent payment for the Term in the sum of Ten Dollars (\$10.00), and for other good and valuable consideration described below and in Exhibit 1.

3. Use. Lessee shall use and occupy the Premises for activities and functions specifically related to the purpose and mission of the South Westminster Arts Group. The Premises shall be used for no other purpose unless approved in writing by the Lessor.

4. Utilities, Care and Maintenance of Premises.

a. Lessee’s responsibilities: Lessee acknowledges and accepts the Premises in their as-is condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for paying the cost of utilities as defined in item 8. Lessee shall be responsible for the routine care and maintenance of the interior of the Premises of a housekeeping nature, including custodial and janitorial services, normal and reasonable cleaning, and the replacement of all consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the Premises by the Lessee. The Lessee shall be responsible for utility costs as defined in item 8.

b. Lessor’s responsibilities: The Lessor shall be responsible for all general repairs relative to the principal structure of the Premises, including roofing, plumbing, mechanical and electrical equipment. Minor interior repairs, not to exceed \$500 in cost can be submitted to the City of Westminster Building Operations and Maintenance Department and will be handled subject to the availability of City staff. Minor repairs in excess of \$500 shall be made by Lessor only upon approval of the Executive Director of the Authority.

5. Alterations. Lessee shall not, without first obtaining the prior written consent of Authority staff, make any interior alterations, additions, or improvements to the principal structure of the Premises. Lessee shall not make any changes to the exterior of the Premises. In particular, the south elevation is a historic restoration funded in 2009 by the State Historical Fund. As a result of this funding and the local historic landmark designation, no alterations, including signage, may be made to any part of the exterior of the building without permission from both the Westminster Historic Landmark Board and the State Historical Fund.

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

7. Assignment and Subletting. Lessee shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Lessor, which shall be granted or refused in Lessor’s sole

discretion. Any such assignment or subletting without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's forthwith termination of this Lease.

8. Utilities. The Lessee shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer for the 2013 year. Effective February 1, 2013, the Lessee shall transfer all utility accounts related to heat, electricity, water and sewer for the buildings from the WHA to SWAG. The gas utility shall be provided without interruption so as to prevent damage resulting from freezing temperatures. All applications and connections for other services desired by Lessee for the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services.

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

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

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

12. Insurance.

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

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

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

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

15. Lessor's Remedies on Default. If Lessee defaults in the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such

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

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

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

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

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

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

21. Early Termination. The WHA retains to the right to terminate the lease on the properties located at 3630 W. 73rd Avenue and 7287 Lowell Boulevard upon 30 days written notice to the Lessor.

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

23. Survival. Paragraphs 8, 11, and 15 through 20 inclusive shall survive any termination of this Lease by either Lessee or Lessor.

Signed as of this ____ day of _____, 2013.

WESTMINSTER HOUSING AUTHORITY

By: _____
Nancy McNally, Chairperson

Attest: _____
Authority Clerk

SOUTH WESTMINSTER ARTS GROUP

By: _____
Debbie Teter, Chair

Attest: _____

APPROVED AS TO LEGAL FORM:

Authority Attorney

EXHIBIT 1

As further consideration for the use of the Premises, SWAG agrees to operate the building pursuant to the following public purposes:

1. The Premises, as outlined on the map below, are located in a low and moderate-income neighborhood, in which revitalization activities and projects are a City priority. The Westminster Housing Authority is permitted by state law to own a community center that supports its affordable housing goals. SWAG is expected to operate the Premises for the benefit of the neighborhood, keeping in mind the diversity of the neighborhood, including incomes, ethnicity, age and abilities.
2. Goals for use of the outlined Premises may include:
 - a. Community use and access.
 - b. Providing resources and programming to support the careers of emerging creative professionals.
 - c. Providing opportunities for users of the building to engage in volunteerism and community service.
 - d. Educational opportunities for both youth and adults
 - e. Promotion of a variety of cultural and creative activities including, but not limited to, visual arts, music, digital art and video, historic preservation, ethnic cultural programming, festivals and other projects and activities of interest to the inhabitants of the neighborhood.
3. SWAG is expected to coordinate its events and activities with neighboring landowners and businesses in order to manage parking and other impacts efficiently and with consideration of all concerned.
4. SWAG is expected to keep the outlined Premises clean and free of weeds and debris.

7287 Lowell Boulevard



3915 W. 73rd Avenue

