



## CITY COUNCIL AGENDA

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

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

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings** (January 26, 2014)
4. **Report of City Officials**
  - A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
  - A. 2014 Digital Cities Survey Award
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. 2015 Server and Computer Replacement Purchases
  - B. Purchase of Replacement Mobile Computers for Police and Fire Departments
  - C. Library Services Master Plan Contract Authorization
  - D. 2015 Foothills Animal Shelter Construction Debt Assessment
  - E. Citywide Radio System Service and Maintenance Contract Payment
  - F. 2015 Pump Station Improvements Project Phase 1 Design/Build Contract
  - G. 2015 Pressure Reducing Valve Rehabilitation and Replacement Project Design Contract
  - H. 2015 Asphalt and Crackseal Material Purchase
  - I. Intergovernmental Agreement with Federal Heights for the 2015 Rehabilitation of 104<sup>th</sup> Avenue
  - J. Amendment of Pacific West Companies and Urban Pacific Multi-Housing LLC Contract to Buy and Sell Real Estate
  - K. Authorize the Mayor to sign the Moorings at Hidden Lake Annexation Agreement
  - L. Second Reading of Councillor's Bill No. 3 Annexing the Moorings at Hidden Lake Property
  - M. Second Reading of Councillor's Bill No. 4 Amending CLUP Designation for the Moorings at Hidden Lake Property
  - N. Second Reading of Councillor's Bill No. 5 Zoning the Moorings at Hidden Lake Property
  - O. Second Reading of Councillor's Bill No. 6 Authorizing Lease of 7287 Lowell Boulevard to SWAG
  - P. Second Reading of Councillor's Bill No. 7 Authorizing EDA with Tenere, Inc.
  - Q. Second Reading of Councillor's Bill No. 8 Authorizing EDA with Trimble Navigation
9. **Appointments and Resignations**
  - A. Resolution No. 4 Reappointment Members to Boards and Commissions and Filling Vacancies
10. **Public Hearings and Other New Business**
  - A. Councillor's Bill No. 11 Financing for Little Dry Creek Drainage Improvements (Possible Emergency Ordinance)
  - B. Councillor's Bill No. 12 Amending Title XI, W.M.C., with Annual Code Updates
  - C. Resolution No. 5 Awarding Service Commitments to Connections at Westminster S-F Detached Residential
  - D. Resolution No. 6 Awarding Service Commitments to Huron Plaza S-F Detached Residential
  - E. Resolution No. 7 Awarding to Ryland Homes at City Park S-F Detached Residential
  - F. Resolution No. 8 Awarding to Winters Subdivision S-F Detached Residential
  - G. Resolution No. 9 Awarding Service Commitments to Alpine Vista Multi-Family Residential

- H. Resolution No. 10 Awarding to Legacy at Westminster Promenade East TMUND
- I. Resolution No. 11 Awarding Service Commitments to The Plaza at Country Club Village TMUND
- J. Resolutions No. 12, 13, and 14 Approving IGAs with CDOT for Federal Bridge Replacement
- K. Authorize Payment to CDOT Pursuant to IGAs

**11. Old Business and Passage of Ordinances on Second Reading**

- A. Special Legal Counsel Services for Drafting of Collective Bargaining Ordinance (Tabled 10-27-14)

**12. Miscellaneous Business and Executive Session**

- A. City Council
- B. Executive Session
  - 1. Discussions with the City Attorney for the Purpose of Receiving Legal Advice on Pending Litigation in the Brandt v City of Westminster Case as Authorized by Section 24-6-402(4)(b), C.R.S., and Section 1-11-3(C)(3), W.M.C.
  - 2. Discuss Strategy and Progress on Negotiations Related to Economic Development Matters for the Westminster Urban Center Redevelopment, Disclosure of which Would Seriously Jeopardize the City’s Ability to Secure the Development; to Discuss Strategy and Progress on the Possible Sale, Acquisition, Trade, or Exchange of Property Rights, Including Future Leases; and to Provide Instruction to the City Negotiators on the Same as Authorized by Sections 1-11-3(C)(2), (4) and (7), W.M.C., and Sections 24-6-402(4)(a) and (e), C.R.S.

**13. Adjournment**

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

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**GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS**

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, JANUARY 26, 2015, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of January 12, 2015, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. Smithers reported that immediately following adjournment of this meeting and the Westminster Housing Authority meeting, the City Council would conduct an executive session in the Board Room to discuss strategy and progress on negotiations related to economic development matters for the Westminster Urban Center Redevelopment, disclosure of which would seriously jeopardize the City's ability to secure the development; discuss strategy and progress on the possible sale, acquisition, trade or exchange of property rights, including future leases; and provide instruction to the City's negotiators on the same as authorized by Sections 1-11-3(C)(2), (4), and (7), W.M.C., and Sections 24-6-402(4)(a) and (e), C.R.S.

COUNCIL REPORTS

Councillor Garcia reported that on January 22, the Scientific and Cultural Facilities District held its annual Board of Directors meeting at the Westminster History Center, presenting an opportunity to showcase the Center. It had been an honor to host the meeting.

Councillor Seitz reported City Attorney David Frankel had been formally welcomed at a reception earlier in the afternoon. She thanked Hilary Graham, Deputy City Attorney, for aptly serving as Acting City Attorney during the recruitment process, as well as Mr. Smithers for accepting duties of the City Manager to bridge the gap between J. Brent McFall's retirement departure and the beginning of Donald M. Tripps's tenure as City Manager on February 9. The City had hosted a wonderful retirement celebration for Mr. McFall on January 22 in the Community Room at City Park Recreation Center that had been well attended by current and former City employees, current and former City Council members, professional colleagues from the region, and community members. The community had been fortunate to retain Mr. McFall and would enjoy the benefits of his contributions for decades to come. Now everyone looked forward with enthusiasm to Mr. Tripp's leadership.

CITIZEN COMMUNICATION

Jeremy Rodriguez of Congressman Ed Perlmutter's staff invited high school students and their parents to a Tuition and Scholarship Fair the Congressman was hosting on January 31 from 10 a.m. to noon at Westminster High School. Mayor Atchison asked Mr. Rodriguez to extend Council's best wishes to Congressman Perlmutter's wife, who was recovering from surgery.

Bryan Head of Head Insurance Group and a member of the Westminster Chamber of Commerce asked that a welcoming letter from the Mayor sent to him with a newly issued business license be updated to include the Westminster Chamber of Commerce. He also informed Council of an upcoming workshop sponsored by the Westminster Chamber of Commerce and invited Council and Staff to attend.

Speaking on behalf of the Westminster Chamber of Commerce, Richard Seymour, 9705 Kipling Street, invited Council and Staff to participate in the Chamber's first Annual Awards Gala on February 18. The event would be held at Noah's Event Center from 6-8 P.M. Tickets and sponsorships of tables were available for purchase by contacting [info@WestminsterChamber.biz](mailto:info@WestminsterChamber.biz).

### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the December 2014 Financial Report as presented; authorize the Mayor to execute the employment agreement with Donald M. Tripp for his services as City Manager for 2015 with an effective date of February 9, 2015, and an automatic renewal for 2016 unless terminated pursuant to the terms of the agreement; based upon the recommendation of the City Manager, determine that the public interest would be best served by approving Fleet Maintenance cumulative purchases in 2015 with Chief Petroleum, Gray Oil, and Hill Petroleum for total fuel purchases not to exceed \$432,036 total among the three vendors; accept the Fourth Quarter 2014 Insurance Claims Report; authorize the City Manager to execute a 2015 Intergovernmental Agreement with the City of Thornton amending and restating the 2006 Intergovernmental Agreement between the Cities of Thornton and Westminster regarding maintenance responsibilities at I-25 and the 144<sup>th</sup> and 136<sup>th</sup> Avenue Interchanges; authorize the Mayor to execute the Intergovernmental Agreement with Adams County regarding funding for Little Dry Creek Road and Drainage Improvements in substantially the same form as attached to the agenda memorandum; authorize the City Manager to sign the seventh amended intergovernmental agreement with the Urban Drainage and Flood Control District and Adams County for the Little Dry Creek Regional Detention Pond and related channel improvements; authorize the City Manager to execute a fifth amendment to the Contract to Buy and Sell Real Estate, with Urban Pacific Multi-Housing, LLC and Pacific West Communities, Inc. in a form satisfactory to the City Attorney and to take all actions necessary to close this land sale; final passage on second reading of Councillor's Bill No. 48 appropriating General Fund Contingency funds to the General Capital Improvement Fund; final passage on second reading of Councillor's Bill No. 1 approving a Comprehensive Plan Amendment changing the designation of Lots 4, 7, and 10 of the Northwest Business Park from Office/RD High Intensity to Mixed-Use; and final passage on second reading of Councillor's Bill No. 2 appropriating \$26,576 of 2014 Parks, Open Space and Trails Fund Carryover to the General Capital Improvement Fund.

Councillor Baker moved to approve the consent agenda as presented, excluding Agenda Item 8H. Councillor Seitz seconded the motion, which passed unanimously.

### AMENDMENT OF CONTRACT TO BUY AND SELL REAL ESTATE (AGENDA ITEM 8H)

It was moved by Councillor Pinter and seconded by Councillor Garcia to authorize the City Manager to execute a fifth amendment to the Contract to Buy and Sell Real Estate, with Urban Pacific Multi-Housing, LLC and Pacific West Communities, Inc. in a form satisfactory to the City Attorney and to take all actions necessary to close this land sale. Following comments from Council members, the motion passed on a 5:1 vote with Councillor Baker dissenting.

### PUBLIC HEARING ON MOORINGS AT HIDDEN LAKE ANNEXATION, CLUP AND ZONING

At 7:19 p.m., the Mayor opened a public hearing to consider the Annexation, Comprehensive Plan Amendment, Zoning, Preliminary Development Plan and Official Development Plan for the Moorings at Hidden Lake Property. Mac Cummins, Planning Manager, summarized background information and entered into the record the agenda memorandum and its attachments, as well as evidence that the public hearing notification requirements of the Westminster Municipal Code had been met. The property was located south of 68<sup>th</sup> Avenue and the Westminster High School and was directly adjacent to Hidden Lake. Residential development on 8 lots was proposed. The Planning Commission had reviewed this proposal and had recommended approval.

George Kast, the applicant, displayed a copy of the proposed development plan and the building design. He answered questions from Council, noting that traditional access to and use of the lake would not change.

When all questions from Council had been answered, the Mayor opened the hearing to public comment. No one wished to speak, and the Mayor closed the hearing at 7:30 p.m.

RESOLUTION NO. 2 – ANNEXATION FINDINGS FOR MOORINGS AT HIDDEN LAKE PROPERTY

Upon a motion by Councillor Seitz, seconded by Councillor Briggs, the Council voted unanimously at roll call to adopt Resolution No. 2, making certain findings of fact as required under Section 31-12-110, C.R.S., regarding the Moorings at Hidden Lake property annexation.

COUNCILLOR’S BILL NO. 3 ANNEXING THE MOORINGS AT HIDDEN LAKE PROPERTY

It was moved by Councillor Seitz and seconded by Councillor Briggs to pass on first reading Councillor’s Bill No. 3 annexing the Moorings at Hidden Lake property into the City. On roll call vote, the motion passed unanimously.

COUNCILLOR’S BILL NO. 4 AMENDING CLUP FOR MOORINGS AT HIDDEN LAKE PROPERTY

Councillor Seitz moved, seconded by Councillor Briggs, to pass on first reading Councillor’s Bill No. 4 approving a Comprehensive Plan amendment for the Moorings at Hidden Lake property by changing the designation from Adams County Water Body to City of Westminster R-2.5, to Private Parks/Open Space, and to City-Owned Open Space, and to change the designation of a .377-acre, City-owned open space parcel within the City (Lot 1 of the East Bay Senior Housing Preliminary Development Plan and Official Development Plan) from City-Owned Open Space to R-2.5 based on finding that the proposed amendment would be in the public good and was in compliance with the overall purpose and intent of the Comprehensive Plan. The motion passed unanimously on roll call vote.

COUNCILLOR’S BILL NO. 5 ZONING THE MOORINGS AT HIDDEN LAKE PROPERTY

By motion of Councillor Seitz, seconded by Councillor Briggs, the Council voted unanimously at roll call to pass on first reading Councillor’s Bill No. 5, approving the zoning of the Moorings at Hidden Lake property City of Westminster Planned Unit Development, changing the zoning of the parcel being annexed from Adams County R-1-C and CO to City of Westminster Planned Unit Development, to allow single-family detached residential uses, private parks and private open space use, and City-Owned Open Space use, with the designation of Lot 1 of the East Bay Senior Housing Preliminary Development Plan and Official Development Plan of Planned Unit Development not changed.

MOORINGS AT HIDDEN LAKE PROPERTY PDP AND ODP

Councillor Seitz moved, seconded by Councillor Briggs, to approve the Preliminary and Official Development Plans of the Moorings at Hidden Lake based on a finding that the criteria set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code had been met. The motion carried unanimously.

COOPERATION AGREEMENT WITH WHA AND SWAG ON PROMOTION AND PROGRAMMING

Councillor Garcia moved, seconded by Councillor Pinter, to authorize the City Manager to execute a Cooperation Agreement, in substantially the same form as attached to the agenda memorandum, with the Westminster Housing Authority and the South Westminster Arts Group relative to promoting and providing arts and cultural activities and programming in South Westminster. The motion carried with all Council members voting affirmatively.

COUNCILLOR’S BILL NO. 6 APPROVING LEASE TO SWAG OF 7287 LOWELL BOULEVARD

It was moved by Councillor Garcia, seconded by Councillor Pinter, to pass on first reading Councillor’s Bill No. 6 authorizing the execution of a lease agreement, in substantially the same form as attached to the agenda memorandum, for property located at 7287 Lowell Boulevard. At roll call, the vote was unanimous.

COUNCILLOR'S BILL NO. 7 APPROVING PROPOSED EDA WITH TENERE, INC.

Councillor Briggs moved to pass on first reading Councillor's Bill No. 7, authorizing the City Manager to execute and implement an Economic Development Agreement with Tenere, Inc. Councillor Seitz seconded the motion and it passed unanimously at roll call.

COUNCILLOR'S BILL NO. 8 APPROVING PROPOSED EDA WITH TRIMBLE NAVIGATION

By motion of Councillor Pinter, seconded by Councillor Garcia, on roll call vote the Council unanimously passed on first reading Councillor's Bill No. 8, authorizing the City Manager to execute and implement an Economic Development Agreement with Trimble Navigation.

COUNCILLOR'S BILL NO. 9 FINANCING FOR LDC DRAINAGE IMPROVEMENTS

It was moved by Councillor Briggs and seconded by Councillor Seitz to pass Councillor's Bill No. 9 as an emergency ordinance, approving the issuance of private placement bonds (Bonds) in a principal amount not to exceed \$4,650,000 with UMB Bank, n.a. for purposes of financing a portion of the drainage improvements in the Transit Oriented Development (TOD) in South Westminster along Little Dry Creek, and direct the Mayor, City Manager, Finance Director and City Clerk to sign necessary documents on behalf of the City. Following comment by Councillor Baker, the motion failed on a 5:1 vote.

COUNCILLOR'S BILL NO. 10 – SUPPLEMENTAL APPROPRIATION TO STORM DRAINAGE FUND

Councillor Briggs moved to pass Councillor's Bill No. 10 as an emergency ordinance, providing for a supplemental appropriation of funds to the 2015 budget of the Storm Drainage Fund. The motion was seconded by Councillor Garcia and passed unanimously on roll call vote.

RESOLUTION NO. 3 AUTHORIZING SPRING 2015 ADAMS COUNTY GRANT APPLICATIONS

Councillor Pinter moved, seconded by Councillor Briggs, to adopt Resolution No. 2 authorizing the Parks, Recreation, and Libraries Department to pursue two grants from the Adams County Open Space grant program during the 2015 spring cycle in the amount of \$400,000 for the Metzger Farm South Trail, which was an extension of a trail from the Ranch Creek trail along the north side of 120<sup>th</sup> Avenue to Lowell Boulevard, and for \$75,000 for engineering work to refine improvements, obtain engineering drawings, and provide up-to-date cost estimates for the Little Dry Creek Habitat Improvement Project. At roll call, the motion passed by a 5:1 margin with Councillor Baker voting no.

ACTING CITY MANAGER APPOINTMENT REMOVED FROM TABLE AND APPROVED

It was moved by Councillor Baker and seconded by Councillor Seitz to remove Agenda Item 11C from the table. The motion passed unanimously.

It was moved by Councillor Baker and seconded by Councillor Garcia to appoint Deputy City Manager Stephen Smithers to serve as Acting City Manager to have and exercise the duties and responsibilities of City Manager under the City Charter until such time as a new City Manager was appointed by Council. The motion carried with all Council members voting affirmatively.

SELECTION OF NEW CITY COUNCILLOR AND OATH OF OFFICE

Mayor Atchison briefly summarized Part VII, Section 24, of the City Council Rules and Regulations. Pursuant to same, the City Clerk had prepared ballots with the names of all candidates who had been interviewed and Council members were asked to cast their first ballot. Upon counting the first ballot, the Clerk announced a tie between

Shannon Bird and David DeMott. The names of all other applicants dropped from the ballot, and Council was asked to vote again for either Shannon Bird or David DeMott. The results of the ballot had not changed, and Council was asked to vote a third time for only Ms. Bird or Mr. DeMott. A tie remained after the third balloting was counted.

Councillor Garcia moved to waive Part VII, Section 9, of Council's Rules and Regulations, requiring alteration or amendment of Council's Rules to be submitted in writing and adopted by resolution, to allow revision of Council's Rules by motion and majority vote as to this agenda item only. Councillor Baker seconded the motion, and it carried unanimously.

Councillor Garcia moved, seconded by Councillor Baker, to revise Part VII, Section 24, of Council's Rules and Regulations regarding appointments to fill a vacancy to allow reinstatement of the nomination of all applicants to again allow consideration by written ballot of all applicants following the third successive tie vote. The motion carried unanimously.

Council members cast their ballot with all applicants appearing thereon. The Clerk announced that Maria De Cambra, having received a majority of the votes, had been elected to fill the vacancy on City Council, which was Faith Winter's unexpired term that would end in November, 2015.

Judge John Stipech administered the Oath of Office to Councillor De Cambra, and she took her seat on the dais.

#### ELECTION OF MAYOR PRO TEM

By secret ballot, the Council members voted to elect a Mayor Pro Tem to serve the unexpired balance of Faith Winter's term. Ballots were tallied and the Clerk announced that Bob Briggs had been elected to the office of Mayor Pro Tem.

Judge Stipech administered the Oath of Office of Mayor Pro Tem Briggs.

#### ADJOURNMENT

There was no further business to come before the City Council, and, hearing no objections, Mayor Atchison adjourned the meeting at 8:01 p.m.

ATTEST:

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City Clerk

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Mayor



## Agenda Item 6 A

### Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** Digital Cities Survey 2014 Award

**Prepared By:** David Puntenney, Information Technology Director

### Recommended City Council Action

Present the Digital Cities Survey 2014 Award to the Information Technology Department in recognition of the success that the City of Westminster has achieved in the use of information technology.

### Summary Statement

- City Council is asked to present the Center for Digital Government's "Digital Cities Survey" award that recognizes the success the City of Westminster has achieved - via the use of technology - in operating efficiencies, realizing strategic objectives, innovative and creative solutions, effective collaboration and transparency measures.
- This award was accepted by City Councilors Anita Seitz, Emma Pinter and Alberto Garcia as well as Deputy City Manager Steve Smithers and IT Director David Puntenney during a special recognition and award presentation at the National League of Cities Conference in Austin, Texas, on November 20, 2014.
- Information Technology Director David Puntenney, Software Engineer Manager Art Rea, Information Systems Manager Scott Rope, and Senior Telecommunication Administrator Dan Hord will be in attendance at the meeting to accept the award.

**Expenditure Required:** \$0

**Source of Funds:** N/A



SUBJECT: Digital Cities Survey 2014 Winner

**Policy Issue**

None identified.

**Alternative**

None identified.

**Background Information**

The Center for Digital Government, a national research and advisory institute on information technology policies and best practices in state and local government, conducts an annual comprehensive nationwide Digital Cities Survey to evaluate results achieved by cities - via the use of technology - in operating efficiencies, realizing strategic objectives, innovative or creative solutions or approaches, effective collaboration and transparency measures. Participation in the program has increased each year and competition is growing. Cities are categorized and ranked by population.

The Center for Digital Government evaluated the City of Westminster and other participating cities from across the nation in the areas of Information Technology strategic planning, hardware and software technologies, citizen engagement, green initiatives, city services offered through web sites, use of mobile technology and policies, technology use in public safety, geographic information system capabilities, voice and data networks and more. Staff is very pleased to report that the City of Westminster was awarded a 4<sup>th</sup> place ranking in the population category of 75,000 – 125,000. This is the twelfth year Westminster has achieved a top ten ranking nationwide. Westminster was one of only two Colorado cities selected in the 75,000 – 125,000 population category. Winners are posted on the Center for Digital Government's website ([www.centerdigitalgov.com](http://www.centerdigitalgov.com)).

The Center for Digital Government hosted an award reception for winners during the NLC Convention in Austin, Texas on November 20, 2014.

This award addresses two Strategic Plan goals: Excellence in City Services and Beautiful, Desirable, Environmentally Responsible City.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** 2015 Server and Computer Replacement Purchases

**Prepared By:** David Puntenney, Information Technology Director  
Scott Rope, Information Systems Manager

**Recommended City Council Action**

Find that the Western States Contracting Alliance (WSCA) pricing meets City Charter bidding requirements and authorize Staff to proceed with 2015 calendar year purchases of laptop and desktop PCs, storage hardware, computer servers, printers and software from Dell, HP, Lenovo and SHI Corporations in an amount not to exceed \$457,375.

**Summary Statement**

- The City uses 37 physical and 146 virtual computer servers to support software applications and provide services for all departments.
- Servers and laptops are replaced on a four-year replacement schedule and desktop computers are replaced on a five-year replacement schedule in order to provide a high level of reliability, availability and performance.
- Maintenance contracts for servers more than four years old are expensive.
- City Council authorized adequate funds in the 2015 Utility Fund Information Technology Department operating budget to purchase replacement servers and software.
- City Council authorized adequate funds in the appropriate 2015 Utility Fund, General Golf and POST Funds department's operating budgets for the purchase of departmental PCs via the PC Replacement fee managed in the General Capital Outlay Replacement Fund (GCORF).
- The City purchases hardware through Dell, HP, Lenovo and SHI at or below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements. The prices under this joint purchasing contract are well below what the City could achieve purchasing on its own.
- The City is scheduled to replace and purchase new a total of 228 desktop computers, 39 laptops, and 3 servers in 2015.
- Technology purchases and services including software maintenance, disk storage, monitors, RAM and related supplies are also purchased through Dell, HP, Lenovo and SHI at or below the Western States Contracting Alliance (WSCA) contract prices and are included in the total projected 2015 amount.
- Decommissioned desktop and laptop computers are donated to the 7:10 Rotary Club for the Computers for Kids program.
- Several decommissioned computer servers will be relocated to the City's computer disaster recovery facility to serve as short-term recovery computers in the event of a disaster at the primary computer facility located at City Hall.

**Expenditure Required:** \$ 457,375

**Source of Funds:** Utility Fund, Information Technology Department Operating Budget,  
and General Capital Outlay Replacement Fund

### **Policy Issue**

Should the City continue to replace aged and purchase new computer servers, laptop computers and peripheral equipment and software to ensure high availability, performance and capacity to support software applications and users?

### **Alternative**

Forgo the 2015 replacement and purchase of new computer hardware, software and servers. This alternative is not recommended for the following reasons:

- Continued maintenance on older servers is expensive. The City purchases new servers that include a four-year maintenance agreement.
- Application software upgrades frequently require more processing speed and memory. Attempting to upgrade older servers to meet the demands of new applications is many times impossible and not cost effective, especially when combined with the cost of maintaining older computer technology.
- The expected performance and reliability of servers more than four years old is unacceptable for the City's critical applications.
- Older desktop and laptop computers lack the processing power needed to adequately support newer applications.
- New computers approved in the Adopted 2015 Budget are primarily associated with new staff authorized and the computers are needed to be able to properly perform their job responsibilities.

### **Background Information**

The City uses 1,115 personal computers, laptops and iPads throughout all departments, representing an investment of approximately \$850,000. These computers provide access to essential software and services needed for City operations.

In 2001, the City established a PC replacement schedule for desktop computers of three years or four years, depending on the type of applications and performance requirements on each PC. In 2005, with the improved reliability and speed of new computers, Information Technology eliminated the three-year replacement schedule, and moved all desktop computers to a four-year replacement cycle. In 2008, IT Staff evaluated the potential savings and risk associated with extending the desktop computer replacement schedule from four years to five years.

Since 2008, Staff has found the modified replacement schedule to be very successful and has realized approximately \$198,000 (an average of \$33,000 per year) in savings. In 2015, the City will purchase up to 25 spare desktop PCs to replace desktop computers that may fail between their fourth and fifth year of use. Additionally, 39 laptops are scheduled for replacement or as additional new laptops in 2015.

In 2006, the Information Technology Department conducted a comprehensive study of "virtualization" technology to determine how such technology could improve computer server availability and reliability while reducing the total number of servers required. Virtualization is the process of configuring an individual server to function as multiple virtual servers, thereby allowing multiple applications to be run on the same server. The study concluded that virtualization would result in a long-term cost benefit to the City by reducing the required number of servers. In 2007, Staff began the virtualization project and has successfully eliminated 45 servers, reducing the total number of servers from 82 to 37. Without virtualization, the City would be replacing on average 12-15 servers per year. Instead, only three servers require replacement in 2015. As a result of virtualization, the City has reduced the replacement budget and realized an average annual net savings of \$40,000 in server replacement costs.

The City's servers support applications such as Computer Aided Dispatch, Public Safety Records Management, Enterprise Resource Management, Court, Geographic Information Systems, Internet, Intranet, Utility Maintenance Management, Utility Billing, Office tools and many others. These servers are critical to departments to provide internal and external customer service and to conduct critical City operations. The City has established a four-year replacement for computer servers. Several decommissioned servers will be relocated to the City's computer disaster recovery facility to provide short term, more limited use in the event of a disaster at City Hall that would restrict access to or availability of production servers. New servers include a four-year maintenance agreement, so the City does not incur additional hardware maintenance expense during the full production life of the servers.

The City has standardized on Dell computer systems, which have some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of Dell equipment and the support provided to the City.

Cooperative purchasing is a powerful, proven tool to save taxpayer money by creating access to the best value possible and reducing administrative overhead. WSCA (the Western States Contracting Alliance) and NASPO (the National Association of State Procurement Officials) use a competitive, lead-state procurement model to capture the best value for common government requirements, including personal computers and peripherals. The City purchases Dell hardware, software and peripheral equipment at or below the WSCA prices, thereby meeting City purchasing requirements and minimizing costs. Contract prices are up to 52% below retail, depending on product purchased under the WSCA contracts. Using this approach for purchasing also saves time and money that would normally be associated with RFP development, advertising, evaluating proposals, and contract management.

This proposal supports the City Council's Strategic Plan goal of Excellence in City Services.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** Purchase of Replacement Mobile Computers for Police and Fire Departments

**Prepared By:** David Puntenney, Information Technology Director  
Scott Rope, Information Systems Manager  
Ed West, IT Systems Supervisor  
Rich Welz, Fire Technical Services Coordinator  
Karin Marquez, Communications Supervisor  
Russ Bowers, Public Safety Communications Administrator

**Recommended City Council Action**

Find that the Western States Contracting Alliance (WSCA) pricing meets City Charter bidding requirements and authorize Staff to proceed with 2015 calendar year purchases of 100 ruggedized mobile computers in an amount not to exceed \$428,000.

**Summary Statement**

- The City currently utilizes 90 ruggedized laptops for Police and Fire. The warranty on these units expired in June 2014. During the past 13 months, Staff from Information Technology, Police and Fire has conducted a comprehensive evaluation of ruggedized computers from various manufacturers to identify the most suitable replacement for the existing ruggedized mobile data terminal (MDT).
- The manufacturer of the current MDTs, General Dynamic, is no longer manufacturing ruggedized computers.
- City staff tested ruggedized laptops and tablets from multiple vendors including Dell, Panasonic, Getach, Fujitsu, and DataComm.
- Following extensive evaluation and testing, the evaluation committee unanimously agreed that the Dell ruggedized laptop computer provides the best in functionality and price for the City.
- The total amount requested includes a five-year “no questions asked” warranty for each computer, eliminating any added cost for hardware maintenance or repair during the five year period.
- Adequate funds are budgeted in the PC Replacement CIP for the MDT computer purchase through Dell.

**Expenditure Required:** Not to exceed \$428,000

**Source of Funds:** General Capital Outlay Replacement Fund: PC Replacement

**Policy Issue**

Should the City of Westminster enter into a purchase agreement, in partnership with Dell, to replace the existing end-of-life MDTs?

**Alternative**

Continue to utilize the current MDT's that are five years old and repair them on a time and materials basis. Repairing failed units is no longer a cost effective option. Additionally, reliability of the existing units is declining, and staff is experiencing failure rates averaging six units per month. This option is not recommended as the MDTs are a critical tool for public safety operations, and reliability and performance is essential.

**Background Information**

In July 2000, the Police and Fire Departments implemented the Intergraph Corporation Computer Aided Dispatch and Records Management System. The capabilities of this system allow a police officer or a firefighter to perform the majority of his/her duties in the field with the use of ruggedized MDT's. These computers are essential as they allow officers to receive calls for service; access interactive maps to aid in locating addresses; prepare and route incident reports to the Intergraph Records Management System; and access the Colorado Bureau of Investigation Crime database to check for wants or warrants on individuals and vehicles. Additionally, with the MDT integrated GPS capabilities, Police and Fire Dispatch staff can monitor the physical location of all Police, Animal Management, Code Enforcement officers, and Fire personnel allowing dispatch staff to send immediate help to an exact location should an emergency situation be declared. The use of MDT's and interactive map functions also enable firefighters to create a plan of attack for structure fires and aids paramedics in quickly locating obscure addresses to provide faster medical attention. The interactive map function also aids Police Department's SWAT Unit in locating physical boundaries and other obstacles that are crucial when setting up perimeters to major in-progress crimes by utilizing aerial photography.

City Council authorized replacement of the MDT's in the adopted 2013-2014 PC Replacement program through a budget of \$428,000.

The City currently owns 90 MDTs. With this acquisition, staff is recommending the purchase of 100 units. The 10 additional units will be utilized in the Police and Fire Departments as spares to minimize the down time of a patrol or fire unit due to having to wait for a replacement MDT for warranty work. Staff believes this will enhance Police and Fire services within the community.

Over the past 13 months, staff from Information Technology, Police and Fire evaluated laptop and tablet computers from several vendors, including Dell, Panasonic, Getac, Fujitsu and Durabook. The evaluation process included setting up demo computers during role call periods so that field staff would have the opportunity to provide feedback to the committee. Additionally, demo units were installed for several weeks in Police and Fire vehicles for field testing.

The latest computer to be evaluated during this project period was the Dell 14 ruggedized laptop computer. After fully considering feedback from Police and Fire staff, the Dell 14 fully ruggedized laptop was selected as the best choice for the City. Dell's quote was the lowest of the three quotes received from vendors, and was also lower than Dell's standard WSCA pricing. Staff also agreed that Dell provided the best product, price, service warranty and Staff is familiar with the company and their service history. The total cost of the Dell 14 fully ruggedized mobile laptops includes a five year no fault warranty and the required mounting docks that secure the computer in the vehicles.

Cooperative purchasing is a powerful, proven tool to save taxpayer money by creating access to the best value possible and reducing administrative overhead. WSCA (the Western States Contracting Alliance) and NASPO (the National Association of State Procurement Officials) use a competitive, lead-state procurement model to capture the best value for common government requirements, including personal computers and peripherals. The City purchases Dell hardware, software and peripheral equipment at or below the WSCA prices, thereby meeting City purchasing requirements and minimizing costs. Contract prices are up to 52% below retail, depending on product purchased under the WSCA contracts. Using this approach for purchasing also saves time and money that would normally be associated with RFP development, advertising, evaluating proposals, and contract management. Staff negotiated pricing with Dell below that normally achievable through the WSCA for this ruggedized laptop purchase.

This proposal supports the City Council's Strategic Plan goal of Excellence in City Services.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



## Agenda Item 8 C

### Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** Library Services Master Plan Contract Authorization

**Prepared By:** Emily Littlejohn, Library Supervisor

### Recommended City Council Action

Authorize Staff to enter into a contract with Godfrey's Associates, Inc. (GA) for the purpose of creating a Westminster Public Libraries Master Plan in the amount of \$83,995, plus a contingency of \$8,399 (10%), for a total authorized expenditure amount not to exceed \$92,394.

### Summary Statement

- The City last completed a Master Plan (MP) in 2007. Many Library systems update master plans utilizing outside consultants every five years.
- Staff is requesting authorization to enter into a contract with Godfrey's Associates (GA) to create the MP. This firm has significant expertise in Library management and operation and uses a Buxton community profile for a detailed demographic assessment of current users and non-users.
- An updated MP will better align City resources with community needs and wants; examine and redesign current program offerings; and assess facility uses.
- Partnering with an external consulting firm will provide expertise beyond current Staff resources in citizen engagement, user group analyses, community profiling, and innovative industry best practices.
- The MP will be data-driven and proactive, allowing the City's library services to be redesigned to meet current and anticipated trends, including technology changes and an understanding of community needs.
- In November 2014, Staff issued a Request for Proposals (RFP) for a MP to nine vendors. Two firms responded: GA and Bennett Wagner Grody Architects (BWGA). GA's proposal was \$96,210. BWGA's proposal was \$78,760. Upon further clarification and assessment, GA's proposal was revised to \$83,995.
- GA's proposal was recommended by a nine-person selection committee because it best responded to the criteria of the RFP. The committee felt that BWGA's proposal was deficient in key areas, whereas GA's proposal was detailed, including programming, technology, library service roles and market analysis.
- The MP update will be funded through the Library Services Operating Budget for Contractual Services. Funds were set aside in the 2014 Operating Budget for this project and will be requested as part of 2014 carryover.

**Expenditure Required:** \$92,394

**Source of Funds:** 2015 General Fund Operating Budget - PRL will utilize existing operating budget to fund the project and will request 2014 carryover to help offset impacts.



## **Policy Issue**

Should City Council approve awarding a contract to Godfrey's Associates, Inc. for the purpose of creating a Westminster Public Libraries Master Plan?

## **Alternatives**

- City Council could decide not to award a contract to Godfrey's Associates, Inc. and instead award to the competing proposal. This is not recommended. Godfrey's proposal was more comprehensive, more detailed, and offered more hours of service at a comparable price.
- City Council could direct City Staff to create the Master Plan in-house. This is not recommended for the reasons outlined in the background information section of this Agenda Memorandum, detailing the experience of Godfrey's Associates with Humphries Poli Architects with Buxton Company, and what an external consulting team could bring to the project.
- City Council could direct Staff not to pursue a Master Plan at this time. This is not recommended. The current plan was created in 2007, is outdated, and our libraries need a strategic plan for the future.

## **Background Information**

The Westminster Public Library (the Library) was established in 1919 and serves the residents of the City of Westminster with two branches. Staff have seen a rise in non-traditional use of the Library such as the checking out of electronic materials, increased computer usage, and demand for community meeting spaces and study rooms. Nationwide, this is a critical time for libraries; changes in digital and technological applications are causing significant evolution in library services.

The Library, as a customer-based organization, actively promotes and supports literacy of all types. It is essential the library master plan be proactive in identifying the future literacies needed and be data driven and created with community engagement at the forefront.

Libraries continue to provide an important service to the community. In 2014, Westminster Public Libraries had 941,256 check-outs, 6,190 new library card registrations, 87,782 reference questions, and 428,991 door count visitors. There were also 1,195 children's programs and tours and 548 adult and young adult programs and tours.

A thoughtful and data-driven Master Plan will provide a roadmap for the Library and align with the City of Westminster Strategic Plan. The Library Division had an operating budget of \$2,917,699 in 2014. Investing now in an experienced and qualified set of consultants at a cost of \$83,995 will result in a Master Plan with a lifespan of seven to ten years; in other words, this initial investment will help steer the course of at least \$21,000,000 in spending over the course of the next seven to ten years.

In 2007, a five-year Library Master Plan was completed and implemented. The new five-year Master Plan was delayed in 2012 to allow the Parks, Recreation and Libraries Department (PRL) time to complete its new mission statement. Since 2012, PRL has worked to develop a shared mission statement and vision and service delivery model based on community needs, as identified in the 2012 and 2014 Citizen Surveys and in the 2013 PRL Citizen Needs Assessment Survey. Information gleaned from the Libraries Master Plan work will be a value-added enhancement to the 2013 PRL Citizen Needs Assessment Survey, helping to identify how the Library Division can better fulfill the PRL mission of "providing opportunities for a vibrant community with a commitment to nature, wellness and literacy."

This project supports the City's Strategic Plan Goals of "Vibrant and Inclusive Neighborhoods," "Comprehensive Community Engagement," and "Excellence in City Services" by initiating a community outreach process, working to identify future needs of all demographics in the City, identifying innovative services that exceed community expectations, and proactively leading a planning process seeking to ensure the libraries continue to be seen as a vibrant resource in the 21<sup>st</sup> century.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** 2015 Foothills Animal Shelter Construction Debt Assessment

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

**Recommended City Council Action**

Authorize payment of \$87,058.73 to Jefferson County for the City's 2015 assessment for construction debt repayment.

**Summary Statement**

- On November 25, 1996, City Council authorized the City Manager to enter into an Intergovernmental Agreement (IGA) for the provision of all animal sheltering functions for the City of Westminster to be located at Table Mountain Animal Center (TMAC). Westminster is party to this agreement with Jefferson County, Lakewood, Wheat Ridge, Arvada, Edgewater and Golden. The Agreement covers Westminster residents who live in Adams County as well as Jefferson County. In August 2010, TMAC changed its name to Foothills Animal Shelter (FAS) in conjunction with the move to the new facility located at 580 McIntyre Street in Golden.
- In August of 2012, Council approved a new IGA with Jefferson County and the cities of Lakewood, Wheat Ridge, Arvada Edgewater and Golden. This new IGA combined and restructured the Foothills Animal Shelter (FAS) construction debt repayment and the Countywide Dog Licensing Program agreements that had been in effect.
- The former agreements allowed for the revenue collected from the sale of dog licenses throughout the County to be applied toward the FAS construction debt repayment to Jefferson County, while the parties were annually assessed for operational costs of the facility. The new IGA allows for the dog licensing revenue to cover FAS operational costs and the parties will now be annually assessed for the construction debt repayment by Jefferson County.
- The amount requested for the annual assessment is within the funds authorized by City Council for this item in the 2015 Police Department budget.

**Expenditure Required:** \$87,058.73

**Source of Funds:** 2015 General Fund – Police Department Operating Budget

**Policy Issue**

Should City Council authorize the expenditure of \$87,058.73 for Westminster's 2015 assessment for Foothills Animal Shelter construction debt repayment?

**Alternative**

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

**Background Information**

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

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

The construction debt assessment for 2015 represents a 0.6% decrease from the 2014 assessment of \$87,580.57. Because the assessment is based on the loan principal balance, the annual assessment will incrementally decrease as the principal is paid down.

Adequate funds are budgeted in the Police Department's 2015 General Fund Operating Budget for this expense.

Action on this item supports City Council's Strategic Plan goal of Excellence in City Services.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** Citywide Radio System Service and Maintenance Contract Payment

**Prepared By:** Russ Bowers, Communications Administrator  
Mike Cressman, Deputy Chief

**Recommended City Council Action**

Authorize payment of \$148,500 to Airbus DS Communications for the 2015 annual service/maintenance contract payment on the Citywide Radio System equipment.

**Summary Statement**

- The City of Westminster's radio system serves the Police, Fire, Public Works and Utilities, and Parks, Recreation and Libraries Departments and is managed by the Police Department.
- In 2013, the City of Westminster replaced the radio system with a P25 digital interoperable simulcast radio system (Citywide Radio System) with state-of-the-art technology that provides for enhanced radio coverage. Cassidian Communications was selected for the purchase, installation, and service/maintenance of the system. (In August 2014, Cassidian Communications changed its name to Airbus DS Communications.)
- The service/maintenance contract for the Citywide Radio System was previously with Frontier Communications, who is no longer in business. During the process of researching other certified service providers, the Police Department determined that in order to keep the software and hardware current and viable, the factory sole source service and maintenance was the only way to guarantee non-obsolescence over the life of the system.
- Staff is recommending that it is in the best interest of the City to continue the sole source service and maintenance contract with Airbus DS Communications and pay the annual service and maintenance payment for 2015.
- Funds are specifically budgeted in the Police, Fire, Public Works and Utilities, and Parks, Recreation and Libraries Departments' 2015 budgets for this expenditure.

**Expenditure Required:** \$148,500

**Source of Funds:** 2015 General Fund operating budgets of the Police, Fire, Public Works and Utilities, and Parks, Recreation and Libraries Departments; and 2015 Utility fund operating budget of the Public Works and Utilities Department

### **Policy Issue**

Should the City of Westminster pay the annual service and maintenance contract with Airbus DS Communications for the Citywide Radio System?

### **Alternative**

Do not pay the annual service/maintenance contract with Airbus DS Communications. Staff does not recommend this alternative because this action would leave the City without a radio system service/maintenance contract. This would endanger public safety and compromise the various City Departments' ability to communicate and provide emergency and non-emergency services effectively. Currently, Airbus DS Communications is the only fully authorized service and maintenance vendor in the Denver Metro area that is capable of maintaining a large radio system.

### **Background Information**

For decades, the City of Westminster's radio system has functioned as the City's main communication backbone and provided emergency and non-emergency radio service to the Police, Fire, Public Works and Utilities, and Parks, Recreation and Libraries, and facility locations throughout Westminster and beyond the City limits when mutual aid events occur. The system is in operation 24 hours per day, seven days per week and provides the critical link for public safety employees and other City employees to the Public Safety Dispatch Center and between each other while in the field.

Over the last several years, Frontier Communications provided the service and maintenance for the previous radio system and they were also sub-contracted by Cassidian Communications for installation of the new Citywide Radio System in 2013. During that time, Frontier performed very well in both service and diagnostics and they were the only maintenance provider that was factory trained with the expertise, personnel, and all-weather fleet capability within the State of Colorado. Frontier was capable of servicing a system with the size and complexity of the City of Westminster's system, and they provided round the clock, year-round service. Unfortunately, Frontier Communications went out of business.

On January 28, 2013, City Council authorized the City Manager to execute a sole source Purchase and Sale Agreement; and a system Service and Maintenance Agreement with Cassidian Communications, who was selected for the purchase, installation and service/maintenance of the system. The agreement stipulates payment in the first year following the warranty year and does not require contract renewal or Council approval each year for a minimum period of nine consecutive years. However, the annual payment for the service and maintenance is over \$75,000 and therefore requires annual approval by City Council. The service/maintenance agreement also guarantees a non-obsolescence agreement over the life of the system. This is an important benefit for the City because it ensures that the software and hardware remain current and viable. The factory sole source service and maintenance was the only way to guarantee non-obsolescence would be included in the contract.

The Citywide Radio System project was completed and went live in December 2013. The system is state-of-the-art technology and provides enhanced radio coverage. In August 2014, Cassidian Communications changed its name to Airbus DS Communications. The current Citywide Radio System is a large and complex multi-site system that requires a service provider large enough to serve a combined 24-hour, seven day per week, public safety operation. The City recognizes the critical role that the radio system service and maintenance program plays. Other service providers were researched as to certifications, number of trained staff, fleet capabilities, and guaranteed response times. Based on the aforementioned criteria, none of the providers possessed the capabilities to service a system of this size, complexity, and critical nature with the exception of factory-authorized service from Airbus DS Communications.

The approval of the Service and Maintenance Agreement payment with Airbus DS Communications supports the City's Strategic Plan goal of Excellence in City Services.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** 2015 Pump Station Improvements Project Phase I Design/Build Contract

**Prepared By:** Julie Koehler, Senior Engineer  
Stephen Grooters, Senior Projects Engineer

**Recommended City Council Action**

1. Authorize the City Manager to execute Phase I for a design/build contract with The Garney Water Partnership in the amount of \$270,612 for the 2015 Pump Stations Improvements Project, plus a contingency of \$27,061, for a total authorized expenditure of \$297,673.
2. Authorize combining the Wandering View Pump Station, Pump Station Major Repair/Replace North Park, Pump Stations Piping/Yard Structures, and the Gravel Lakes Major Repair/Replace capital project accounts into a new 2015 Pump Station Improvements capital project account to provide a total amount of \$3,367,520 to complete the project.

**Summary Statement**

- The City owns and operates 13 pumping stations that deliver water to facilities and customers.
- The 2015 Pump Stations Improvement Project involves priority repairs and improvements to five facilities including the Wandering View, North Park, Silo, Standley Lake Raw Water, and Jim Baker Reservoir Pump Stations.
- The project will employ an alternative project delivery method called design/build whereby the engineer and contractor work together to streamline project implementation and pre-resolve challenging constructability issues. This approach is preferred to address schedule constraints associated with seasonal water demands.
- Staff believes The Garney Water Partnership presented the best proposal and provides the best value to the City. The team is comprised of the engineering firm Burns & McDonnell and the construction contractor Garney Construction.
- Staff recommends awarding the contract to The Garney Water Partnership based on its competitive rates, proposed scope of work, familiarity with the City’s infrastructure and successful pump station experience.
- This contract is for the first of two phases of the 2015 Pump Stations Improvement Project. Phase I includes 60% design for the five facilities and a guaranteed maximum price, also called the bid, to complete the project. At completion of Phase I, Staff will return to City Council with a contract for Phase II, which includes design completion and construction. The anticipated total cost of the project is \$3,367,520.
- Staff recommends consolidating four separate pump station capital projects into one to reduce overall project costs, streamline Staff resources, and ensure consistency in construction.

**Expenditure Required:** \$297,673

**Source of Funds:** Utility Capital Improvement Fund: Wandering View Pump Station (\$1,342,000); Pump Station Major R&R North Park project (\$900,000); Pump Stations Piping/Yard Structures project (\$206,555); Gravel Lakes – Major Repair/Replace project (\$918,965) [combined new 2015 Pump Station Improvements project (\$3,367,520)]



## **Policy Issues**

1. Should the City execute a design/build contract with The Garney Water Partnership (GWP) for Phase I of the 2015 Pump Station Improvements Project?
2. Should City Council authorize the combination of previously approved capital project budgets into the 2015 Pump Station Improvements Project?

## **Alternatives**

1. City Council could decline to approve the contract and place the project on hold. This is not recommended because this action would result in delaying priority improvements to the pump stations. The improvements have been identified as necessary to keeping the facilities in working order and avoid possible service impacts to customers.
2. City Council could choose to award the contract to one of the other consultants that submitted a statement of qualifications. Staff does not recommend this alternative since GWP presented the best and most qualified proposal and will provide the best value to the City.
3. City Council could choose not to authorize the combining of budgets into one project account. Staff does not recommend this alternative as bundling the smaller projects into a single larger project reduces overall project costs, streamlines Staff resources, and ensures consistency in project accounting as well as in construction.

## **Background Information**

The City of Westminster owns and operates 13 water booster pump stations that facilitate water rights exchange, convey water to water treatment plants, convey pressurized potable water to City customers and respond to emergency events. Five of these pump stations have been identified for priority repairs and/or improvements to various station components. The intent of this project is to bundle all of these projects into a single project to: 1) reduce overall project costs, 2) streamline Staff resources, and 3) ensure consistency in features and equipment making long-term operations and maintenance simpler and less costly.

An explanation of the project components is provided below.

**Project Part A – Wandering View and North Park Pump Stations.** The Wandering View Pump Station is one of the largest pump stations in the City. Critical repairs to the Wandering View Pump Station and yard piping are required due primarily to age and condition. The second work component at this site involves relocating the North Park Pump Station into the Wandering View Pump Station. This station is currently a below-grade structure that has reached the end of its useful life. Relocating this equipment will create safer access for operations and maintenance.

**Project Part B - Silo Pump Station.** The purpose of this project component is to improve the heating, ventilation and air conditioning system.

**Project Part C - Standley Lake Raw Water Pump Station.** The purpose of this project component is to address settlement that has occurred on the floor slab of the station.

**Project Part D - Jim Baker Pump Station.** The purpose of the project is to replace the building, pumps, and electrical, instrumentation, and communications equipment of the station due to age and condition.

The combined project will employ an alternative project delivery method called design/build, whereby the engineer and contractor work together to streamline project implementation and pre-resolve challenging constructability issues, especially due to schedule constraints associated with seasonal water demands. Staff distributed a request for qualifications (RFQ) to seven consulting and construction firms specialized in design/build project delivery for water pumping stations. Of the five proposals received, Staff recommends that The Garney Water Partnership be selected for this work. This selection is based on their successful response to the following criteria as outlined in the request for qualifications:

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

The five firms that submitted proposals and hourly rate ranges for their key staff (i.e., engineers, cost estimator, construction manager, and Site Superintendent) were as follows:

<b>FIRM</b>	<b>Hourly Rates for Core Team (non-clerical)</b>	<b>Combined Hourly Rate for the Team Proposed</b>
The Garney Water Partnership	\$125 to \$217	\$149
CH2MHill	\$134 to \$196	\$159
Hatch Mott MacDonald	\$100 to \$195	\$151
HDR	\$90 to \$240	\$158
Stantec	Undefined	

Of the firms that proposed, The Garney Water Partnership approach and team were the best and most qualified for the project. The team offered senior staff who have completed several similar projects throughout the Front Range. As a result of its recent project experience, the partnership offered an approach that streamlined project tasks to allow it to accomplish the goals of the project within the tight schedule available for construction while providing competitive fees. Following its selection, Staff negotiated a detailed scope of work and fee for Phase I of the project. Staff believes the fee is both fair and competitive. A 10% contingency in the amount of \$27,061 is requested for a total Phase I budget of \$297,673.

As part of Phase I, the City will receive design documents with sufficient detail for the contractor to develop a guaranteed maximum price (GMP) to finish design and construct the improvements. The City will receive and negotiate the GMP with The Garney Water Partnership. Staff will return to City Council for consideration of Phase II that will include the negotiated GMP for final design and construction. If for any reason the GMP negotiations do not reach consensus, the City can opt to finalize design documents and bid the project with other companies. The overall project with construction is currently estimated to cost \$3,367,520 and is estimated to be completed spring 2016.

The budgets for this project were previously approved by City Council as part of the budget process as separate pump station projects. To reduce overall project costs, streamline Staff resources, and ensure consistency in project accounting as well as in construction, Staff requests the consolidation of the Wandering View Pump Station, Pump Station Major Repair/Replace North Park, Pump Stations Piping/Yard Structures, and the Gravel Lakes Major Repair/Replace capital project accounts (which was intended to fund the replacement of existing pumps and associated infrastructure improvements at the Jim Baker Reservoir) into one new 2015 Pump Station Improvements capital project account. The total amount of funds to be consolidated is \$3,367,520.

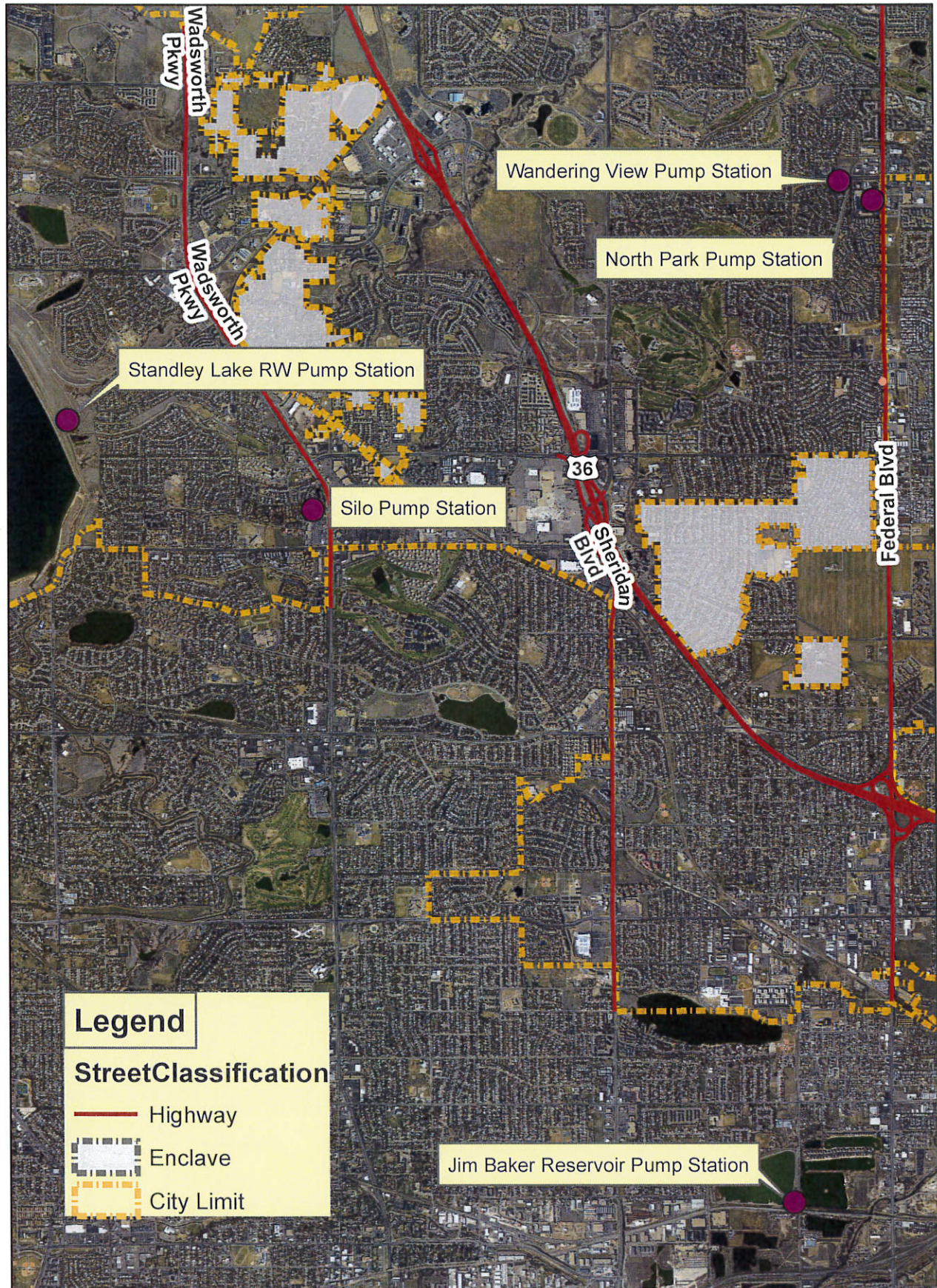
The 2015 Pump Station Improvements Project helps achieve City Council's Strategic Plan Goals of "Beautiful, Desirable, Environmentally Responsible City," "Vibrant and Inclusive Neighborhoods," and "Excellence in City Services" by contributing to the objectives of well-maintained City infrastructure and facilities and providing water service with reduced risk of system failures.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment: Map – 2015 Pump Station Improvements Project Phase I Design/Build Contract

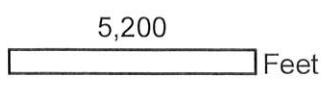
# 2015 Pump Station Improvements Project Phase 1 Design/Build Contract



**Legend**

**Street Classification**

- Highway
- Enclave
- City Limit





**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** 2015 Pressure Reducing Valve Rehabilitation and Replacement Project Design Contract

**Prepared By:** Andy Walsh, Senior Engineer  
Stephen Grooters, Senior Projects Engineer

**Recommended City Council Action**

Authorize the City Manager to execute a contract with JVA Consulting Engineers, Inc. in the amount of \$200,000 for the design of the 2015 Pressure Reducing Valve Rehabilitation and Replacement project, plus a 10% project contingency of \$20,000, for a total authorized expenditure of \$220,000.

**Summary Statement**

- There are 14 areas in the City's potable water distribution system where water pressures are independently controlled. These areas are called pressure zones. Seven of these zones are controlled by pressure reducing valves.
- These pressure reducing valves control pressure for more than 62 miles of distribution system piping and over 4,200 customer connections. They are also used in controlling pressure limits, pipe breaks and water loss in the distribution system.
- As part of the City's Capital Improvement Program planning process, eight pressure reducing valves were identified for rehabilitation, replacement or abandonment because of age and condition. These valves are the main focus of the 2015 Pressure Reducing Valve Rehabilitation and Replacement project.
- Of four proposals received for design of the project, Staff believes JVA Consulting Engineers, Inc. provides the most comprehensive proposal and competitive engineering fees and provides the best value to the City. Staff is recommending that a contract for the project design be awarded to JVA Consulting Engineers, Inc.
- At completion of this work, Staff plans to negotiate a contract amendment with JVA Consulting Engineers, Inc. for services during construction and will return to City Council for authorization along with approval of a construction contract.
- Design is expected to be completed by August 2015, with construction completion anticipated in summer 2016.
- Adequate funds were budgeted and are available for this project in the Utility Fund.

**Expenditure Required:** \$220,000

**Source of Funds:** Utility Fund – PRV Repair and Replacement capital project

**Policy Issue**

Should the City execute a contract with JVA Consulting Engineers, Inc. (JVA) for engineering design of the 2015 Pressure Reducing Valve (PRV) Rehabilitation and Replacement Project contract?

**Alternatives**

1. City Council could decline to approve the contract and place the contract on hold. However, several of the PRVs have aged, are in poor condition, and are in need of rehabilitation or replacement. Delaying the project is not recommended since it could result in increased maintenance and repair expenses and possible waterline breaks or damage to customer plumbing.
2. City Council could choose to award the contract to one of the other consultants that submitted proposals. This is not recommended as Staff believes that JVA provides the best value for this project.

**Background Information**

There are 14 areas in the City’s potable water distribution system where water pressures are independently controlled. These areas are called pressure zones (see the attached map). Seven of these zones are controlled by a team of pressure reducing valves (PRVs). These PRVs control water pressure within these zones and are extremely important for maintaining target pressures in the system and limiting pipe breaks. As part of the City’s Capital Improvement Project (CIP) planning process, eight PRVs were identified for rehabilitation, replacement or abandonment due to their age and condition and are the focus of this project. Safety concerns and poor accessibility issues are also items that need to be addressed.

Hydraulic analysis using the City’s water distribution system model is a key component of this project in order to identify the most efficient locations for the new PRVs to serve the City now and into the future. This project focuses on PRV rehabilitation or replacement in two geographic areas of the City: the North Huron PRV Area that includes two large PRVs generally north of 128<sup>th</sup> Avenue, and the 104<sup>th</sup> Avenue and Federal Boulevard PRV Area that includes six smaller PRVs just north of 104<sup>th</sup> Avenue. A third area of this project involves permanently abandoning two PRVs that were previously decommissioned and are located along 88<sup>th</sup> Avenue near Yukon Street and Carr Loop.

Staff sent a Request for Proposals (RFP) to six engineering firms that specialize in this type of design work. Four proposals were received in December, 2014. It is Staff’s assessment that awarding the design contract to JVA is in the best interest of the City based on its response to the following criteria as outlined in the RFP:

- Response to the requirements in the RFP and an approach that clearly indicates understanding of the project scope and City’s goals and expectations.
- Recent and relevant project experience for work of similar size, scope, complexity, and positive reference feedback on past project performance.
- Total level of effort and fee relative to the proposed approach.
- Project schedule that demonstrates clear understanding of the project and allows the required City review of project deliverables.

The four engineering firms that submitted proposals and hourly rate ranges for key staff are as follows:

<u>Engineering Firm</u>	<u>Hourly Rate Range</u>
JVA Consulting Engineers, Inc.	\$104 to \$140/hour
J&T Consulting	\$100 to \$120/hour
Lidstone & Associates	\$125 to \$135/hour
Bohannon Huston, Inc.	\$120 to \$185/hour

Engineering fees from the proposals received ranged from \$180,357 to \$222,205, with JVA’s proposed fee being \$200,000. Of the firms that proposed, JVA’s approach and team were the most comprehensive and

best qualified for the project and its level of effort and fee was competitive for the scope of work. In Staff's opinion, JVA will provide the best value to the City. Adequate funding for this work is available from the adopted 2015 Utility Fund capital budget.

Following successful completion of the design, Staff intends to negotiate a subsequent contract for engineering services during construction. The design is anticipated to be completed in August 2015, and Staff anticipates construction completion in summer 2016.

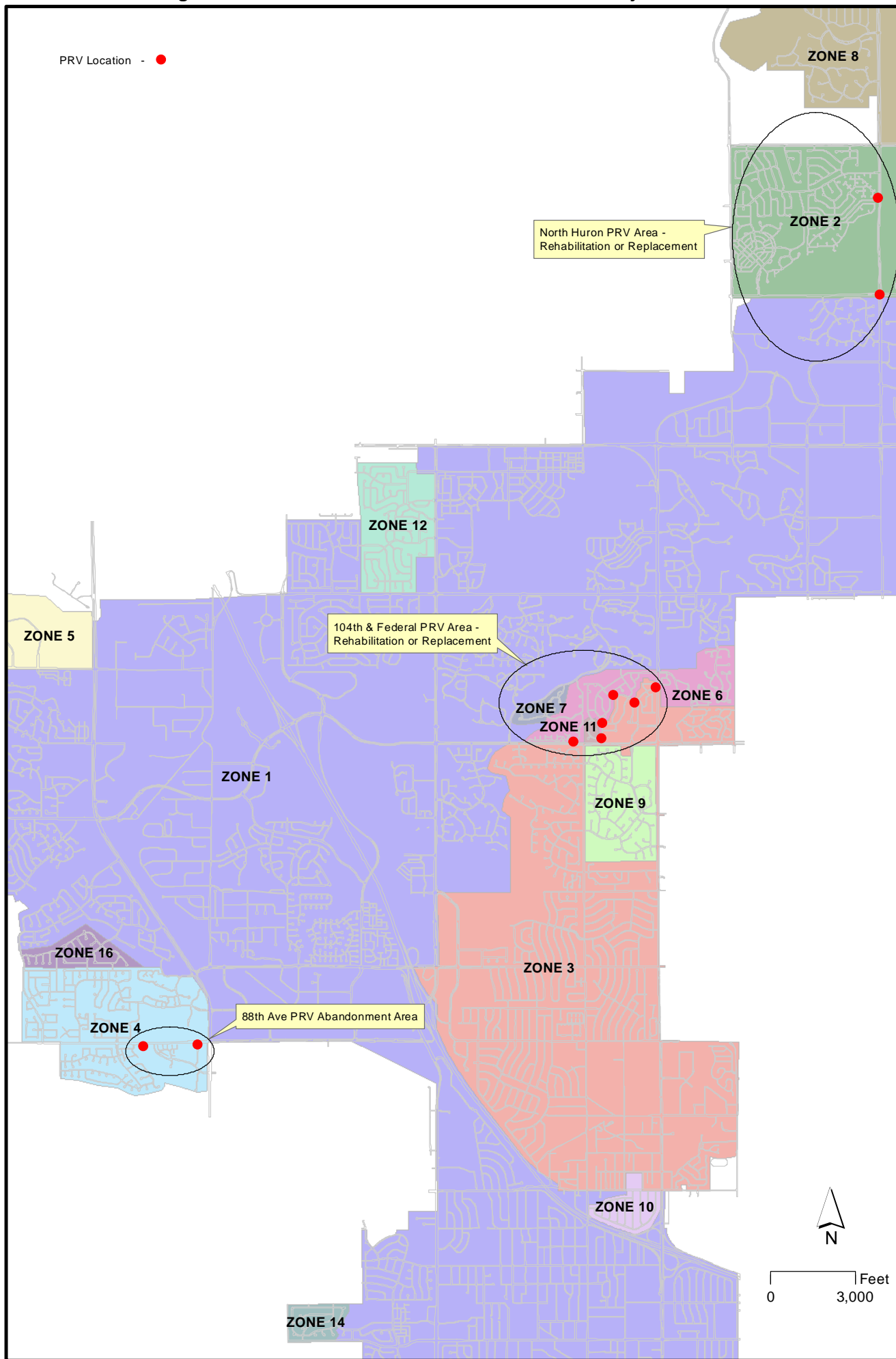
The 2015 PRV Rehabilitation and Replacement project helps achieve the City Council's Strategic Plan Goals of "Beautiful, Desirable, Environmentally Responsible City" and "Excellence in City Services" by being innovative, cost-conscious, and contributing to the objective of well-maintained City infrastructure and facilities.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment: Map of Westminster's Pressure Zones and PRV Project Areas

Figure 1 - Westminster Pressure Zones and PRV Project Areas







## Agenda Item 8 H

### Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** 2015 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 Multiple Assembly of Procurement Officials (MAPO) bidder each quarter during 2015 in an amount not to exceed \$827,000 for asphalt and \$80,000 for crackseal materials.

### Summary Statement

- Hot mix asphalt material is used for all types of street maintenance repairs including pothole patching, surface replacement and preparation of streets earmarked for 2015 and 2016 improvements, and water break and valve repair excavation in-house pavement patching.
- Rubberized cracksealing material is used to seal moisture from asphalt pavements throughout the City.
- The hot mix asphalt bidders on the 2015 Multiple Assembly of Procurement Officials bid are: Brannan Companies, APC Construction, Asphalt Specialties, Colorado Asphalt Services, Inc., and Aggregate Industries. The crackseal material bidders are CrafcO, Inc., Denver Industrial, and Maxwell Products.
- The Multiple Assembly of Procurement Officials bid allows for quarterly price adjustment pending substantial and agreed upon justification. Council's approval to purchase these materials from the lowest price vendor each quarter can result in a cost savings opportunity for the City.
- Adequate funds were budgeted and are available for this expenditure.

**Expenditure Required:** \$ 907,000

**Source of Funds:** General Fund - Street Operations Division Budget (\$842,000)  
Utility Fund - Utilities Operations Division Budget (\$65,000)

**Policy Issue**

Should City Council authorize the purchase of asphalt and crackseal materials from the low price vendor each quarter utilizing the 2015 Multiple Assembly of Procurement Officials (MAPO) bids?

**Alternative**

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

**Background Information**

Hot mix asphalt material is used for all types of street maintenance repairs including pothole patching, surface replacement and preparation of streets earmarked for 2015 and 2016 improvements, and in-house pavement patching from water break and valve repair excavations. Rubberized cracksealing material is used to seal moisture from asphalt pavements throughout the City. City crews will need an estimated 21,200 tons of hot mix asphalt material and 162,933 pounds of rubberized crackseal material, to be purchased on an as-needed basis throughout 2015.

**First Quarter 2015 MAPO Hot Mix Asphalt Material Bid**

Vendor	Bid Amount per Ton
Brannan Companies	\$39.00
APC Construction	\$46.00
Asphalt Specialties Company	\$46.50
Colorado Asphalt Services, Inc.	\$46.50
Aggregate Industries	\$47.75

Brannan Companies is the MAPO 2015 first quarter low bidder for hot mix asphalt material, matching its low bid price for the end of 2014. The MAPO bid allows for quarterly price adjustments pending substantial and agreed upon justification. Should one of the MAPO bidders offer lower pricing during a particular quarter in 2015, Staff will purchase asphalt from the vendor with lowest pricing. All vendors’ plants are able to supply mix per City specifications. The City has successfully purchased hot mix asphalt material from all of the vendor’s plants in the Denver metro area in past years.

**First Quarter 2015 MAPO Rubberized Crackseal Material Bid**

Vendor	Bid Amount (Cost Per Pound – delivered)
Crafco, Inc.	\$0.491
Denver Industrial	\$0.52
Maxwell Products	\$0.53

Crafco, Inc. is the 2015 MAPO low bidder for crackseal material. 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 2015, 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 15 years on roadways throughout the City. The 2015 crackseal materials bid did not increase above 2014 pricing.

Purchasing these materials through the MAPO bid process and tracking costs quarterly helps achieve City Council’s goals of “Proactive Regional Collaboration” and “Ease of Mobility” by actively working with

**SUBJECT:** 2015 Asphalt and Crackseal Materials Purchase

Page 3

our partners to achieve lower pricing of materials, investing in well-maintained and sustainable City infrastructure and facilities, and providing ease of mobility for the residents and guests of Westminster.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** Intergovernmental Agreement with the City of Federal Heights for the 2015 Rehabilitation of 104<sup>th</sup> Avenue

**Prepared By:** Kurt Muehlemeyer, Pavement Management Coordinator  
Dave Cantu, Street Operations Manager

**Recommended City Council Action**

Authorize the City Manager to sign an Intergovernmental Agreement with the City of Federal Heights that provides for the City of Westminster to contract for all of the 2015 street improvements on West 104<sup>th</sup> Avenue from Zuni Street to Federal Boulevard, and requires the City of Federal Heights to reimburse the City for the portions of the project completed in the City of Federal Heights.

**Summary Statement**

- The City of Westminster and the City of Federal Heights share responsibility for maintaining and repaving their respective portions of West 104<sup>th</sup> Avenue.
- Both entities have identified West 104<sup>th</sup> Avenue from Zuni Street to Federal Boulevard for resurfacing in 2015 to provide a new riding surface and prolong pavement life.
- An Intergovernmental Agreement has been negotiated between the two cities regarding cooperation for asphalt resurfacing and concrete replacement.
- The total West 104<sup>th</sup> Avenue project is anticipated to cost \$362,000, and the portion of the project in Federal Heights is estimated to cost \$157,455. The proposed Intergovernmental Agreement calls for the City of Federal Heights to reimburse Westminster for the actual costs of its portion of the asphalt resurfacing and concrete replacement on West 104<sup>th</sup> Avenue no later than thirty days after receiving an invoice from the City of Westminster.
- Per the Intergovernmental Agreement, Westminster agrees to perform this work, provided that the Federal Heights City Council approves the agreement. The City of Federal Heights will present the proposed Intergovernmental Agreement to its City Council for approval and signature once it has been approved by the City of Westminster.
- Although adequate funds are available, none are required at this time. This project will be included in the City of Westminster's 2015 Concrete Replacement Project and the 2015 Asphalt Pavement Rehabilitation Project, which will be taken to City Council for approval at a future date.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City enter into an Intergovernmental Agreement (IGA) with Federal Heights that provides for the City of Westminster to contract for all of the 2015 street improvements on West 104<sup>th</sup> Avenue from Zuni Street to Federal Boulevard, and requires the City of Federal Heights to reimburse the City for the portions of the project completed in the City of Federal Heights?

**Alternative**

City Council could choose not to enter into an IGA with Federal Heights and complete only the City's portion of the proposed roadway work. Staff does not recommend this alternative because the result would be lower quality construction work, possibly different resurfacing strategies, and a continuation of pavement deterioration which would increase patching costs and disruption to the public multiple times at the same location. The cooperative agreement is the most cost effective, sound construction approach and makes the most operational sense for both entities.

**Background Information**

The cities of Westminster and Federal Heights share the responsibility of maintaining and repaving their respective portions of West 104<sup>th</sup> Avenue from Zuni Street to Federal Boulevard. Both entities have identified this section of roadway as a high priority to receive pavement rehabilitation in 2015.

Staff and attorneys from the two cities have produced an IGA that details each entity's responsibilities in this rehabilitation project. As a condition of the IGA, Westminster Staff will contract 100% of the street improvements on West 104<sup>th</sup> Avenue and will include Federal Heights' portion of the proposed street rehabilitation in the City's 2015 Concrete Replacement and Asphalt Pavement Rehabilitation projects. The total cost of the West 104<sup>th</sup> Avenue project is anticipated to be \$362,000 and will be taken to Council for approval at a future date.

The City agrees to perform this work, provided that the Federal Heights City Council approves this IGA. The agreement requires Federal Heights to reimburse Westminster for its portion of the actual costs associated with the project's concrete replacement and asphalt pavement resurfacing. This amount is estimated to be \$157,455 and is required to be paid no later than thirty days from receipt of an invoice from the City of Westminster.

This IGA helps achieve City Council's Strategic Plan Goals of "Proactive Regional Collaboration," "Vibrant & Inclusive Neighborhoods," "Excellence in City Services," and "Ease of Mobility" by collaborating with adjacent local governments to provide well maintained City infrastructure through timely resurfacing of roadways.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments: Intergovernmental Agreement  
IGA Exhibit A  
IGA Exhibit B



# 2015 104th Avenue Overlay Project Westminster and Federal Heights

## LEGEND

- City of Westminster
- Federal Heights

### Exhibit A



# Exhibit B

## 2015 Westminster & Federal Heights 104th Ave Overlay

Location	From:	To:	Sq Yards				
<b>1</b>	<b>104th Ave</b>	<b>Zuni Street</b>	<b>Federal Blvd</b>	<b>25,692</b>			
	<b>2" Mill &amp; Overlay</b>	<b>Westminster</b>	<b>Federal Heights</b>	<b>Est Unit Cost</b>	<b>Westminster Total</b>	<b>Federal Heights Total</b>	
	Removal of Asphalt Mat (Planing)	14,671 Sq Yards	11,021 Sq Yards	\$ 1.45	\$ 21,272.95	\$ 15,980.45	
	HMA GR SX (100) PG 76-28	1,816 Ton	1,364 Ton	\$ 75.00	\$ 136,200.00	\$ 102,300.00	
	Traffic Control	7 LS/Day	7 LS/Day	\$ 2,120.00	\$ 14,840.00	\$ 14,840.00	
	Message Boards	10 LS/Day	10 LS/Day	\$ 375.00	\$ 3,750.00	\$ 3,750.00	
	Lane Lines Epoxy Paint(White & Yellow)	2,395 Sq Feet	1,415 Sq Feet	\$ 1.35	\$ 3,233.25	\$ 1,910.25	
	Thermoplastic Crosswalks	384 Sq Feet	280 Sq Feet	\$ 10.15	\$ 3,897.60	\$ 2,842.00	
	Thermoplastic Stop Bars	114 Sq Feet	82 Sq Feet	\$ 10.15	\$ 1,157.10	\$ 832.30	
	Thermoplastic Turn Arrows	10 Each	8 Each	\$ 265.00	\$ 2,650.00	\$ 2,120.00	
	8 " Thick Crossspan (remove & replace)	0 SF	848 SF	\$ 8.05	\$ -	\$ 6,826.40	
	Sidewalk (6" thick) (remove & replace)	0 SF	256 SF	\$ 5.83	\$ -	\$ 1,492.48	
	Handicap Curb Ramp (remove & replace per specifications)	0 Each	4 Each	\$ 1,000.18	\$ -	\$ 4,000.72	
	Grade "S" HMA Patchback	0 Tons	7 Tons	\$ 80.01		\$ 560.07	
					<b>\$ 187,000.90</b>	<b>\$ 157,454.67</b>	



## Agenda Item 8 J

### Agenda Memorandum

City Council Meeting  
February 9, 2015



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

**Prepared By:** Steve Smithers, Deputy City Manager

### Recommended City Council Action

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

### Summary Statement

- The City owns approximately 15.8 acres between The Promenade and Circle Point (see vicinity map).
- The Contract to Buy and Sell Real Estate with Urban Pacific Multi-Housing, LLC and Pacific West Communities (the Contract) was approved by City Council on July 9, 2012.
- The current sale price is approximately \$4,619,931 (\$6.71/sf).
- The 2nd Amendment to the Contract was approved on March 25, 2014 that provided for a new closing date of September 30, 2014; increased the purchase price by \$150,000; provided for early closing incentives; and makes the existing \$100,000 deposit currently in escrow non-refundable should closing of the Contract not occur. The third amendment provided for changing the closing date from September 30, 2014 to December 15, 2014. The fourth amendment extended the closing date to January 31, 2015. The Fifth Amendment extended the closing date until February 27, 2015, added a provision for the City to participate in the cost of several small land parcels (less than 1/2 acre total), and altered the legal description slightly to reflect the property line agreed to in the Official Development Plan approved for the Axis development.
- The proposed sixth amendment adds a provision to allow for the escrow of the exclusion fee amount (\$550,000). This was not included in the Purchase and Sale Agreement previously because Staff assumed that this would be addressed in the Exclusion Agreement at a later date. The timing of the closing on the land necessitates that the funds be escrowed now.

**Expenditure Required:** \$0

**Source of Funds:** N/A



**Policy Issue**

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

**Alternative**

Don't approve the sixth amendment to the Purchase and Sale Agreement. This is not recommended as the closing has been complicated by the issues around accomplishing exclusion from the NBC Metropolitan District, which is one of the conditions for this sale to move forward. Staff has worked through the issues with the Developer and closing on the property is imminent.

**Background Information**

The purpose of the sixth amendment to the Contract to Buy and Sell Real Estate, with Urban Pacific Multi-Housing, LLC and Pacific West Communities, Inc. is to authorize the escrow of the \$550,000 exclusion fee, which is necessary to allow the closing on the land to move forward in a timely manner (closing is anticipated to take place in the next 7 days). The developer will also be required to pay an equal \$550,000 fee to allow the exclusion from the NBC District to move forward. The fee offsets property tax revenues that the District would otherwise collect if the property was to stay in the District and is a critical component of the Exclusion Agreement. The terms of the proposed amendment will make it clear that if the exclusion does not move forward the \$550,000 will be released back to the City in a timely manner.

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

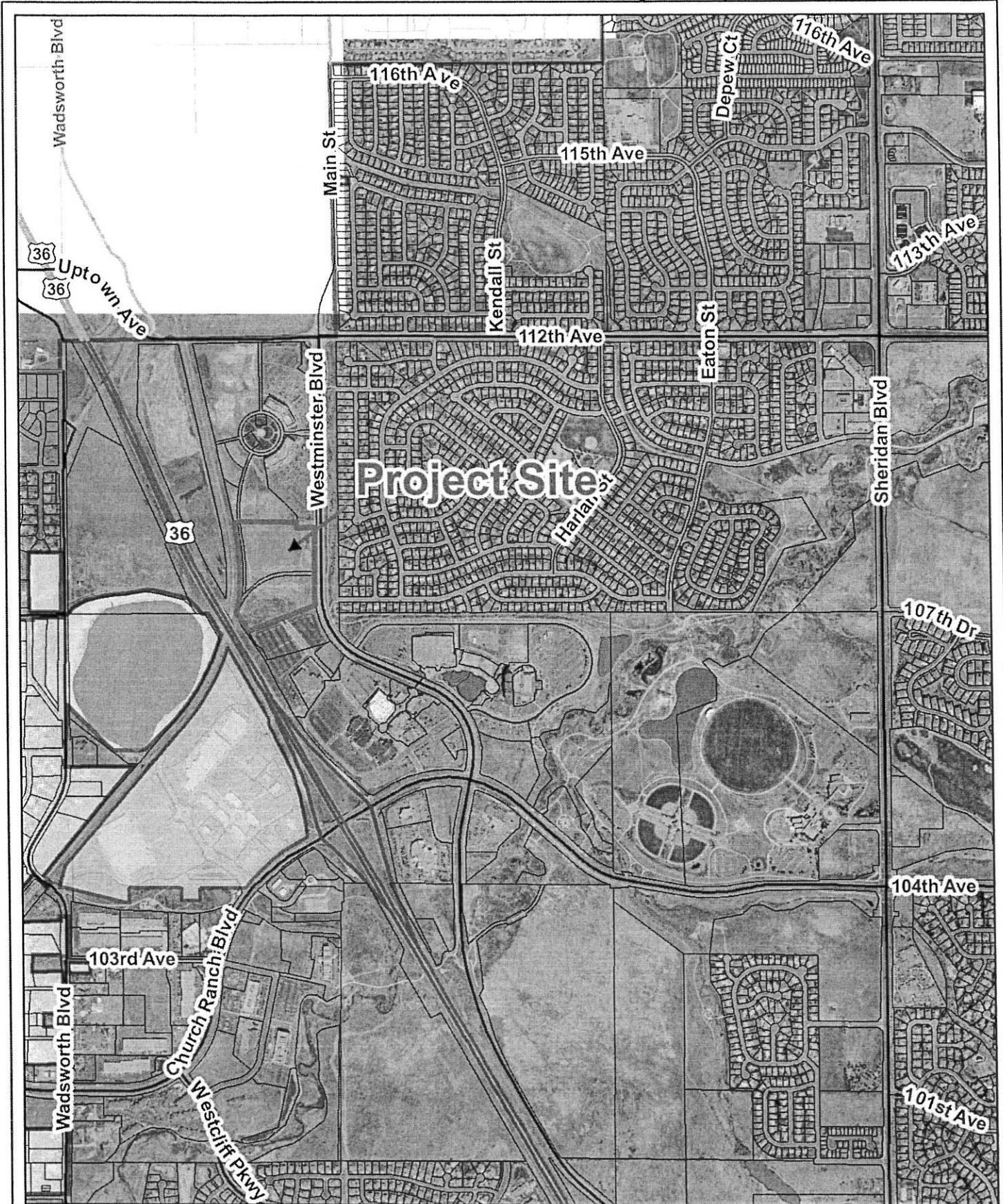
The approval of this amendment is consistent with City Council Strategic Goal of creating Vibrant and Inclusive Neighborhoods in Westminster.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment: Vicinity Map

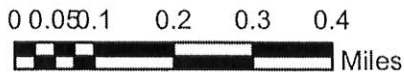
# 15.8 Acre Parcel Vicinity Map



Date: 3/6/2014

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## City of Westminster





Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** Second Reading of Councillor’s Bill Nos. 3, 4, and 5 on an Annexation, Comprehensive Plan Amendment, and Zoning for the Moorings at Hidden Lake Property

**Prepared By:** Patrick Caldwell, Senior Planner

**Recommended City Council Action**

1. Authorize the Mayor to sign the Annexation Agreement for the Moorings at Hidden Lake property.
2. Pass Councillor’s Bill No. 3 on second reading annexing the Moorings at Hidden Lake property into the City.
3. Pass Councillor’s Bill No. 4 on second reading approving a Comprehensive Plan amendment for the Moorings at Hidden Lake property changing the designation from Adams County Water Body to City of Westminster R-2.5, to Private Parks/Open Space, and to City Owned Open Space, and; change the designation of a .377 acre City owned open space parcel within the City (Lot 1 of the East Bay Senior Housing Preliminary Development Plan and Official Development Plan) from City Owned Open Space to R-2.5 based on finding that the proposed amendment will be in the public good and the proposed amendment is in compliance with the overall purpose and intent of the Comprehensive Plan.
4. Pass Councillor’s Bill No. 5 on second reading approving the zoning of the Moorings at Hidden Lake property City of Westminster Planned Unit Development, changing the zoning of the parcel being annexed from Adams County R-1-Cand CO to City of Westminster Planned Unit Development to allow single-family detached residential uses, private parks and private open space use, and City Owned Open Space use. The designation of Lot 1 of the East Bay Senior Housing Preliminary Development Plan and Official Development Plan is presently Planned Unit Development and that is not proposed to change.

**Summary Statement**

- The Moorings at Hidden Lake Preliminary Development Plan (PDP) and Official Development Plan (ODP) site is south of 68<sup>th</sup> Avenue, and east of Utica Street. It consists of 6.5 acres, inclusive of a portion of Hidden Lake.
- Eight single-family residential lots with a minimum lot size of 12,000 square feet are proposed. A one-acre parcel, called Outlot B, will be dedicated to the City for public open space. A 2.5-acre parcel, called Outlot A within Hidden Lake, will be private open space available to the owners of the eight lots.
- Additional right-of-way for 68<sup>th</sup> Avenue will be dedicated.
- A small portion of 68<sup>th</sup> Avenue will be vacated where it is not needed.
- The existing City-owned public open space parcel known as Lot 1 of the East Bay Senior Housing PDP will be exchanged for an equal amount of non-floodplain land in Outlot B, a proposed City owned open space parcel.
- These Councillor’s Bills were approved on first reading by City Council on January 26, 2015.

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

Stephen P. Smithers  
Acting City Manager

Attachments: Annexation Agreement  
Annexation Ordinance  
Comprehensive Plan Ordinance (Exhibit A, Exhibit B)  
Zoning Ordinance (Exhibit A, Exhibit B)

## ANNEXATION AGREEMENT

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

### RECITALS

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

### AGREEMENT

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

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

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

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

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

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

(i) Owner. The Mayham Reservoir Corporation.

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

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

## 2. Annexation and Zoning.

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

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

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

## 3. Conditions to Annexation.

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

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

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

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

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

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

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

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

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

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

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

#### 4. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

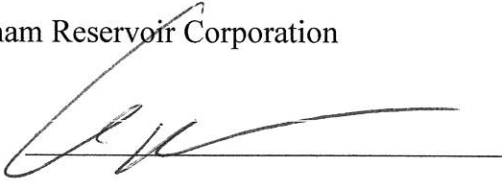


**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**OWNER**

Mayham Reservoir Corporation

By:



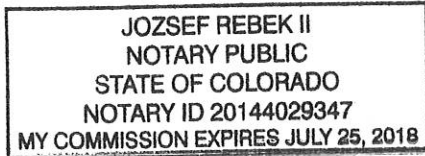
George Kast, its President

STATE OF COLORADO                     )  
   ) ss.  
COUNTY OF DENVER                     )

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

Witness my hand and official seal.

My commission expires: 07/25/2018



\_\_\_\_\_  
Notary Public 

**CITY OF WESTMINSTER**

THE CITY OF WESTMINSTER, A  
COLORADO MUNICIPAL  
CORPORATION

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest: \_\_\_\_\_, City Clerk

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public

EXHIBIT A

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

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

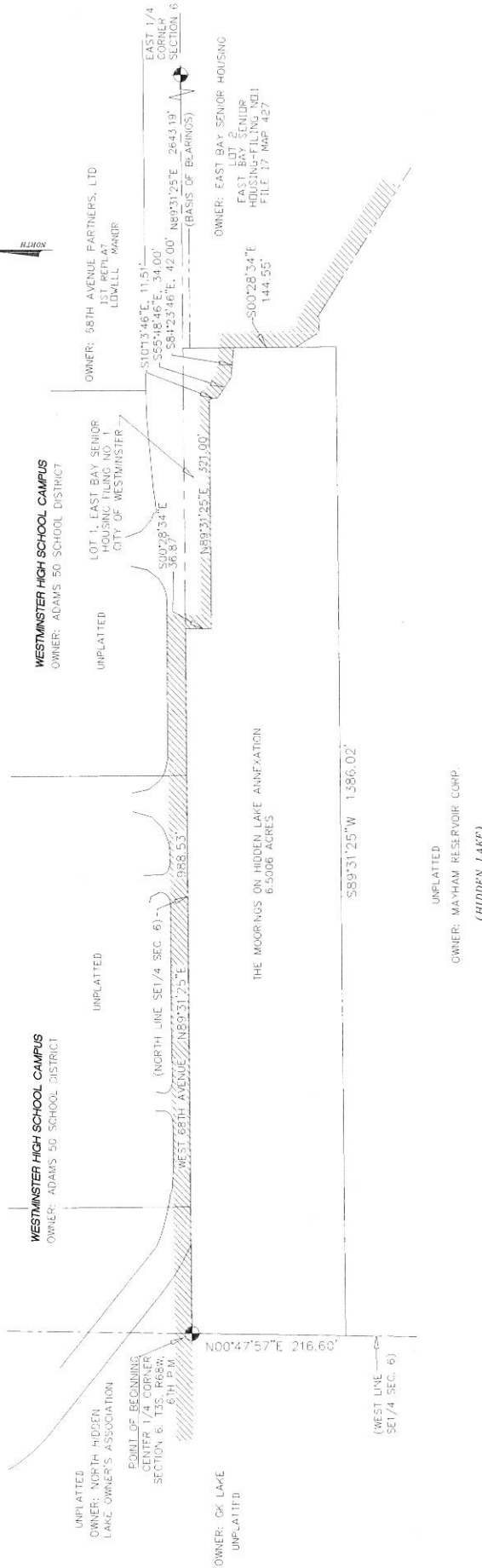
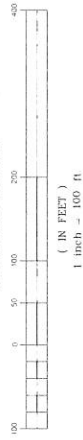
BEGINNING AT THE CENTER 1/4 CORNER SAID SECTION 6; THENCE N89°31'25"E ALONG THE NORTH LINE OF THE SOUTHEAST 1/4, 988.53 FEET TO THE NORTHWEST CORNER LOT 1, EAST BAY SENIOR HOUSING-FILING NO. 1 AS RECORDED AT FILE 17, MAP 427; THENCE ALONG THE WESTERLY AND SOUTHERLY LINE SAID LOT 1 THE FOLLOWING FIVE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

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

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

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

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



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

mooings\2014 resubmit\vevannem.ap.dwg

BY AUTHORITY

ORDINANCE NO. **3763**

COUNCILLOR'S BILL NO. **3**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

**Seitz - Briggs**

**A BILL**

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

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

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

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

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

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

NOW, THEREFORE, the City of Westminster ordains:

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

**THE MOORINGS AT HIDDEN LAKE  
LEGAL DESCRIPTION**

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

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

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

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

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

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

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

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

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

Consisting of approximately 6.506 acres

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

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

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

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

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney's Office

BY AUTHORITY

ORDINANCE NO. **3764**

COUNCILLOR'S BILL NO. 4

SERIES OF 2015

INTRODUCED BY COUNCILLORS  
**Seitz - Briggs**

**A BILL**

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds that:

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

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

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

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

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

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

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

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

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

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

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

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Mayor

ATTEST:

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Deputy City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office



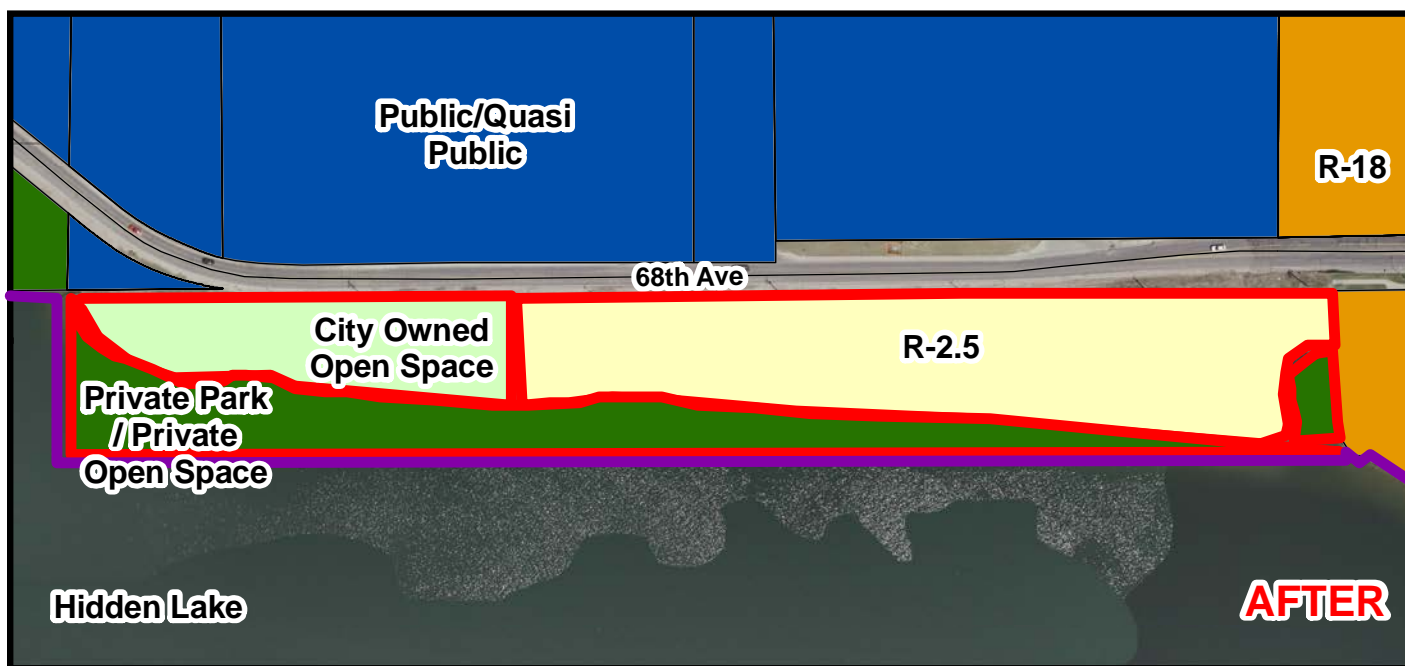
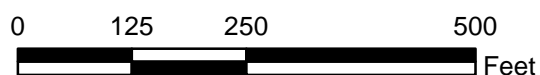
**EXHIBIT A**

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

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

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

SAID PARCEL CONTAINING 6.463 ACRES, MORE OR LESS.



## Comprehensive Plan Map Changes: The Moorings at Hidden Lake

BY AUTHORITY

ORDINANCE NO. **3765**

COUNCILLOR'S BILL NO. **5**

SERIES OF 2015

INTRODUCED BY COUNCILLORS  
**Seitz - Briggs**

**A BILL**

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

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

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

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

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

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

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

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

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

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

---

Mayor

ATTEST:

---

Deputy City Clerk

APPROVED AS TO LEGAL FORM:

---

City Attorney's Office

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

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

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

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

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

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

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

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

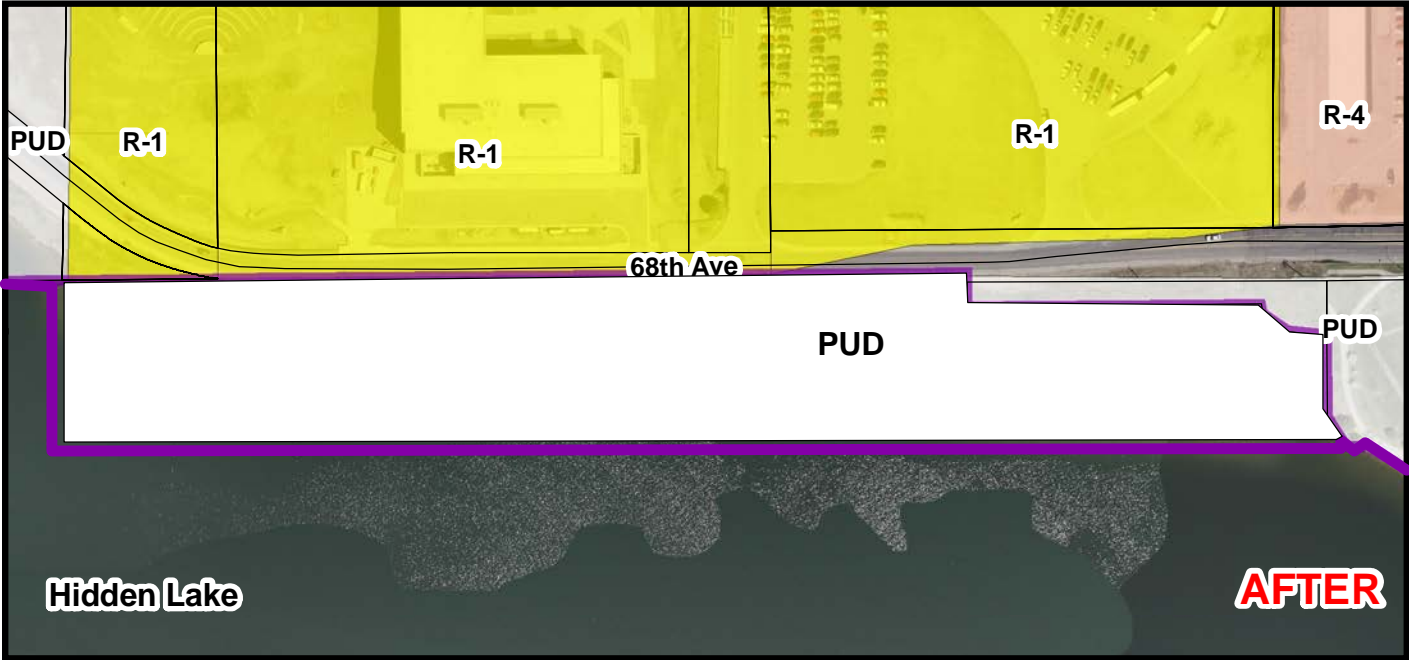
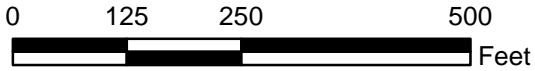
SAID TRACT OF LAND CONTAINING 6.5006 ACRES, MORE OR LESS.

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



**Legend**

- PUD
- R-1
- R-4



# Zoning Map: The Moorings at Hidden Lake



## Agenda Item 8 O

### Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** Second Reading on Councillor's Bill No. 6 re Lease of 7287 Lowell Boulevard

**Prepared By:** Tony Chacon, Senior Projects Coordinator

### Recommended City Council Action

Pass Councillor's Bill No. 6 on second reading authorizing the execution of a lease agreement in substantially the same form as the attached agreement for property located at 7287 Lowell Boulevard, Westminster, CO 80021, to the South Westminster Arts Group (SWAG).

### Summary Statement

- SWAG is proposing to continue operation of the theater at 7287 Lowell Boulevard by entering into a lease with the City to utilize the building through October 31, 2015. Upon approval of a lease, SWAG would sublease the premises to the Germinal Stage theater company that will conduct a full season of theatrical performances.
- The form of lease for the property has been approved by the City Attorney's Office and by the tenants.
- This Councillor's Bill was approved on first reading by City Council on January 26, 2015.

**Expenditure Required:** Not to Exceed \$500

**Source of Funds:** General Fund - Building Operations & Maintenance Operating Budget

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments: Ordinance  
Lease Agreement

BY AUTHORITY

ORDINANCE NO. **3766**

COUNCILLOR'S BILL NO. **6**

SERIES OF 2015

INTRODUCED BY COUNCILLORS  
**Garcia - Pinter**

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

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

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

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

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

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

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

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Clerk

\_\_\_\_\_  
City Attorney's Office



## ATTACHMENT "C"

### *LEASE AGREEMENT*

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

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

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

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

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

**4. Utilities, Care and Maintenance of Premises.**

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

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

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

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

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

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

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

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

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

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

**12. Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

Signed as of this \_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF WESTMINSTER**

**SOUTH WESTMINSTER ARTS GROUP**

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Debbie Teter, Chair

Attest: \_\_\_\_\_  
City Clerk

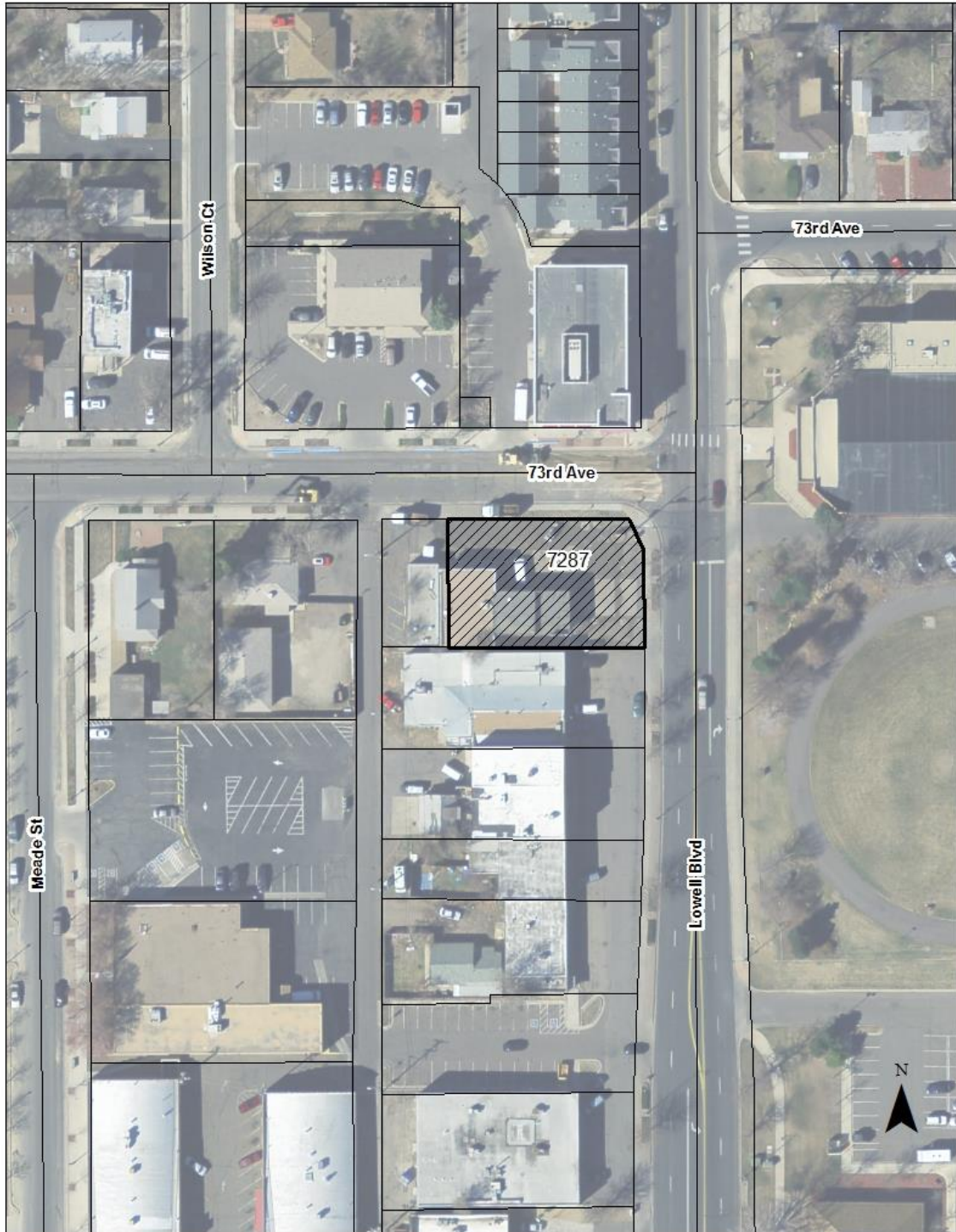
Attest: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Office of the City Attorney

EXHIBIT 1

Leasable Premises – 7287 Lowell Boulevard





**Agenda Memorandum**

City Council Meeting  
February 9, 2015



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

**Prepared By:** Chris Gray, Economic Development Officer

**Recommended City Council Action**

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

**Summary Statement**

- Tenere, Inc. designs and fabricates complex metal and plastic components for the telecommunications, medical, aerospace and other industries. Tenere recently added rapid prototyping capability through its recent acquisition of Protogenic, a Westminster company.
- Tenere plans to consolidate and expand its operations in Westminster and will lease 131,000 square feet of light industrial space at Park 12 Hundred.
- The company will bring 72 manufacturing and office workers to the site with plans to add another 100 employees over the next three to five years. The average annual wage at the facility will be \$46,000.
- Assistance is based on the City's desire to attract and retain a successful and substantial manufacturing operation and primary employer.
- Should Tenere, Inc. decide to move out of Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.
- This Councillor's Bill was passed on first reading on January 26, 2015.

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

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

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments: Ordinance  
Exhibit A – Agreement

BY AUTHORITY

ORDINANCE NO. **3767**

COUNCILLOR'S BILL NO. **7**

SERIES OF 2015

INTRODUCED BY COUNCILLORS  
**Briggs - Seitz**

**A BILL**

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

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

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

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

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

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

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

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

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Clerk

\_\_\_\_\_  
City Attorney's Office



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

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

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

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

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

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

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

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

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

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

4. Payments of Rebates.

- a. The total rebate is not to exceed \$85,818. The Company will file returns and pay City sales and use taxes due no less frequently than on a calendar quarter. Rebates shall be calculated for each calendar quarter based upon revenue actually received by the City in connection with the opening and operation of the new facility.
  - i. If the total amount of a quarterly rebate due to the Company is at least \$1,000, the rebate will be paid within thirty (30) days following the end of the calendar quarter.
  - ii. If the total amount of a quarterly rebate due to the Company is less than \$1,000, such rebate will be added to the next quarterly rebate due until the total amount to be rebated is at least \$1,000. The accumulated amount of such rebates will then be

paid within thirty (30) days following the end of the most recent calendar quarter reported.

- iii. Payments shall commence for the calendar quarter during which final occupancy approval is granted.
- iv. No payment of the use taxes on construction material provided for in Paragraph 2 above will be made until the City approves a Construction Project Cost Report for construction at the Company's new space at Park 12 Hundred.
- v. No payment shall be made until the Company has obtained a City of Westminster business license for the new facility.
- vi. All payments by the City shall be made electronically to the Company's designated financial institution or other account.

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

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

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

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

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

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

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

TENERE, INC.

CITY OF WESTMINSTER

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Tom Hennings  
General Manager

---

Donald M. Tripp  
City Manager

ATTEST:

---

ATTEST:

---

Linda Yeager  
City Clerk

APPROVED AS TO LEGAL FORM:

---

City Attorney's Office

*Adopted by Ordinance No. 3767*



**Agenda Memorandum**

City Council Meeting  
February 9, 2015



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

**Prepared By:** Chris Gray, Economic Development Officer

**Recommended City Council Action**

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

**Summary Statement**

- Trimble Navigation is best known for its global positioning system (GPS) technology and services that integrate a wide range of positioning technologies including GPS, laser, optical and inertial technologies.
- Trimble desires to expand its presence in Westminster and has acquired acreage in Westmoor Technology Park to build a new 125,000 s.f. office building.
- The company currently employs 600 high tech employees at an average annual wage of \$102,000 at the Westminster location and expects to grow employment to 917 by 2018.
- Assistance is based on the City's desire to retain and expand one of the City's major employers in a key industry sector.
- Should Trimble Navigation decide to move out of Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.
- This Councillor's Bill was passed on first reading on January 26, 2015.

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

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

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments: Ordinance  
Exhibit A – Agreement

BY AUTHORITY

ORDINANCE NO. **3768**

COUNCILLOR'S BILL NO. **8**

SERIES OF 2015

INTRODUCED BY COUNCILLORS  
**Pinter - Garcia**

**A BILL**

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

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

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

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

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

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

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

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

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney's Office

**Exhibit "A"**  
**ECONOMIC DEVELOPMENT AGREEMENT**  
**FOR**  
**TRIMBLE NAVIGATION LIMITED**

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

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

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

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

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

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

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

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

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

4. Payments of Rebates.

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

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

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

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

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

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

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

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

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

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

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

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

they shall first engage in a good faith the services of a mutually acceptable, qualified, and experience mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.

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

TRIMBLE NAVIGATION LIMITED  
A California Corporation

CITY OF WESTMINSTER

\_\_\_\_\_  
Raj Bahri  
Chief Financial Officer

\_\_\_\_\_  
Donald M. Tripp  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Linda Yeager  
City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney's Office

*Adopted by Ordinance No. 3768*





**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** Resolution No. 4 Reappointing Members to Boards and Commissions and Filling Vacancies

**Prepared By:** Linda Yeager, City Clerk

**Recommended City Council Action**

Adopt Resolution No. 4 reappointing members whose terms of office expired on December 31, 2014, to an additional two-year term and appointing alternate members to regular membership, where applicable, on the Environmental Advisory Board, the Historic Landmark Board, the Human Services 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, 2014, 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, 2014, and to fill vacancies through the appointment of alternate members to regular membership?

**Alternative**

City Council could choose not to reappoint members and fill vacancies on the Boards and Commissions as noted. This is not recommended as these citizens serve invaluable roles on these Boards and Commissions and their service is an important component of citizen engagement and participation, which supports a Strategic Plan Goal.

**Background Information**

The terms of office of four members on the Environmental Advisory Board expired on December 31, 2014. Edwin Cook, Donald Fiddes, Mark Moreno, and Melanie Stone would like to be reappointed to the Board. Before the end of the year, Nancy Partridge, the alternate member, had to resign suddenly due to the health of an aging parent that required her to move from Westminster. In mid-December of 2014, City Council selected Sharon Powers to fill the balance of Ms. Partridge's unexpired term through December 31, 2015. The attached resolution accomplishes reappointments and fills the vacancy in the alternate position. There will be no vacancies on this Board upon adoption of the resolution.

The terms of office of Barbara Cox, Kaaren Hardy, Jami Mohlenkamp, and Chris Meschuk on the Historic Landmark Board expired on December 31, 2014. All have voiced interest in being reappointed for additional two-year terms, which the attached resolution will accomplish if adopted. All terms of office will expire December 31, 2016. This Board has no vacancies.

The terms of office of Tom Bruchmann, Dan Orecchio, and Samantha Dixon on the Human Services Board expired December 31, 2014. With regret, Ms. Dixon asked not to be reappointed to another term, as lack of transportation and health issues prevent her from attending meetings. Ms. Dixon's service to Westminster spans 27 years and includes not only appointed offices, but also elected office on City Council. The attached resolution appoints Lisa Fiola, the alternate member, a regular member with a two-year term of office that will expire December 31, 2016. The alternate member vacancy that her appointment creates will be filled by Council at a later date.

The terms of office of Margaret Rivera and Betty Whorton on the Personnel Board expired on December 31, 2014. Ms. Whorton would like to be reappointed. After 22 years on the Personnel Board, Ms. Rivera is resigning and thanked City Council for the opportunity to serve. The attached resolution reappoints Ms. Whorton to a two-year term and names Darrell Fuller, the 1<sup>st</sup> alternate, to a two-year term as a regular member. Both terms will expire on December 31, 2016. There are vacancies in the 1<sup>st</sup> and 2<sup>nd</sup> alternate memberships on this Board that Council will fill at a later date.

On the Planning Commission, the terms of Donald Anderson, Tracy Colling, Lawrence Dunn, Mike Litzau, and Joe McConnell expired on December 31, 2014. 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, 2016. There are no vacancies on the Planning Commission.

The terms of office of four members of the Special Permit and License Board expired on December 31, 2014. David DeMott, David Amin, and George Werkmeister have indicated they would like to be reappointed. Mark Whitney resigned with regret due to family health commitments and appreciated the opportunity to serve on this Board. The attached resolution names Geraldine Magill, the alternate member, a regular member for a two-year term that will expire December 31, 2016, to fill one of these two vacancies. The alternate vacancy on this Board will need to be filled at a later date.

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

The citizens appointed 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 members contribute toward a Dynamic, Diverse Economy; Vibrant and Inclusive Neighborhoods; Comprehensive Community Engagement; and Beautiful Desirable, Environmentally Responsible City.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. 4

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**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, 2014, 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 Samantha "Sam" Dixon of the Human Services Board, from Margaret Rivera of the Personnel Board, and from Mark Whitney of the Special Permit and License Board.

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

Section 1. The following individuals are hereby reappointed as members of the City of Westminster Board or Commission listed below with terms of office to expire December 31, 2016.

<b><u>BOARD/COMMISSION</u></b>	<b><u>NAMES OF RE-APPOINTEES</u></b>
Environmental Advisory Board	Edwin Cook, Donald Fiddes, Mark Moreno, and Melanie Stone
Historic Landmark Board	Barbara Cox, Kaaren Hardy, Jami Mohlenkamp, and Chris Meschuk
Human Services Board	Tom Bruchmann and Dan Orecchio
Personnel Board	Betty Whorton
Planning Commission	Donald Anderson, Tracy Colling, Lawrence Dunn, Mike Litzau, and Joe McConnell
Special Permit and License Board	David DeMott, David Amin, 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, 2016:

<b><u>BOARD/COMMISSION</u></b>	<b><u>NAMES OF APPOINTEES</u></b>
Human Services Board	Lisa Fiola
Personnel Board	Darrell Fuller
Special Permit and License Board	Geraldine Magill

Section 3. Sharon Powers is appointed the alternate member on the Environmental Advisory Board with a term of office to expire December 31, 2015.

PASSED AND ADOPTED this 9th day of February, 2015.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney



Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** Councillor’s Bill No. 11 re Financing for Little Dry Creek Drainage Improvements (Possible Emergency Ordinance)

**PREPARED BY:** Tammy Hitchens, Finance Director  
Robert Byerhof, Treasury Manager

**Recommended City Council Action:**

Pass Councillor’s Bill No. 11 on first reading, approving the issuance of private placement bonds (Bonds) in a principal amount not to exceed \$4,650,000 with UMB Bank, n.a. for purposes of financing a portion of the drainage improvements in the Transit Oriented Development (TOD) in South Westminster along Little Dry Creek, and direct the Mayor, City Manager, Finance Director and City Clerk to sign necessary documents on behalf of the City.

**Summary Statement**

- Staff apprised City Council at the December 15, 2014, Study Session of the road and drainage improvements required on the south side of the Westminster commuter rail station, in addition to the funding and administrative challenges associated with an Intergovernmental Agreement (IGA) with Adams County.
- One of the funding challenges identified was the need to finance a portion of the costs to be paid by Adams County per an Intergovernmental Agreement (IGA), which outlines the commitment by the County to contribute \$4,566,110; however, they need to structure the commitment in \$456,611 annual payments over a ten year period from 2015 through 2024.
- Additionally, negotiating the terms of the IGA was challenging and was just approved on January 26 and January 27, 2015, by the City and Adams County, respectively.
- Last September, Finance solicited financing bids in anticipation of the short-term borrowing needs and secured financing pending Council’s approval to obtain a 5-year private placement bond with UMB Bank, n.a.
- Source of repayment for the Bonds is storm water revenues, including payments identified in the IGA with Adams County.
- The estimated closing costs on the Bonds include origination fees (\$11,500), bank legal fees (\$5,000), City legal fees (\$20,000), and miscellaneous fees (\$5,000) for a total of \$41,500.
- On January 26, 2015, CB No. 9 was presented to Council as an emergency ordinance to approve the financing related to drainage improvements in the TOD area, which did not receive the super majority of affirmative votes to pass as an emergency ordinance (5-1 vote); however, Council did pass the emergency ordinance CB No. 10 providing for a supplemental appropriation of the bond funds with a 6-0 vote.
- The current interest rate on the bonds is locked at 1.35% rate until March 3, 2015, which costs \$2,790.
- If the ordinance is passed on first reading and subsequently on February 23<sup>rd</sup> with a second reading, a 30 day referendum period will need to pass before closing on the bonds. The current lock period will expire prior to closing on the bonds under this scenario and the City will need to enter into a new lock period.
- UMB Bank, n.a. has indicated a willingness to enter into a new lock period; however, this exposes the City to the uncertainty of interest rates at the time of the reset.

**Expenditure Required:** Not to exceed \$41,500

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

**Policy Issue**

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

**Alternatives**

- Do not secure a private placement bond issue with UMB Bank, n.a. This alternative is not recommended. In a recently approved IGA with Adams County, the County will pay for their commitment of the improvements over a 10-year period and the City does not have the available monies to fund their portion of the project. By securing a private placement issue, the City is able to ensure timely construction of drainage infrastructure improvements on the south side of Westminster Station.
- City Council could reconsider approving this private placement bond by emergency ordinance. City Council considered this at the January 26 meeting but, per the City Charter, a total of six affirmative votes were needed (i.e., a super majority) since there were only six members of Council present at the meeting. Approving these bonds by emergency ordinance would make the funding immediately available (eliminating the second reading and the additional 30-day referendum period requirements) and eliminate the need to extend the lock with the bank another time. Should City Council decide to reconsider an emergency ordinance, the motion would be: Pass Councillor's Bill No. 11A as an emergency ordinance, approving the issuance of private placement bonds (Bonds) in a principal amount not to exceed \$4,650,000 with UMB Bank, n.a. for purposes of financing a portion of the drainage improvements in the Transit Oriented Development (TOD) in South Westminster along Little Dry Creek, and direct the Mayor, City Manager, Finance Director and City Clerk to sign necessary documents on behalf of the City.

**Background Information**

City Council was presented with information at the December 15, 2014, Study Session regarding road and drainage improvements required on the south side of the Westminster commuter rail station in addition to the administrative challenges associated with negotiating the terms of the IGA with Adams County.

Most recently, the IGA with Adams County was approved by both entities and the County has committed \$4,566,110 per the IGA; however, they need to structure the commitment in \$456,611 annual payments over a ten year period from 2015 through 2024. Since Adams County will not be able to fully fund their commitment in a lump sum nor are they willing to obtain their own financing, Finance investigated short-term financing solutions.

Using a competitive bid process, Staff evaluated five financing proposals based on interest cost, origination and bank legal fees, prepayment terms and other requirements such as financing covenants. Out of the five respondents, UMB Bank, n.a. was selected as the financial institution with the most favorable terms, including the lowest interest rate. Currently, the City has locked in a 1.35% rate, which expires on March 3, 2015 at a cost of \$2,790.

Section 8.3 of the City Charter states that an emergency ordinance may be enacted at the meeting at which it is introduced before publication of the proceedings of the meeting at which it is introduced, by six affirmative votes if six or seven of the Council are present at the meeting at which it is enacted or by four affirmative votes if four or five members of the Council are present at the meeting at which it is enacted. Councillors Bill No. 9 was presented as an emergency ordinance at the January 26, 2015, Council meeting and failed on a vote of five to one. Although the financing was not approved on January 26, 2015, the appropriation of \$4,650,000 was approved with CB No. 10; however, in order to complete the project the financing is needed. Since CB No. 9 did not pass as an emergency ordinance, it is considered as not having

passed based on the motion. As such, an official first and second reading to issue bonds is needed. This has further delayed the issuance of the bonds and will require working with the bank to extend the rate lock as noted previously.

An alternative is offered for City Council to consider the emergency ordinance, CB No. 11A as attached. Since CB No. 9 did not pass as an emergency ordinance, staff has worked with the Construction Manager/General Contractor (CM/GC) for the Little Dry Creek project to bring before City Council for consideration a first phase of construction with the funds currently appropriated in the project account in early March. Staff will then return to City Council with an amendment to the CM/GC contract after the bond funds are available for the completion (second phase) of the Little Dry Creek project construction.

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

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments: Councillor's Bill No. 11 Bond Financing (regular ordinance with two readings)  
Councillor's Bill No. 11A Bond Financing (emergency ordinance with one reading)



**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_  
SERIES OF 2015

COUNCILOR'S BILL NO. **11**  
INTRODUCED BY COUNCILORS

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**A BILL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The costs of contingencies;

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

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

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

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

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

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

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

(11) The costs of machinery and equipment;

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

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

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

(15) All other expenses pertaining to the Project.

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

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

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

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

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

“Fiscal Year” shall mean the twelve (12) months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other twelve-month period as may from time to time be designated by the Council as the Fiscal Year of the Enterprise.

“Governing Body” shall mean the City Council of the City, acting as the Governing Body of the Enterprise.

“Governmental Obligations” shall mean any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein: (1) cash, (2) non-callable direct obligations of the United States of America (“Treasuries”), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) pre-refunded municipal obligations rated in one of the four highest rating categories by S&P and Moody’s, respectively, or (5) any combination of the foregoing.

“Manager” shall mean the City Manager of the City, acting as the Manager of the Enterprise.

“Maximum Annual Debt Service Requirement” shall mean the maximum amount of all required payments of principal and interest on the Outstanding Bonds which will become due in any Fiscal Year.

“Ordinance” shall mean this Ordinance of the Enterprise, which provides for the issuance and delivery of the Bonds.

“Outstanding” shall mean as of any date of calculation, all Bonds or Additional Bonds theretofore executed, issued and delivered by the Enterprise except:

(1) Bonds or Additional Bonds theretofore cancelled by the Enterprise or any paying agent, or surrendered to the Enterprise or any paying agent for cancellation;

(2) Bonds or Additional Bonds in lieu of or in substitution for which other Bonds or Additional Bonds shall have been executed, issued and delivered by the Enterprise and authenticated by any registrar unless proof satisfactory to any registrar is presented that any such Bonds or Additional Bonds are duly held by the lawful owners thereof; or

(3) Bonds deemed to have been paid as provided in Section 19 hereof or bonds that are deemed to have been paid as provided in any similar section of an ordinance authorizing Additional Bonds.

“Owner” or “registered owner” shall mean the registered owner of any Bond as shown on the registration books kept by the Registrar.

“Parity Maximum Annual Debt Service Requirement” shall mean the maximum amount of all required payments of principal and interest which will become due in any Fiscal Year on the Outstanding Bonds, Outstanding Additional Bonds, and any Additional Bonds to be issued at the time of computation.

“Paying Agent” shall mean UMB Bank, n.a., or any successor thereto.

“Paying Agent Agreement” shall mean the agreement between the Enterprise and the Paying Agent.

“Permitted Investment” shall mean any investment or deposit permitted by the Charter, Ordinances of the City and State law.

“Person” shall mean any individual, firm, partnership, corporation, company, association, joint-stock association or body politic; and the term includes any trustee, receiver, assignee or other similar representative thereof.

“Pledged Revenues” shall mean the Stormwater Revenues, the proceeds of the Bonds or other legally available moneys deposited into and held in the Bond Account and the Reserve Account; and interest or investment income on the Bond Account and the Reserve Account; all to the extent that such moneys are at any time required by Section 14 hereof to be deposited into and held in the Bond Account and Reserve Account.

“President” shall mean the Mayor of the City, acting as the President of the Enterprise.

“Principal Operations Office” shall mean the principal operations office of the Registrar and Paying Agent.

“Project” shall mean the stormwater improvements of the Enterprise.

“Purchaser” shall mean UMB Bank, n.a., as the initial purchaser of the Bonds.

“Rebate Account” shall mean the account by that name described in Section 14 hereof.

“Registrar” shall mean UMB Bank, n.a., or any successor thereto.

“Regular Record Date” shall mean the fifteenth day of the calendar month next preceding each interest payment date for the Bonds (other than a special interest payment date hereafter fixed for the payment of defaulted interest).

“Reserve Account” shall mean the account by that name described in Section 14 hereof.

“Reserve Account Requirement” shall mean zero, unless a different amount is set forth in the Sale Certificate as the Reserve Account Requirement.

“Sale Certificate” shall mean the certificate executed by the Manager or the Finance Director dated on or before the date of delivery of the Bonds, setting forth (i) the rate or rates of interest on the Bonds, (ii) the conditions on which and the prices at which the Bonds may be called for redemption; (iii) the price at which the Bonds will be sold; (iv) the principal amount of the Bonds; (v) the amount of principal of the Bonds maturing on each date; (vi) the dates on which interest will be paid and the first interest payment date; (vii) the Reserve Account Requirement, if any; and (viii) any other matters which may be determined by the Manager or the Finance Director pursuant to Section 11-57-205 of the Supplemental Act.

“Secretary” shall mean the City Clerk of the City, acting in his or her capacity as Secretary to the Enterprise.

“Special Record Date” shall mean a special date fixed to determine the names and addresses of registered owners for purposes of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 5 hereof.

“State” shall mean the State of Colorado.

“Stormwater Facilities” shall mean any one or more of the various devices used in the collection, treatment, or disposition of storm, flood or surface drainage waters, including all manmade structures or natural watercourses for the conveyance of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins and street facilities; all inlets; collection, drainage, or disposal lines; intercepting sewers; disposal plants; settling basins; outfall sewers; all pumping, power and other equipment and appurtenances; all extension, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities.

“Stormwater Revenues” shall mean all income from rates, fees, tolls and charges for the services furnished by, or the direct or indirect use of, the Stormwater Facilities, but excluding special assessments for Stormwater purposes.

“Supplemental Public Securities Act” shall mean Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended.

“Tax Code” shall mean the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds, and any regulations promulgated thereunder.

“Term Bonds” shall mean any Bonds that are payable on or before their specified maturity dates from sinking fund payments pursuant to Section 6B hereof.

“Treasurer” shall mean the Director of Finance of the City, or his or her successor in functions, if any, acting as treasurer for the Enterprise.

“Trust Bank” shall mean a Commercial Bank which is authorized to exercise and is exercising trust powers.

“Wastewater Facilities” shall mean any one or more of the various devices used in the collection, treatment, or disposition of sewage and industrial wastes of a liquid nature, including, without limitation, all inlets; collection, drainage, or disposal lines; intercepting sewers; wastewater disposal plants; outfall sewers; sewage lagoons; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; any and all rights or interests for such wastewater facilities; and all other necessary, incidental, or appurtenant properties, facilities, equipment, and costs relating to the foregoing.

“Water Facilities” shall mean water rights, raw water and any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements, and all other necessary, incidental, or appurtenant properties, facilities, equipment and costs relating to the foregoing.

## Section 2. Recitals.

(A) The City is a municipal corporation duly organized and existing under the City’s Charter adopted pursuant to Article XX of the Constitution of the State of Colorado.

(B) The City operates the Stormwater Facilities and imposes and collects the Stormwater Revenues for the use of the Stormwater Facilities.

(C) The City operates its Stormwater Facilities as an enterprise for purposes of Article X, Section 20 of the State Constitution.

(D) The City has heretofore established the Enterprise and authorized the Enterprise to have and exercise certain powers in furtherance of its purposes.

(E) Pursuant to Article X, Section 20 and Article XX, Section 6 of the State Constitution, Chapter XI, and Section 11.1(c) of the Charter, the Enterprise is authorized to issue the Bonds, without voter approval in advance.

(F) The Council has determined that it is in the best interests of the City and the inhabitants thereof and the Enterprise, that stormwater revenue bonds in an aggregate principal amount of not to exceed \$4,650,000 be issued for the purpose of paying the Costs of the Project.

(G) The Enterprise intends to issue the Bonds to defray in part the cost of the Project.

(H) There is not now a pledge of the Pledged Revenues to the payment of any bonds or for any purposes.

(I) The Pledged Revenues may now be pledged lawfully and irrevocably for the payment of the Bonds.

(J) The City has received a proposal from the Purchaser for the private placement purchase of the Bonds.

(K) There is on file with the Secretary the proposed form of the Proposal, the Custodial Agreement and the Paying Agent Agreement.

(L) The City Council desires to cause the Bonds to be issued by the Enterprise, to authorize and direct the application of the proceeds thereof as set forth herein, and to provide security for the payment thereof, all in the manner hereinafter set forth.

Section 3. Short Title and Ratification. This ordinance shall be known and may be cited by the short title "2015 Stormwater Revenue Bond Ordinance."

All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council and other officers of the Enterprise with respect to the imposition and collection of the Pledged Revenues, the Project, and selling and issuing the Bonds for those purposes are ratified, approved and confirmed.

Section 4. Authorization of Project; Sale of Bonds. The Project hereby is authorized at a cost of not exceeding \$4,650,000. There hereby are authorized to be issued fully registered revenue securities of the Enterprise, to be designated "City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds, Series 2015" in the aggregate principal amount of not to exceed \$4,650,000, to be payable and collectible, both as to principal and interest, from the Pledged Revenues. The Bonds shall be sold to the Purchaser. Pursuant to the Supplemental Public Securities Act, the Council hereby delegates to the Manager or the Finance Director the authority to accept the proposal of the Purchaser.

Pursuant to Section 11-57-204 of the Supplemental Public Securities Act, a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Public Securities Act. The Council hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the Bonds. Either the Manager or the Finance Director is hereby independently authorized and directed to execute and deliver the Sale Certificate and to make and approve the final determinations contained therein, subject to the parameters and restrictions of this Ordinance.

Section 5. Bond Details. The Bonds shall be issued in fully registered form (i.e., registered as to both principal and interest) initially registered in the name of the Purchaser or its designee, shall be dated

as of the date of delivery of the Bonds, shall be issued in the denomination of \$5,000 or any integral multiple thereof (provided that no Bond may be in a denomination which exceeds the principal coming due on any maturity date, and no individual Bond will be issued for more than one maturity and interest rate) and shall be numbered in such manner as the Registrar may determine.

The Bonds shall be dated as of the date of their delivery to the Purchaser. The Bonds shall mature, bear interest from their dated date to maturity and be sold, all as provided in the Sale Certificate; provided that

- (1) the aggregate principal amount of the Bonds shall not exceed \$4,650,000;
- (2) the Bonds shall mature no later than December 31, 2020;
- (3) the purchase price of the Bonds, shall not be less than 98% of the principal amount of the Bonds;
- (4) the Bonds shall be subject to redemption prior to maturity at any time at the option of the Enterprise without prior redemption premium;
- (5) the maximum annual repayment cost of the Bonds shall not exceed \$1,700,000;
- (6) the maximum total repayment cost of the Bonds shall not exceed \$5,100,000; and
- (7) the net effective interest rate on the Bonds shall not exceed 2.00%.

The Bonds shall mature on June 1 in the years set forth in the Sale Certificate, and interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on June 1 and December 1, commencing on the date provided in the Sale Certificate.

The principal of and premium, if any, on any Bond shall be payable to the registered owner thereof as shown on the registration records kept by the Registrar at the Principal Operations Office, upon maturity thereof or prior redemption and upon presentation and surrender at the Principal Operations Office of the Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity or prior redemption, it shall continue to draw interest at the same interest rate borne by said Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made by check or draft mailed or wire sent by the Paying Agent from the Principal Operations Office, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof at the address shown on the registration records kept by the Registrar at the close of business on the Regular Record Date for such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner thereof at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date and the date fixed for payment of the defaulted interest shall be fixed by the Registrar whenever moneys become available for payment of the defaulted interest. Notice of the Special Record Date and the date fixed for payment of the defaulted interest shall be given to the registered owners of the Bonds not less than ten days prior to the Special Record Date by first-class mail to each such registered owner as shown on the Registrar's registration records on a date selected by the Registrar, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to between the owner of such Bond and the Paying Agent (provided, however, that the City shall not be required to make funds available to the



Paying Agent prior to the payment dates stated in the Registrar Agreement). All such payments shall be made in lawful money of the United States of America without deduction for the services of the Paying Agent or Registrar.

Section 6. Prior Redemption.

(A) **OPTIONAL PRIOR REDEMPTION:** The Bonds designated in the Sale Certificate, if any, shall be subject to redemption at the option of the Enterprise from any legally available funds on the dates set forth in the Sale Certificate in whole, or in part from any maturities, in any order of maturity and by lot within a maturity from Bonds of the same maturity and interest rate, in such manner as the Enterprise may determine (giving proportionate weight to Bonds in denominations larger than \$5,000), at the price set forth in the Sale Certificate, subject to the parameters and restrictions of this Ordinance.

(B) **MANDATORY REDEMPTION:** The Term Bonds shall be subject to mandatory sinking fund redemption at the times, in the amounts and at the prices provided in the Sale Certificate.

On or before the thirtieth day prior to each such sinking fund payment date, the Registrar shall proceed to call the Term Bonds for redemption from such sinking fund on the next June 1, and give notice of such call without further instruction or notice from the Enterprise.

At its option, to be exercised on or before the sixtieth day next preceding any such sinking fund redemption date, the Enterprise may (a) deliver to the Registrar for cancellation Term Bonds in an aggregate principal amount desired or (b) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the Enterprise on such sinking fund redemption date and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The Enterprise will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding sentence are to be availed with respect to such sinking fund payment. Failure of the Enterprise to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this paragraph B.

*So long as the Purchaser is the sole owner of 100% of the Bonds, the Purchaser shall not be required to surrender the Bonds to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption, but shall be required to surrender such Bond on the final maturity date thereof to receive payment of the final principal payment thereof.*

(C) **PARTIAL REDEMPTION:** In the case of Bonds of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the owner of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof.

(D) **NOTICE:** Notice of redemption shall be given by the Registrar in the name of the Enterprise, by sending a copy of such notice by certified, first-class postage prepaid mail, or by electronic means, not more than 60 nor less than 30 days prior to the redemption date, to the Purchaser, and to each registered owner of any Bond, all or a portion of which is called for prior redemption, at his address as it last appears on the registration records kept by the Registrar. Failure to give such notice by mailing to the registered owner of any Bond or to the Purchaser or any defect therein, shall not affect the validity of the proceedings for the redemption of any other Bonds.

Such notice shall identify the Bonds or portions thereof to be redeemed (if less than all are to be redeemed) and the date fixed for redemption, and shall further state that on such redemption date the principal amount thereof and the designated premium thereon, if any, will become due and payable at the Paying Agent, and that from and after such date interest will cease to accrue. Accrued interest to the redemption date will be paid by check or draft mailed to the registered owner (or by alternative means if so agreed to by the Paying Agent and the registered owner). Notice having been given in the manner hereinabove provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation and surrender thereof at the Paying Agent, the Enterprise will pay the principal of and premium, if any, on Bond or Bonds so called for redemption.

Notwithstanding the provisions of this Section, any notice of redemption shall either (a) contain a statement that the redemption is conditioned upon the receipt by the Paying Agent on or before the redemption date of funds sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be cancelled by written notice to the Owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed, or (b) be given only if funds sufficient to pay the redemption price of the Bonds so called for redemption are on deposit with the Paying Agent in the applicable fund or account.

Section 7. Special Obligations. All of the Bonds, together with the interest accruing thereon shall be payable and collectible solely out of the Pledged Revenues, which are hereby irrevocably so pledged; the owner or owners of the Bonds may not look to any general or other fund for the payment of principal and interest on the Bonds, except the designated special funds pledged therefor; and the Bonds shall not constitute an indebtedness nor a debt within the meaning of any applicable charter, constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the Enterprise or the City.

Section 8. Form of Bonds and Registration Panel. The Bonds and the registration panel shall be substantially as follows (provided that any portion of the Bond text may, with appropriate references, be printed on the back of the Bonds), with such omissions, insertions, endorsements, and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this Ordinance, or be consistent with this Ordinance and necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto:

(Form of Bond)

**STATE OF COLORADO** **UNITED STATES OF AMERICA**  
**COUNTIES OF ADAMS AND JEFFERSON**

**CITY OF WESTMINSTER**  
**WATER AND WASTEWATER UTILITY ENTERPRISE**  
**STORMWATER REVENUE BOND**  
**SERIES 2015**

R-\_\_\_\_ \$\_\_\_\_\_

INTEREST RATE            MATURITY DATE            DATED DATE            CUSIP  
      \_\_\_\_%            June 1, 20\_\_            , 2015

REGISTERED OWNER: UMB BANK, N.A.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The City of Westminster, Colorado (the "City"), acting by and through its Water and Wastewater Utility Enterprise (the "Enterprise"), for value received, promises to pay to the registered owner specified above, or registered assigns, solely from the special funds provided therefor, the principal amount specified above, on the maturity date specified above (unless called for earlier redemption), and to pay from said sources interest thereon on June 1 and December 1 of each year, commencing on June 1, 2015, at the interest rate per annum specified above, until the principal sum is paid or payment has been provided therefor, as described in an ordinance adopted by the City Council of the City, acting as the governing body of the Enterprise, on February 23, 2015 (the "Ordinance"). This is one of an authorized series of bonds issued under the Ordinance (the "Bonds"). The Bonds are all issued under and equally and ratably secured by and entitled to the security of the Ordinance. To the extent not defined herein, terms used in this Bond shall have the same meanings as set forth in the Ordinance. This Bond bears interest, matures, is payable, is subject to redemption and is transferable as provided in the Ordinance.

The Bond shall mature on June 1 in the years set forth below, and interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on June 1 and December 1, commencing on June 1, 2015.

The Bond is subject to mandatory sinking fund redemption at a price equal to the principal amount thereof plus accrued interest to the redemption date.

As and for the sinking fund for the Bonds, the Enterprise shall deposit in the Bond Account on or before June 1, 2015, and on each June 1 thereafter, through and including June 1, 20\_\_, a sum which together with other moneys available in the Bond Account is sufficient to redeem (after credit as hereinafter provided), on the following dates, the following principal amounts of the Bonds maturing on June 1, 20\_\_:

<u>June 1 of the Year</u>	<u>Principal Amount</u>
2015	
2016	
2017	
2018	
2019	
2020	
<b>TOTAL</b>	

---

\*Maturity.

*So long as the Purchaser is the sole owner of 100% of this Bond, the Purchaser shall not be required to surrender this Bond to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption, but shall be required to surrender this Bond on the final maturity date thereof to receive payment of the final principal payment thereof.*

Reference is made to the Ordinance and to all Ordinances supplemental thereto, with respect to the nature and extent of the security for the Bonds, the accounts, funds or revenues pledged, rights, duties and obligations of the Enterprise, the Paying Agent the rights of the Owners of the Bonds, the events of defaults and remedies, the circumstances under which any Bond is no longer Outstanding, the issuance of additional bonds and the terms on which such additional bonds may be issued under and secured by the Ordinance, the ability to amend the Ordinance, and to all the provisions of which the Owner hereof by the acceptance of this Bond assents.

THE BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, AND PURSUANT TO THE CHARTER AND THE ORDINANCE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ENTERPRISE, SECURED BY THE PLEDGED REVENUES. THE BONDS DO NOT CONSTITUTE A DEBT OF THE ENTERPRISE OR THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE ENTERPRISE, THE CITY, THE STATE NOR ANY OF THE POLITICAL SUBDIVISIONS THEREOF IS LIABLE THEREFOR. NEITHER THE MEMBERS OF THE CITY COUNCIL NOR ANY PERSONS EXECUTING THIS BOND SHALL BE PERSONALLY LIABLE FOR THIS BOND.

It is certified, recited and warranted that all the requirements of law have been fully complied with by the proper officers of the Enterprise in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the Constitution of the State, with the Charter of the City, the Enterprise Ordinance, and with the Ordinance and any ordinances supplemental thereto; and that this Bond does not contravene any Constitutional, statutory or Charter limitation.

It is also certified, recited, and warranted that the Bonds are issued under the authority of the Ordinance and the Supplemental Public Securities Act. It is the intention of the Enterprise, as expressed in the Ordinance, that this recital shall conclusively impart full compliance with all of the provisions of the Ordinance and shall be conclusive evidence of the

validity and the regularity of the issuance of the Bonds after their delivery for value and that all of the Bonds issued are incontestable for any cause whatsoever after their delivery for value.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the certificate of authentication hereon shall have been duly executed by the Paying Agent.

IN TESTIMONY WHEREOF, the City Council of the City of Westminster, acting by and through its Water and Wastewater Utility Enterprise, has caused this bond to be signed and executed in its name with a manual or facsimile signature of the President, and to be signed, executed and attested with a manual or facsimile signature of the Secretary, with a manual or facsimile impression of the seal of the City affixed hereto, all as of the date specified above.

(Manual or Facsimile Signature)  
President

(MANUAL OR FACSIMILE SEAL)

Attest:

(Manual or Facsimile Signature)  
Secretary

(End of Form of Bond)

(Form of Registrar's Certificate of Authentication)

This is one of the Bonds described in the within-mentioned Bond Ordinance, and this Bond has been duly registered on the registration records kept by the undersigned as Registrar for such Bonds.

UMB BANK, N.A.,  
as Registrar

Date of Authentication  
and Registration:

By: \_\_\_\_\_  
Finance Director/Treasurer

\_\_\_\_\_

(End of Form of Registrar's Certificate of Authentication)

(Form of Prepayment Panel)

The following installments of principal (or portion thereof) of this bond have been prepaid in accordance with the terms of the Bond Ordinance authorizing the issuance of this bond.

---

<u>Date of Prepayment</u>	<u>Principal Prepaid</u>	<u>Signature of Authorized Representative of the Depository</u>

---

(End of Form of Prepayment Panel)



(Form of Assignment)

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney, to transfer the same on the records of the Registrar, with full power of substitution in the premises.

\_\_\_\_\_

Dated: \_\_\_\_\_

Signature Guaranteed by a member  
of the Medallion Signature Program:

\_\_\_\_\_

Address of transferee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security or other tax  
identification number of transferee:

\_\_\_\_\_

NOTE: The signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

**EXCHANGE OR TRANSFER FEES MAY BE CHARGED**

(End of Form of Assignment)

Section 9. Uniform Commercial Code. Subject to the registration provisions hereof, the Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the owner or owners thereof shall possess all rights enjoyed by the holders or owners of negotiable instruments under the provisions of the Uniform Commercial Code-Investment Securities. The principal of and interest on the Bonds shall be paid, and the Bonds shall be transferable, free from and without regard to any equities between the City and the original or any intermediate owner of any Bonds or any setoffs or cross-claims.

Section 10. Execution. The Bonds shall be executed in the name and on behalf of the Enterprise by the signature of the President, shall be sealed with a manual or facsimile impression of the seal of the City and attested by the signature of the Secretary. Each Bond shall be authenticated by the manual signature of an authorized officer or employee of the Registrar as hereinafter provided. The signatures of the President and the Secretary may be by manual or facsimile signature. The Bonds bearing the manual or facsimile signatures of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the Enterprise (subject to the requirement of authentication by the Registrar as hereinafter provided), notwithstanding that before the delivery thereof and payment therefor or before the issuance of the Bonds upon transfer or exchange, any or all of the persons whose manual or facsimile signatures appear thereon shall have ceased to fill their respective offices. The President and the Secretary shall, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures any facsimiles thereof appearing on the Bonds. At the time of the execution of the signature certificate, the President and the Secretary may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds.

No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly manually executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by the Registrar if manually signed by an authorized officer or employee of the Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds issued hereunder. By authenticating any of the Bonds initially delivered pursuant to this Ordinance, the Registrar shall be deemed to have assented to the provisions of this Ordinance.

Section 11. Registration, Transfer and Exchange.

(A) The Bonds shall be registered in the name of the Purchaser or its designee. Upon the surrender for transfer of any Bond at the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall enter such transfer on the registration records and shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same series, of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not previously assigned. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the series and the same maturity and interest rate of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not previously assigned. The Registrar may impose reasonable charges in connection with such exchanges and transfers of Bonds, which charges (as well as any tax or other governmental charge required to be paid with respect to such exchange or transfer) shall be paid by the registered owner requesting such exchange or transfer.

(B) The Registrar shall not be required to transfer or exchange (1) any Bond or portion thereof during a period beginning at the opening of business 15 days before the day of the mailing of notice of prior redemption as herein provided and ending at the close of business on the day of such mailing, or (2) any

Bond or portion thereof after the mailing of notice calling such Bond or any portion thereof for prior redemption, except for the unredeemed portion of the Bonds being redeemed in part.

(C) The person in whose name any Bond shall be registered on the registration records kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes; except as may be otherwise provided in Section 5 hereof with respect to payment of interest; and, subject to such exception, payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

(D) If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it and the Enterprise may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not previously assigned. If such lost, stolen, destroyed, or mutilated Bond shall have matured or is about to become due and payable, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

(E) The officers of the Enterprise are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.

(F) Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Registrar for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the Enterprise.

Section 12. Book Entry. The Bonds shall be registered in the name of the Purchaser and shall not be registered in book-entry format.

Section 13. Delivery of Bonds and Disposition of Proceeds. When the Bonds have been duly executed by appropriate Enterprise officers and authenticated by the Registrar, the Enterprise shall cause the Bonds to be delivered to the Purchaser on receipt of the agreed purchase price. The Bonds shall be delivered in such denominations as the Purchaser shall direct (but subject to the provisions of Sections 11 and 12 hereof); and the Registrar shall initially register the Bonds in such name or names as the Purchaser shall direct.

The proceeds of the Bonds shall be deposited promptly by the Enterprise into the Construction Account and shall be accounted for as described in the Custodial Agreement and are hereby pledged therefor, but the Purchaser of the Bonds or any subsequent Owner in no manner shall be responsible for the application or disposal by the Enterprise or any of its officers of any of the funds derived from the sale.

All proceeds of the Bonds shall be credited to the Construction Account and used by the Enterprise, together with any other available moneys therefor, to pay the Costs of the Project, and costs incidental to the issuance of the Bonds. After payment of all Costs of the Project and of issuance of the Bonds, or after adequate provisions therefor is made, any unexpended balance of the proceeds of the Bonds shall be deposited in the Bond Account and applied to the payment of the principal of and interest on the Bonds.

Section 14. Lien on Pledged Revenues; Use of Pledged Revenues. The Bonds constitute a pledge of, and an irrevocable lien (but not necessarily an exclusively such lien) on all of the Pledged Revenues. The Bonds and any Additional Bonds authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance thereof, it being the intention of the Enterprise that there shall be no priority among the Bonds and Additional Bonds, regardless of the fact that they may be actually issued and delivered at different times.

So long as any Bonds shall be Outstanding, either as to principal or interest, the Pledged Revenues shall, upon receipt by the Enterprise, be applied as follows.

(A) BOND ACCOUNT: First, there shall be credited from the Pledged Revenues to a special account hereby created, known as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bond Account,” the following amounts:

(1) Interest Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next maturing installment of interest on the Bonds then Outstanding.

(2) Principal Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, or commencing on the first day of the month one year next prior to the first principal payment date of any of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next installment of principal of the Bonds coming due at maturity, or pursuant to mandatory redemption, if any.

If prior to any interest payment date or principal payment date there has been accumulated in the Bond Account the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraph (1) or (2) (whichever is applicable) of this paragraph, may be appropriately reduced; but the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date. The moneys in the Bond Account shall be used only to pay the principal of, prior redemption premium if any, and interest on the Bonds as the same becomes due. The payments required in subparagraph (1) or (2) of this paragraph shall be made concurrently with payments required to be made to pay the principal of or interest on Additional Bonds pursuant to any ordinance authorizing the issuance of Additional Bonds.

(B) RESERVE ACCOUNT: Second, except as hereinafter provided, from any remaining Pledged Revenues there shall be credited monthly to a special account hereby created, known as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds Reserve Account” an amount, if any, which is necessary to maintain the Reserve Account as a continuing reserve in an amount not less than the Reserve Account Requirement or to pay the issuer of any Bond Reserve Insurance Policy (if any) any amounts owing to such issuer under the terms of such Bond Reserve Insurance Policy. Investment earnings on deposits in the Reserve Account shall remain in the Reserve Account if the amount on deposit in the Reserve Account does not equal the Reserve Account Requirement. No credit need be made to the Reserve Account so long as the moneys and/or a Bond Reserve Insurance Policy (if any) therein equal the Reserve Account Requirement (regardless of the source of such accumulations). The Reserve Account Requirement shall be accumulated and maintained as a continuing reserve to be used, except as provided in paragraphs C and E of this Section and Section 19 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the

Bonds resulting from the failure to credit to the Bond Account sufficient funds to pay said principal and interest as the same accrue or to pay the issuer of any Bond Reserve Insurance Policy (if any) any amounts owing to such issuer under the terms of the Bond Reserve Insurance Policy.

In lieu of all or a portion of the moneys required to be deposited in the Reserve Account by this Ordinance, the Enterprise may at any time or from time to time deposit a Bond Reserve Insurance Policy in the Reserve Account in full or partial satisfaction of the Reserve Account Requirement. Any such Bond Reserve Insurance Policy shall be payable (or available to be drawn upon) on any date on which moneys will be required to be withdrawn from the Reserve Account as provided herein. Upon deposit of any Bond Reserve Insurance Policy in the Reserve Account, the Enterprise may transfer moneys equal to the amount payable under the Bond Reserve Insurance Policy from the Reserve Account and apply such moneys to any lawful purpose.

If the tax covenant contained in Section 18L of this Ordinance does not permit the use of proceeds of any series of Bonds for a full funding of the Reserve Account in the amount necessary to have the Reserve Account funded at the Reserve Account Requirement, the maximum amount of proceeds of such series of Bonds which may be deposited to the Reserve Account pursuant to Section 18L shall be deposited to the Reserve Account upon the issuance of the Bonds and Pledged Revenues shall be deposited to the Reserve Account monthly so that not later than twelve calendar months after the date of issuance of the Bonds the amount on deposit in the Reserve Account shall equal the Reserve Account Requirement.

The payments required to be made by this paragraph shall be made concurrently with payments required to be made to any reserve fund or account pursuant to any ordinance authorizing Additional Bonds and concurrently with any repayment or similar obligations payable to any surety provider issuing any reserve fund insurance policy with respect to any Additional Bonds. If there are insufficient Pledged Revenues to comply with the requirements of the first sentence of this paragraph, available Pledged Revenues shall be credited or paid to the Reserve Account and to reserve funds or accounts which may be established by any ordinance authorizing Additional Bonds (or to the issuer of any Bond Reserve Insurance Policy or any other surety provider issuing any reserve fund insurance policy with respect to any Additional Bonds) pro rata, based upon the aggregate principal amount of the Bonds and any such Additional Bonds then Outstanding; provided, however, that compliance with the provisions of this sentence shall not cure any Event of Default caused by non-compliance with the first sentence of this paragraph.

(C) **TERMINATION UPON DEPOSITS TO MATURITY OR REDEMPTION DATE:** No payment need be made into the Bond Account, the Reserve Account, or both, if the amount in the Bond Account and the amount in the Reserve Account total a sum at least equal to the entire amount of the Outstanding Bonds, both as to principal and interest to their respective maturities, or to any redemption date on which the Enterprise shall have exercised its option to redeem the Bonds then Outstanding and thereafter maturing, including any prior redemption premiums then due, and both accrued and not accrued, in which case moneys in the Bond Account and Reserve Account in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue, and any moneys in excess thereof in the two Accounts may be withdrawn and used for any lawful purpose.

(D) **DEFRAYING DELINQUENCIES IN BOND AND RESERVE ACCOUNTS:** If on any required monthly payment date the Enterprise shall for any reason fail to pay into the Bond Account the full amount above stipulated, then an amount shall be paid into the Bond Account on such date from the Reserve Account equal to the difference between the amount paid and the full amount so stipulated. Any cash on deposit in the Reserve Account shall be transferred to the Bond Account to cover such a deficiency prior to the transfer of funds drawn under the Bond Reserve Insurance Policy. After such a

draw any available Pledged Revenues, after the payments required by paragraph A of this Section, shall be used first to repay the issuer of the Bond Reserve Insurance Policy (if any), to reinstate the Bond Reserve Insurance Policy and then to replenish cash in the Reserve Account. The cash so used shall be replaced in the Reserve Account from the first Pledged Revenues received that are not required to be otherwise applied by this Section, but excluding any payments required for any subordinate obligations; provided, however, that an amount equal to the amount withdrawn from the Reserve Account shall be deposited by the Enterprise in the Reserve Account no later than twelve months from the date of such withdrawal. If at any time the Enterprise shall for any reason fail to pay into the Reserve Account the full amount above stipulated from the Pledged Revenues, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first Pledged Revenues thereafter received not required to be applied otherwise by this Section, but excluding any payments required for any subordinate obligations. The moneys in the Bond Account and in the Reserve Account shall be used solely for the purpose of paying the principal and any redemption premium of and the interest on the Bonds, except that moneys in the Reserve Account shall be used to pay the issuer of any Bond Reserve Insurance Policy any amounts owing to such issuer under the terms of the Bond Reserve Insurance Policy; provided, however, that any moneys at any time in excess of the Reserve Account Requirement calculated with respect to the Bonds in the Reserve Account may be withdrawn therefrom and used for any lawful purpose; and provided, further, that any moneys in the Bond Account and in the Reserve Account in excess of accrued and unaccrued principal and interest requirements to the respective maturities of the Outstanding Bonds may be used as provided in paragraphs G and H of this Section.

(E) REBATE ACCOUNT: Second, concurrently with any payments required to be made pursuant to any ordinance authorizing the issuance of Additional Bonds with respect to any rebate funds established thereby, there shall be deposited in a special account hereby created, known as the "City of Westminster, Colorado, 2015 Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds Rebate Account" amounts required by Section 148(f) of the Tax Code to be held until such time as any required rebate payment is made. Amounts in the Rebate Account shall be used for the purpose of making the payments to the United States required by Section 148(f) of the Tax Code. Any amounts in excess of those required to be on deposit therein by Section 148(f) of the Tax Code shall be withdrawn therefrom and deposited into the Bond Account. Funds in the Rebate Account shall not be subject to the lien created by this Ordinance to the extent such amounts are required to be paid to the United States Treasury.

(F) CONSTRUCTION ACCOUNT: A special fund is hereby created and established with the Custodian to be designated as the "City of Westminster, Colorado, 2015 Stormwater Revenue Bonds Construction Account." Moneys on deposit in the Construction Account shall be disbursed, upon the written direction of the Enterprise, to pay the Costs of the Project and shall be governed by the terms of the Custodial Agreement.

(G) INTEREST ON BOND RESERVE INSURANCE POLICY DRAWS: After the payments required by A, B and E of this Section, the Pledged Revenues shall be used to pay interest on amounts advanced under any Bond Reserve Insurance Policy or any similar policy, surety, letter of credit or similar instrument deposited in or credited to a reserve account for Additional Bonds.

(H) PAYMENT FOR SUBORDINATE OBLIGATIONS: After the payments required by paragraphs A, B, E and F of this Section, the Pledged Revenues shall be used by the Enterprise for the payment of interest on and principal of any obligations secured by Pledged Revenues subordinate to the lien of the Bonds, hereafter authorized to be issued, including reasonable reserves therefor.

(I) USE OF REMAINING REVENUES: After making the payments required to be made by this Section, any remaining Pledged Revenues may be used for any lawful purpose.

Section 14. General Administration of Accounts. The accounts designated in Section 14 hereof shall be administered as follows subject to the limitations stated in Section 18L hereof:

(A) **BUDGET AND APPROPRIATION OF ACCOUNTS:** The sums provided to make the payments specified in Section 14 hereof are hereby appropriated for said purposes, and said amounts for each year shall be included in the biennial budget and the appropriation ordinance or measures to be adopted or passed by the City Council in each year respectively while any of the Bonds, either as to principal or interest, are Outstanding and unpaid. No provision of any constitution, statute, charter, ordinance, resolution, or other order or measure enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the Enterprise to keep and perform the covenants contained in this Ordinance so long as any of the Bonds remain Outstanding and unpaid. Nothing herein shall prohibit the City Council, at its sole option, from appropriating and applying other funds of the Enterprise legally available for such purpose to the Bond Account or Reserve Account for the purpose of providing for the payment of the principal of, interest on or any premiums due with respect to the Bonds.

(B) **PLACES AND TIMES OF DEPOSITS:** Each of the special accounts described in Section 14 hereof shall be maintained as a book account kept separate and apart from all other accounts or funds of the Enterprise as trust accounts solely for the purposes herein designated therefor. For purposes of investment of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such book accounts pertaining to the Pledged Revenues or to such accounts and any other funds of the Enterprise to be continued under this Ordinance. Moneys in any such book account shall be continuously secured to the fullest extent required by the laws of the State for the securing of public accounts. Each periodic payment shall be credited to the proper book account not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.

(C) **INVESTMENT OF ACCOUNTS:** Any moneys in any account described in Section 14 of this Ordinance may be invested or reinvested in any Permitted Investment. Securities or obligations purchased as such an investment shall either be subject to redemption at any time at face value by the holder thereof at the option of such holder, or shall mature at such time or times as shall most nearly coincide with the expected need for moneys from the account in question. Securities or obligations so purchased as an investment of moneys in any such account shall be deemed at all times to be a part of the applicable account. The Enterprise shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given account whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such account.

(D) **NO LIABILITY FOR LOSSES INCURRED IN PERFORMING TERMS OF ORDINANCE:** Neither the Enterprise nor any officer of the Enterprise shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

(E) **CHARACTER OF FUNDS:** The moneys in any fund or account herein authorized shall consist of lawful money of the United States or investments permitted by Section 15C hereof or both such money and such investments. Moneys deposited in a demand or time deposit account in or evidenced by a certificate of deposit of a Commercial Bank pursuant to Section 15C hereof, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.

Section 16. Additional Bonds.

(A) **LIMITATIONS UPON ISSUANCE OF ADDITIONAL BONDS:** Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the Enterprise of Additional Bonds

payable from and constituting a lien upon the Pledged Revenues on a parity with the lien of the Bonds. Such Additional Bonds may be payable solely from Pledged Revenues or they may be payable from Pledged Revenues and another revenue or fund of the Enterprise (“Additional Pledged Revenues”). Regardless of whether payable solely from Pledged Revenues or from Pledged Revenues and Additional Pledged Revenues, such bonds or other obligations may be issued only if for the Fiscal Year immediately preceding the issuance of any Additional Bonds, the amount of Pledged Revenues in such Fiscal Year equaled or exceeded 125% of the Parity Maximum Annual Debt Service Requirement. In addition, if the Enterprise has drawn on the Bond Reserve Insurance Policy, the policy costs due and owing to the issuer of the Bond Reserve Insurance Policy shall be added to Parity Maximum Annual Debt Service for purposes of determining if the test in the preceding sentence has been met. For the purpose of satisfying the aforementioned 125% test, any Additional Pledged Revenues which are pledged to payment of the Bonds prior to or concurrently with the issuance of Additional Bonds, any rate, fee, toll or charge, now existing or hereafter imposed, which legally becomes a part of the Pledged Revenues prior to the issuance of Additional Bonds, and which increase is imposed prior to the issuance of Additional Bonds can be considered for its estimated effect on the amount of the Pledged Revenues as if increase had been in effect for the Fiscal Year immediately preceding the issuance of such Additional Bonds.

(B) **CERTIFICATE OF REVENUES:** A written certification by an officer or employee of the Enterprise that the requirements of paragraph A of this Section have been met shall be conclusively presumed to be accurate in determining the right of the Enterprise to authorize, issue, sell and deliver said Additional Bonds on a parity with the Bonds.

(C) **SUBORDINATE OBLIGATIONS PERMITTED:** Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the Enterprise of additional obligations payable from and constituting a lien upon the Pledged Revenues subordinate or junior to the lien of the Bonds.

(D) **SUPERIOR OBLIGATIONS PROHIBITED:** Nothing in this Ordinance shall be construed so as to permit the Enterprise to hereafter issue obligations payable from the Pledged Revenues having a lien thereon prior or superior to the Bonds.

Section 17.      Refunding Obligations.

(A) **GENERALLY.** If at any time after the Bonds, or any part thereof, shall have been issued and remain Outstanding, the Enterprise shall find it desirable to refund any Outstanding obligations payable from the Pledged Revenues, said obligations, or any part thereof, may be refunded, subject to the provisions of paragraph B of this Section, if (1) the obligations to be refunded, at the time of their required surrender for payment, shall then mature or shall then be callable for prior redemption at the Enterprise’s option upon proper call, or (2) the owners of the obligations to be refunded consent to such surrender and payment.

(B) **PROTECTION OF OBLIGATIONS NOT REFUNDED:** Any refunding obligations payable from the Pledged Revenues shall be issued with such details as the City Council may provide, so long as there is no impairment of any contractual obligation imposed upon the Enterprise by any proceedings authorizing the issuance of any unrefunded portion of obligations payable from the Pledged Revenues; but so long as any Bonds are Outstanding, refunding obligations payable from the Pledged Revenues may be issued on a parity with the unrefunded Bonds only if:

(1) Prior Consent. The Enterprise first receives the consent of the Owner or Owners of the unrefunded Bonds; or



(2) Requirements Not Increased. The refunding obligations do not increase for any Fiscal Year prior to and including the last maturity date of any unrefunded Bonds, the aggregate principal and interest requirements evidenced by such refunding obligations and by any Outstanding Bonds and Outstanding Additional Bonds not refunded, and the lien of any refunding parity obligations on the Pledged Revenues is not raised to a higher priority than the lien thereon of any obligations thereby refunded; or

(3) Earnings Test. The refunding obligations are issued in compliance with paragraphs A and B of Section 16 hereof.

Section 18. Protective Covenants. The Enterprise hereby additionally covenants and agrees with each and every owner of the Bonds that:

(A) USE OF BOND PROCEEDS: The Enterprise will proceed with the Project without delay and with due diligence.

(B) PAYMENT OF BONDS: The Enterprise will promptly pay the principal of and interest on every Bond issued hereunder and secured hereby on the dates and in the manner specified herein and in said Bonds according to the true intent and meaning hereof. Such principal and interest is payable solely from the Pledged Revenues.

(C) RATE MAINTENANCE COVENANT: The City shall prescribe, revise and collect rates, fees, tolls and charges for the use of the Stormwater Facilities that shall produce Stormwater Revenues sufficient to pay in each Fiscal Year an amount at least equal to one hundred twenty-five percent (125%) of the Parity Maximum Annual Debt Service Requirement plus any amounts required to meet then existing deficiencies pertaining to any fund or account relating to the Pledged Revenues or any securities payable therefrom plus one hundred percent (100%) of all amounts then due and owing to any provider of a bond insurance policy or reserve fund insurance policy, if hereafter obtained. In the event that the rates, fees, tolls and charges for the use of the Stormwater Facilities at any time should not be sufficient to make all of the payments and accumulations required by this Ordinance, the Enterprise shall increase its rates, fees, tolls and charges for the use of the Stormwater Facilities to such extent as to insure the payments and accumulations required by the provisions of this Ordinance.

(D) COLLECTION OF CHARGES: The City shall cause rates, fees, tolls and charges for the use of the Stormwater Facilities to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Pledged Revenues shall be adequate to meet the requirements of this Ordinance, including without limitation Section 18C of this Ordinance, and any other ordinance or instrument supplemental thereto. The rates, fees, tolls and charges for the use of the Stormwater Facilities shall be collected in any lawful manner.

(E) DEFENSE OF LEGALITY OF PLEDGED REVENUES: The City shall, to the extent permitted by law, defend the validity and legality of this Ordinance and rates, fees, tolls and charges for the use of the Stormwater Facilities against all claims, suits and proceedings which would diminish or impair the Pledged Revenues. Furthermore, the City shall amend from time to time the provisions of any ordinance or resolution of the City, as necessary to prevent impairment of the Pledged Revenues as required to meet the principal of, interest on, and prior redemption premium, if any, of the Bonds when due.

(F) FURTHER ASSURANCES: At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be

necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds and accounts hereby pledged or assigned, or intended so to be, or which the City or the Enterprise may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Ordinance. The City, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of said Pledged Revenues and other funds and accounts pledged hereunder and all the rights of every owner of any of the Bonds against all claims and demands of all Persons whomsoever.

(G) **CONDITIONS PRECEDENT:** Upon the issuance of any of the Bonds, all conditions, acts and things required by the Constitution or laws of the United States, the Constitution or laws of the State, the Charter, the Enterprise Ordinance or this Ordinance, to exist, to have happened, and to have been performed precedent to or in the issuance of the Bonds shall exist, have happened and have been performed, and the Bonds, together with all other obligations of the Enterprise, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States, the Constitution or laws of the State or the Charter, or the Enterprise Ordinance.

(H) **RECORDS:** So long as any of the Bonds remain Outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues and the accounts created or continued by this Ordinance.

(I) **AUDITS:** The City further agrees that it will, within 210 days following the close of each Fiscal Year, cause an audit of such books and accounts to be made by a certified public accountant, who is not an employee of the City, showing the Pledged Revenues. The City agrees to allow the owner of any of the Bonds to review and copy such audits and reports, at the City's offices, at his request. Copies of such audits and reports will be furnished to the Purchaser.

(J) **PERFORMING DUTIES:** The City will faithfully and punctually perform or cause to be performed all duties with respect to the Pledged Revenues required by the Charter, the Enterprise Ordinance, and the Constitution and laws of the State and the ordinances and resolutions of the Enterprise, including but not limited to the proper collection and enforcement of rates, fees, tolls and charges for the use of the Stormwater Facilities and the segregation of the Pledged Revenues and their application to the respective accounts herein designated.

(K) **OTHER LIENS:** As of the date of issuance of the Bonds, there are no liens or encumbrances of any nature whatsoever on or against any of the Pledged Revenues.

(L) **TAX COVENANT:** The Enterprise and the City covenant for the benefit of the registered owners of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the Enterprise or any facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the Enterprise in fulfilling the above covenant under the Tax Code and Colorado law have been met.

(M) ENTERPRISE'S EXISTENCE: The Enterprise will maintain its corporate identity and existence so long as any of the Bonds remain Outstanding, unless another political subdivision by operation of law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the Enterprise and is obligated by law to receive and distribute the Pledged Revenues in place of the Enterprise, without materially adversely affecting the privileges and rights of any owner of any Outstanding Bonds.

(N) SURETY BONDS: Each official or employee of the City having custody of the Pledged Revenues, or responsible for their handling, shall be fully bonded at all times, which bond shall be conditioned upon the proper application of such money. In lieu of such bond, the City may purchase one or more insurance policies deemed by the City to be sufficient to protect the City against any loss with regard to the Pledged Revenues arising from the malfeasance or misfeasance by any official or employee of the City having custody of the Pledged Revenues.

(O) PREJUDICIAL CONTRACTS AND ACTION PROHIBITED: No contract will be entered into, nor will any action be taken, by the Enterprise by which the rights and privileges of any Owner are impaired or diminished.

Section 19. Defeasance. When the Bonds have been fully paid both as to principal and interest, all obligations hereunder shall be discharged and the Bonds shall no longer be deemed to be Outstanding for any purpose of this Ordinance, except as set forth in Section 18L hereof. Payment of any Bonds shall be deemed made when the Enterprise has placed in escrow with a Trust Bank an amount sufficient (including the known minimum yield from Governmental Obligations) to meet all requirements of principal, interest, and any prior redemption premiums on such Bonds as the same become due to maturity or a designated prior redemption date; and, if Bonds are to be redeemed prior to maturity pursuant to Section 6A hereof, when the Enterprise has given to the Registrar irrevocable written instructions to give notice of prior redemption in accordance with Section 6D hereof. The Governmental Obligations shall become due at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule agreed upon between the Enterprise and such Trust Bank at the time of creation of the escrow and shall not be callable prior to their scheduled maturities by the issuer thereof.

In the event that there is a defeasance of only part of the Bonds of any maturity, the Registrar shall, if requested by the Enterprise, institute a system to preserve the identity of the individual Bonds or portions thereof so defeased, regardless of changes in bond numbers attributable to transfers and exchanges of Bonds; and the Registrar shall be entitled to reasonable compensation and reimbursement of expenses from the Enterprise in connection with such system.

Section 20. Delegated Powers. The officers of the Enterprise are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing; the printing of the Bonds; and the execution of such certificates as may be required by the Purchaser, including, but not necessarily limited to, the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The President and Secretary are hereby authorized and directed to execute and deliver such documents as required hereby.

Section 21. Events of Default. Each of the following events is hereby declared an "event of default:"

- (A) **NONPAYMENT OF PRINCIPAL:** If payment of the principal of any of the Bonds shall not be made when the same shall become due and payable at maturity or by proceedings for prior redemption;
- (B) **NONPAYMENT OF INTEREST:** If payment of any installment of interest on the Bonds shall not be made when the same becomes due and payable;
- (C) **INCAPABLE TO PERFORM:** If the Enterprise shall for any reason be rendered incapable of fulfilling its obligations hereunder;
- (D) **DEFAULT OF ANY PROVISION:** If the Enterprise shall default in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Ordinance on its part to be performed, other than those delineated in paragraphs A and B of this Section, and if such default shall continue for 60 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Enterprise by the owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding; or
- (E) **BANKRUPTCY OR INSOLVENCY:** A petition in bankruptcy or similar proceedings shall, pursuant to the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law, be filed against the Enterprise or the City and not dismissed within 60 days, or shall be filed by the Enterprise.

Section 22. Remedies. Upon the happening and continuance of any event of default as provided in Section 21 hereof, the owner or owners of not less than 25% in aggregate principal amount of the Outstanding Bonds, or a trustee therefor, may protect and enforce their rights hereunder by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent of such appointment being hereby granted), injunctive relief, or requiring the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all owners. The failure of any owner to proceed does not relieve the Enterprise or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right available to the owners of Bonds and the exercise of any right by any owner shall not be deemed a waiver of any other right.

Section 23. Duties Upon Default. Upon the happening of any of the events of default as provided in Section 21 of this Ordinance, the Enterprise and the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on said Bonds promptly as the same become due. Proceeds derived from the Pledged Revenues, so long as any of the Bonds herein authorized, either as to principal or interest, are Outstanding and unpaid, shall be paid into the Bond Account and the Reserve Account, pursuant to the terms hereof and to the extent provided herein, and used for the purposes herein provided. In the event the Enterprise or City fails or refuses to proceed as in this Section provided, the owner or owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of such owners as hereinabove provided.

Section 24. Replacement of Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign, or if the Enterprise shall determine that it wishes to replace said Registrar or Paying Agent, the Enterprise may, upon notice mailed to each owner of any Bond at his address last shown on the registration records, appoint a successor Registrar or Paying Agent, or both. No resignation or dismissal of the Registrar or Paying Agent may take effect until a successor is appointed. Every such successor Registrar or Paying Agent shall be a bank or trust company having a

shareowner's equity (e.g., capital, surplus, and undivided profits), however denominated, of not less than \$10,000,000 or be the Enterprise. It shall not be required that the same institution serves as both Registrar and Paying Agent hereunder, but the Enterprise shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

Section 25. Severability. If any one or more sections, sentences, clauses or parts of this Ordinance shall for any reason be held invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, but shall be confined in its operation to the specific sections, sentences, clauses or parts of this Ordinance so held unconstitutional or invalid, and the inapplicability and invalidity of any section, sentence, clause or part of this Ordinance in any one or more instances shall not affect or prejudice in any way the applicability and validity of this Ordinance in any other instances.

Section 26. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed.

Section 27. Amendment.

(A) The Enterprise may, without the consent of, or notice to the owners of the Bonds, adopt such ordinances supplemental hereto (which supplemental amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

(1) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Ordinance, or to make any provisions with respect to matters arising under this Ordinance or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the owners of the Bonds;

(2) to subject to the lien of this Ordinance additional revenues, properties or collateral;

(3) to grant or confer upon the Registrar for the benefit of the registered owners of the Bonds any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the registered owners of the Bonds; or

(4) to qualify this Ordinance under the Trust Indenture Act of 1939.

(B) Exclusive of the amendatory ordinances permitted by paragraph A of this Section, this Ordinance may be amended or supplemented by ordinance adopted by the City Council in accordance with the law, without receipt by the Enterprise of any additional consideration but with the written consent of the owners of at least 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that, without the written consent of the owners of all of the Bonds adversely affected thereby, no such Ordinance shall have the effect of permitting:

(1) An extension of the maturity of any Bond authorized by this Ordinance; or

(2) A reduction in the principal amount of any Bond, the rate of interest thereon, or the prior redemption premium thereon; or

(3) The creation of a lien upon or pledge of Pledged Revenues ranking prior to the lien or pledge created by this Ordinance; or

(4) A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental ordinance; or

(5) The establishment of priorities as between Bonds issued and Outstanding under the provisions of this Ordinance; or

(6) The modification of or otherwise affecting the rights of the owners of less than all of the Bonds then Outstanding.

Copies of any waiver, modification or amendment to this Ordinance shall be delivered to any entity then maintaining a rating on the Bonds.

Section 28. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Bonds, as received by or otherwise credited to the Enterprise, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Bonds and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the Enterprise. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Enterprise irrespective of whether such persons have notice of such liens.

Section 29. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bonds. Such recourse shall not be available either directly or indirectly through the Council or the Enterprise, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Section 30. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bonds shall contain a recital that they are issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

Section 31. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the Enterprise in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after authorization of the Bonds.

Section 32. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 33. Ordinance Irrepealable. After any of the Bonds herein authorized are issued, this Ordinance shall constitute a contract between the Enterprise and the owners of the Bonds, and shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, cancelled and discharged as herein provided.

Section 34. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 35. Effective Date, Recording and Authentication. The effective date of this Ordinance shall be the date of enactment after passage on second reading. This ordinance shall be recorded in "The Ordinance Book" of the City kept for that purpose, and shall be authenticated by the signatures of the President and Secretary, and published in accordance with law.

INTRODUCED THE 9<sup>TH</sup> DAY OF FEBRUARY, 2015, AND ADOPTED ON FIRST READING AND ORDERED PUBLISHED BY TITLE.

FINALLY PASSED ON SECOND READING AND ORDERED PUBLISHED IN FULL WITHIN TEN DAYS AFTER ENACTMENT IN ACCORDANCE WITH THE CHARTER ON THE 23<sup>RD</sup> DAY OF FEBRUARY, 2015.

CITY OF WESTMINSTER, COLORADO,  
ACTING BY AND THROUGH ITS  
WATER AND WASTEWATER UTILITY  
ENTERPRISE

---

President

(SEAL)

ATTEST:

---

Secretary

APPROVED AS TO FORM:

---

Attorney

---

DATE



STATE OF COLORADO )  
 )  
 COUNTIES OF ADAMS ) SS.  
 AND JEFFERSON )  
 )  
 CITY OF WESTMINSTER )

I, Linda Yeager, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the “City”), acting in my capacity as Secretary of the City of Westminster, Colorado, Water and Wastewater Utility Enterprise (the “Enterprise”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council of the City, acting in its capacity as the governing body of the Enterprise (the “Council”) at a regular meeting of the Council held at the City Hall on February 9, 2015.

2. The passage of the Ordinance on first reading on February 9, 2015 was duly moved and seconded and the Ordinance was approved by vote of a \_\_\_ of \_\_\_ of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Herb Atchison				
Bruce Baker				
Bob Briggs				
Maria De Cambra				
Alberto Garcia				
Emma Pinter				
Anita Seitz				

3. The passage of the Ordinance on second and final reading, was duly moved and seconded at a regular meeting of the Council on February 23, 2015, and the Ordinance was approved on second and final reading by a vote of a \_\_\_ of \_\_\_ of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Herb Atchison				
Bruce Baker				
Bob Briggs				
Maria De Cambra				
Alberto Garcia				
Emma Pinter				
Anita Seitz				

4. The members of the Council were present at such meeting and voted on the passage of the Ordinance as set forth above.

5. The Ordinance has been signed by the President, sealed with the corporate seal of the City, attested by me as Secretary, and duly recorded in the books of the City; and that the same remains of record in the book of records of the City.

6. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance.

7. Notices of the meetings of February 9, 2015 and February 23, 2015, in the forms attached hereto as Exhibit A, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

8. The ordinance was published by title after first reading and published in full after adoption on second reading in the Westminster Window, a newspaper of general circulation within the City on \_\_\_\_\_. The affidavits of publication are attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this 23rd day of February, 2015.

---

Secretary

(SEAL)

EXHIBIT A

(Attach Notices of Meetings)

**EXHIBIT B**

(Attach Affidavit of Publication)

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_  
SERIES OF 2015

COUNCILOR'S BILL NO. **11A**  
INTRODUCED BY COUNCILORS

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**A BILL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The costs of contingencies;

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

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

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

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

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

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

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

(11) The costs of machinery and equipment;

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

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

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

(15) All other expenses pertaining to the Project.

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

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

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

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

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

“Fiscal Year” shall mean the twelve (12) months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other twelve-month period as may from time to time be designated by the Council as the Fiscal Year of the Enterprise.

“Governing Body” shall mean the City Council of the City, acting as the Governing Body of the Enterprise.

“Governmental Obligations” shall mean any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein: (1) cash, (2) non-callable direct obligations of the United States of America (“Treasuries”), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the

investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) pre-refunded municipal obligations rated in one of the four highest rating categories by S&P and Moody's, respectively, or (5) any combination of the foregoing.

"Manager" shall mean the City Manager of the City, acting as the Manager of the Enterprise.

"Maximum Annual Debt Service Requirement" shall mean the maximum amount of all required payments of principal and interest on the Outstanding Bonds which will become due in any Fiscal Year.

"Ordinance" shall mean this Ordinance of the Enterprise, which provides for the issuance and delivery of the Bonds.

"Outstanding" shall mean as of any date of calculation, all Bonds or Additional Bonds theretofore executed, issued and delivered by the Enterprise except:

(1) Bonds or Additional Bonds theretofore cancelled by the Enterprise or any paying agent, or surrendered to the Enterprise or any paying agent for cancellation;

(2) Bonds or Additional Bonds in lieu of or in substitution for which other Bonds or Additional Bonds shall have been executed, issued and delivered by the Enterprise and authenticated by any registrar unless proof satisfactory to any registrar is presented that any such Bonds or Additional Bonds are duly held by the lawful owners thereof; or

(3) Bonds deemed to have been paid as provided in Section 19 hereof or bonds that are deemed to have been paid as provided in any similar section of an ordinance authorizing Additional Bonds.

"Owner" or "registered owner" shall mean the registered owner of any Bond as shown on the registration books kept by the Registrar.

"Parity Maximum Annual Debt Service Requirement" shall mean the maximum amount of all required payments of principal and interest which will become due in any Fiscal Year on the Outstanding Bonds, Outstanding Additional Bonds, and any Additional Bonds to be issued at the time of computation.

"Paying Agent" shall mean UMB Bank, n.a., or any successor thereto.

"Paying Agent Agreement" shall mean the agreement between the Enterprise and the Paying Agent.

"Permitted Investment" shall mean any investment or deposit permitted by the Charter, Ordinances of the City and State law.

"Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association or body politic; and the term includes any trustee, receiver, assignee or other similar representative thereof.

"Pledged Revenues" shall mean the Stormwater Revenues, the proceeds of the Bonds or other legally available moneys deposited into and held in the Bond Account and the Reserve Account; and interest or investment income on the Bond Account and the Reserve Account; all to the extent that such moneys are at any time required by Section 14 hereof to be deposited into and held in the Bond Account and Reserve Account.



“President” shall mean the Mayor of the City, acting as the President of the Enterprise.

“Principal Operations Office” shall mean the principal operations office of the Registrar and Paying Agent.

“Project” shall mean the stormwater improvements of the Enterprise.

“Purchaser” shall mean UMB Bank, n.a., as the initial purchaser of the Bonds.

“Rebate Account” shall mean the account by that name described in Section 14 hereof.

“Registrar” shall mean UMB Bank, n.a., or any successor thereto.

“Regular Record Date” shall mean the fifteenth day of the calendar month next preceding each interest payment date for the Bonds (other than a special interest payment date hereafter fixed for the payment of defaulted interest).

“Reserve Account” shall mean the account by that name described in Section 14 hereof.

“Reserve Account Requirement” shall mean zero, unless a different amount is set forth in the Sale Certificate as the Reserve Account Requirement.

“Sale Certificate” shall mean the certificate executed by the Manager or the Finance Director dated on or before the date of delivery of the Bonds, setting forth (i) the rate or rates of interest on the Bonds, (ii) the conditions on which and the prices at which the Bonds may be called for redemption; (iii) the price at which the Bonds will be sold; (iv) the principal amount of the Bonds; (v) the amount of principal of the Bonds maturing on each date; (vi) the dates on which interest will be paid and the first interest payment date; (vii) the Reserve Account Requirement, if any; and (viii) any other matters which may be determined by the Manager or the Finance Director pursuant to Section 11-57-205 of the Supplemental Act.

“Secretary” shall mean the City Clerk of the City, acting in his or her capacity as Secretary to the Enterprise.

“Special Record Date” shall mean a special date fixed to determine the names and addresses of registered owners for purposes of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 5 hereof.

“State” shall mean the State of Colorado.

“Stormwater Facilities” shall mean any one or more of the various devices used in the collection, treatment, or disposition of storm, flood or surface drainage waters, including all manmade structures or natural watercourses for the conveyance of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins and street facilities; all inlets; collection, drainage, or disposal lines; intercepting sewers; disposal plants; settling basins; outfall sewers; all pumping, power and other equipment and appurtenances; all extension, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities.

“Stormwater Revenues” shall mean all income from rates, fees, tolls and charges for the services furnished by, or the direct or indirect use of, the Stormwater Facilities, but excluding special assessments for Stormwater purposes.

“Supplemental Public Securities Act” shall mean Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended.

“Tax Code” shall mean the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds, and any regulations promulgated thereunder.

“Term Bonds” shall mean any Bonds that are payable on or before their specified maturity dates from sinking fund payments pursuant to Section 6B hereof.

“Treasurer” shall mean the Director of Finance of the City, or his or her successor in functions, if any, acting as treasurer for the Enterprise.

“Trust Bank” shall mean a Commercial Bank which is authorized to exercise and is exercising trust powers.

“Wastewater Facilities” shall mean any one or more of the various devices used in the collection, treatment, or disposition of sewage and industrial wastes of a liquid nature, including, without limitation, all inlets; collection, drainage, or disposal lines; intercepting sewers; wastewater disposal plants; outfall sewers; sewage lagoons; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; any and all rights or interests for such wastewater facilities; and all other necessary, incidental, or appurtenant properties, facilities, equipment, and costs relating to the foregoing.

“Water Facilities” shall mean water rights, raw water and any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements, and all other necessary, incidental, or appurtenant properties, facilities, equipment and costs relating to the foregoing.

## Section 2. Recitals.

(A) The City is a municipal corporation duly organized and existing under the City’s Charter adopted pursuant to Article XX of the Constitution of the State of Colorado.

(B) The City operates the Stormwater Facilities and imposes and collects the Stormwater Revenues for the use of the Stormwater Facilities.

(C) The City operates its Stormwater Facilities as an enterprise for purposes of Article X, Section 20 of the State Constitution.

(D) The City has heretofore established the Enterprise and authorized the Enterprise to have and exercise certain powers in furtherance of its purposes.

(E) Pursuant to Article X, Section 20 and Article XX, Section 6 of the State Constitution, Chapter XI, and Section 11.1(c) of the Charter, the Enterprise is authorized to issue the Bonds, without voter approval in advance.

(F) The Council has determined that it is in the best interests of the City and the inhabitants thereof and the Enterprise, that stormwater revenue bonds in an aggregate principal amount of not to exceed \$4,650,000 be issued for the purpose of paying the Costs of the Project.

(G) The Enterprise intends to issue the Bonds to defray in part the cost of the Project.

(H) There is not now a pledge of the Pledged Revenues to the payment of any bonds or for any purposes.

(I) The Pledged Revenues may now be pledged lawfully and irrevocably for the payment of the Bonds.

(J) The City has received a proposal from the Purchaser for the private placement purchase of the Bonds.

(K) There is on file with the Secretary the proposed form of the Proposal, the Custodial Agreement and the Paying Agent Agreement.

(L) The City Council desires to cause the Bonds to be issued by the Enterprise, to authorize and direct the application of the proceeds thereof as set forth herein, and to provide security for the payment thereof, all in the manner hereinafter set forth.

Section 3. Short Title and Ratification. This ordinance shall be known and may be cited by the short title "2015 Stormwater Revenue Bond Ordinance."

All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council and other officers of the Enterprise with respect to the imposition and collection of the Pledged Revenues, the Project, and selling and issuing the Bonds for those purposes are ratified, approved and confirmed.

Section 4. Authorization of Project; Sale of Bonds. The Project hereby is authorized at a cost of not exceeding \$4,650,000. There hereby are authorized to be issued fully registered revenue securities of the Enterprise, to be designated "City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds, Series 2015" in the aggregate principal amount of not to exceed \$4,650,000, to be payable and collectible, both as to principal and interest, from the Pledged Revenues. The Bonds shall be sold to the Purchaser. Pursuant to the Supplemental Public Securities Act, the Council hereby delegates to the Manager or the Finance Director the authority to accept the proposal of the Purchaser.

Pursuant to Section 11-57-204 of the Supplemental Public Securities Act, a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Public Securities Act. The Council hereby elects to apply all of the provisions of the

Supplemental Public Securities Act to the Bonds. Either the Manager or the Finance Director is hereby independently authorized and directed to execute and deliver the Sale Certificate and to make and approve the final determinations contained therein, subject to the parameters and restrictions of this Ordinance.

Section 5. Bond Details. The Bonds shall be issued in fully registered form (i.e., registered as to both principal and interest) initially registered in the name of the Purchaser or its designee, shall be dated as of the date of delivery of the Bonds, shall be issued in the denomination of \$5,000 or any integral multiple thereof (provided that no Bond may be in a denomination which exceeds the principal coming due on any maturity date, and no individual Bond will be issued for more than one maturity and interest rate) and shall be numbered in such manner as the Registrar may determine.

The Bonds shall be dated as of the date of their delivery to the Purchaser. The Bonds shall mature, bear interest from their dated date to maturity and be sold, all as provided in the Sale Certificate; provided that

- (1) the aggregate principal amount of the Bonds shall not exceed \$4,650,000;
- (2) the Bonds shall mature no later than December 31, 2020;
- (3) the purchase price of the Bonds, shall not be less than 98% of the principal amount of the Bonds;
- (4) the Bonds shall be subject to redemption prior to maturity at any time at the option of the Enterprise without prior redemption premium;
- (5) the maximum annual repayment cost of the Bonds shall not exceed \$1,700,000;
- (6) the maximum total repayment cost of the Bonds shall not exceed \$5,100,000; and
- (7) the net effective interest rate on the Bonds shall not exceed 2.00%.

The Bonds shall mature on June 1 in the years set forth in the Sale Certificate, and interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on June 1 and December 1, commencing on the date provided in the Sale Certificate.

The principal of and premium, if any, on any Bond shall be payable to the registered owner thereof as shown on the registration records kept by the Registrar at the Principal Operations Office, upon maturity thereof or prior redemption and upon presentation and surrender at the Principal Operations Office of the Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity or prior redemption, it shall continue to draw interest at the same interest rate borne by said Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made by check or draft mailed or wire sent by the Paying Agent from the Principal Operations Office, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof at the address shown on the registration records kept by the Registrar at the close of business on the Regular Record Date for such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner thereof at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date and the date fixed for payment of the defaulted interest shall be fixed by the Registrar whenever moneys become available for payment of the

defaulted interest. Notice of the Special Record Date and the date fixed for payment of the defaulted interest shall be given to the registered owners of the Bonds not less than ten days prior to the Special Record Date by first-class mail to each such registered owner as shown on the Registrar's registration records on a date selected by the Registrar, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to between the owner of such Bond and the Paying Agent (provided, however, that the City shall not be required to make funds available to the Paying Agent prior to the payment dates stated in the Registrar Agreement). All such payments shall be made in lawful money of the United States of America without deduction for the services of the Paying Agent or Registrar.

Section 6. Prior Redemption.

(A) **OPTIONAL PRIOR REDEMPTION:** The Bonds designated in the Sale Certificate, if any, shall be subject to redemption at the option of the Enterprise from any legally available funds on the dates set forth in the Sale Certificate in whole, or in part from any maturities, in any order of maturity and by lot within a maturity from Bonds of the same maturity and interest rate, in such manner as the Enterprise may determine (giving proportionate weight to Bonds in denominations larger than \$5,000), at the price set forth in the Sale Certificate, subject to the parameters and restrictions of this Ordinance.

(B) **MANDATORY REDEMPTION:** The Term Bonds shall be subject to mandatory sinking fund redemption at the times, in the amounts and at the prices provided in the Sale Certificate.

On or before the thirtieth day prior to each such sinking fund payment date, the Registrar shall proceed to call the Term Bonds for redemption from such sinking fund on the next June 1, and give notice of such call without further instruction or notice from the Enterprise.

At its option, to be exercised on or before the sixtieth day next preceding any such sinking fund redemption date, the Enterprise may (a) deliver to the Registrar for cancellation Term Bonds in an aggregate principal amount desired or (b) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the Enterprise on such sinking fund redemption date and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The Enterprise will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding sentence are to be availed with respect to such sinking fund payment. Failure of the Enterprise to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this paragraph B.

*So long as the Purchaser is the sole owner of 100% of the Bonds, the Purchaser shall not be required to surrender the Bonds to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption, but shall be required to surrender such Bond on the final maturity date thereof to receive payment of the final principal payment thereof.*

(C) **PARTIAL REDEMPTION:** In the case of Bonds of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the owner of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof.

(D) NOTICE: Notice of redemption shall be given by the Registrar in the name of the Enterprise, by sending a copy of such notice by certified, first-class postage prepaid mail, or by electronic means, not more than 60 nor less than 30 days prior to the redemption date, to the Purchaser, and to each registered owner of any Bond, all or a portion of which is called for prior redemption, at his address as it last appears on the registration records kept by the Registrar. Failure to give such notice by mailing to the registered owner of any Bond or to the Purchaser or any defect therein, shall not affect the validity of the proceedings for the redemption of any other Bonds.

Such notice shall identify the Bonds or portions thereof to be redeemed (if less than all are to be redeemed) and the date fixed for redemption, and shall further state that on such redemption date the principal amount thereof and the designated premium thereon, if any, will become due and payable at the Paying Agent, and that from and after such date interest will cease to accrue. Accrued interest to the redemption date will be paid by check or draft mailed to the registered owner (or by alternative means if so agreed to by the Paying Agent and the registered owner). Notice having been given in the manner hereinabove provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation and surrender thereof at the Paying Agent, the Enterprise will pay the principal of and premium, if any, on Bond or Bonds so called for redemption.

Notwithstanding the provisions of this Section, any notice of redemption shall either (a) contain a statement that the redemption is conditioned upon the receipt by the Paying Agent on or before the redemption date of funds sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be cancelled by written notice to the Owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed, or (b) be given only if funds sufficient to pay the redemption price of the Bonds so called for redemption are on deposit with the Paying Agent in the applicable fund or account.

Section 7. Special Obligations. All of the Bonds, together with the interest accruing thereon shall be payable and collectible solely out of the Pledged Revenues, which are hereby irrevocably so pledged; the owner or owners of the Bonds may not look to any general or other fund for the payment of principal and interest on the Bonds, except the designated special funds pledged therefor; and the Bonds shall not constitute an indebtedness nor a debt within the meaning of any applicable charter, constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the Enterprise or the City.

Section 8. Form of Bonds and Registration Panel. The Bonds and the registration panel shall be substantially as follows (provided that any portion of the Bond text may, with appropriate references, be printed on the back of the Bonds), with such omissions, insertions, endorsements, and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this Ordinance, or be consistent with this Ordinance and necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto:

(Form of Bond)

STATE OF COLORADO UNITED STATES OF AMERICA  
COUNTIES OF ADAMS AND JEFFERSON

CITY OF WESTMINSTER  
WATER AND WASTEWATER UTILITY ENTERPRISE  
STORMWATER REVENUE BOND  
SERIES 2015

R-\_\_\_\_\_ \$\_\_\_\_\_

INTEREST RATE                      MATURITY DATE                      DATED DATE                      CUSIP  
  %                      June 1, 20\_\_                      , 2015

REGISTERED OWNER: UMB BANK, N.A.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The City of Westminster, Colorado (the "City"), acting by and through its Water and Wastewater Utility Enterprise (the "Enterprise"), for value received, promises to pay to the registered owner specified above, or registered assigns, solely from the special funds provided therefor, the principal amount specified above, on the maturity date specified above (unless called for earlier redemption), and to pay from said sources interest thereon on June 1 and December 1 of each year, commencing on June 1, 2015, at the interest rate per annum specified above, until the principal sum is paid or payment has been provided therefor, as described in an ordinance adopted by the City Council of the City, acting as the governing body of the Enterprise, on February 9, 2015 (the "Ordinance"). This is one of an authorized series of bonds issued under the Ordinance (the "Bonds"). The Bonds are all issued under and equally and ratably secured by and entitled to the security of the Ordinance. To the extent not defined herein, terms used in this Bond shall have the same meanings as set forth in the Ordinance. This Bond bears interest, matures, is payable, is subject to redemption and is transferable as provided in the Ordinance.

The Bond shall mature on June 1 in the years set forth below, and interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on June 1 and December 1, commencing on June 1, 2015.

The Bond is subject to mandatory sinking fund redemption at a price equal to the principal amount thereof plus accrued interest to the redemption date.

As and for the sinking fund for the Bonds, the Enterprise shall deposit in the Bond Account on or before June 1, 2015, and on each June 1 thereafter, through and including June 1, 20[\_\_\_], a sum which together with other moneys available in the Bond Account is sufficient to redeem (after credit as hereinafter provided), on the following dates, the following principal amounts of the Bonds maturing on June 1, 20[\_\_\_]:

<u>June 1 of the Year</u>	<u>Principal Amount</u>
2015	
2016	
2017	
2018	
2019	
2020	
<b>TOTAL</b>	

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\*Maturity.

*So long as the Purchaser is the sole owner of 100% of this Bond, the Purchaser shall not be required to surrender this Bond to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption, but shall be required to surrender this Bond on the final maturity date thereof to receive payment of the final principal payment thereof.*

Reference is made to the Ordinance and to all Ordinances supplemental thereto, with respect to the nature and extent of the security for the Bonds, the accounts, funds or revenues pledged, rights, duties and obligations of the Enterprise, the Paying Agent the rights of the Owners of the Bonds, the events of defaults and remedies, the circumstances under which any Bond is no longer Outstanding, the issuance of additional bonds and the terms on which such additional bonds may be issued under and secured by the Ordinance, the ability to amend the Ordinance, and to all the provisions of which the Owner hereof by the acceptance of this Bond assents.

THE BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, AND PURSUANT TO THE CHARTER AND THE ORDINANCE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ENTERPRISE, SECURED BY THE PLEDGED REVENUES. THE BONDS DO NOT CONSTITUTE A DEBT OF THE ENTERPRISE OR THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE ENTERPRISE, THE CITY, THE STATE NOR ANY OF THE POLITICAL SUBDIVISIONS THEREOF IS LIABLE THEREFOR. NEITHER THE MEMBERS OF THE CITY COUNCIL NOR ANY PERSONS EXECUTING THIS BOND SHALL BE PERSONALLY LIABLE FOR THIS BOND.

It is certified, recited and warranted that all the requirements of law have been fully complied with by the proper officers of the Enterprise in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the Constitution of the State, with the Charter of the City, the Enterprise Ordinance, and with the Ordinance and any ordinances supplemental thereto; and that this Bond does not contravene any Constitutional, statutory or Charter limitation.

It is also certified, recited, and warranted that the Bonds are issued under the authority of the Ordinance and the Supplemental Public Securities Act. It is the intention of the Enterprise, as expressed in the Ordinance, that this recital shall conclusively impart full compliance with all of the provisions of the Ordinance and shall be conclusive evidence of the



validity and the regularity of the issuance of the Bonds after their delivery for value and that all of the Bonds issued are incontestable for any cause whatsoever after their delivery for value.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the certificate of authentication hereon shall have been duly executed by the Paying Agent.

IN TESTIMONY WHEREOF, the City Council of the City of Westminster, acting by and through its Water and Wastewater Utility Enterprise, has caused this bond to be signed and executed in its name with a manual or facsimile signature of the President, and to be signed, executed and attested with a manual or facsimile signature of the Secretary, with a manual or facsimile impression of the seal of the City affixed hereto, all as of the date specified above.

(Manual or Facsimile Signature)  
President

(MANUAL OR FACSIMILE SEAL)

Attest:

(Manual or Facsimile Signature)  
Secretary

(End of Form of Bond)

(Form of Registrar's Certificate of Authentication)

This is one of the Bonds described in the within-mentioned Bond Ordinance, and this Bond has been duly registered on the registration records kept by the undersigned as Registrar for such Bonds.

UMB BANK, N.A.,  
as Registrar

Date of Authentication  
and Registration:

By: \_\_\_\_\_  
Finance Director/Treasurer

\_\_\_\_\_

(End of Form of Registrar's Certificate of Authentication)

(Form of Prepayment Panel)

The following installments of principal (or portion thereof) of this bond have been prepaid in accordance with the terms of the Bond Ordinance authorizing the issuance of this bond.

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<u>Date of Prepayment</u>	<u>Principal Prepaid</u>	<u>Signature of Authorized Representative of the Depository</u>

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(End of Form of Prepayment Panel)

(Form of Assignment)

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney, to transfer the same on the records of the Registrar, with full power of substitution in the premises.

\_\_\_\_\_

Dated: \_\_\_\_\_

Signature Guaranteed by a member  
of the Medallion Signature Program:

\_\_\_\_\_

Address of transferee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security or other tax  
identification number of transferee:

\_\_\_\_\_

NOTE: The signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

**EXCHANGE OR TRANSFER FEES MAY BE CHARGED**

(End of Form of Assignment)

Section 9. Uniform Commercial Code. Subject to the registration provisions hereof, the Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the owner or owners thereof shall possess all rights enjoyed by the holders or owners of negotiable instruments under the provisions of the Uniform Commercial Code-Investment Securities. The principal of and interest on the Bonds shall be paid, and the Bonds shall be transferable, free from and without regard to any equities between the City and the original or any intermediate owner of any Bonds or any setoffs or cross-claims.

Section 10. Execution. The Bonds shall be executed in the name and on behalf of the Enterprise by the signature of the President, shall be sealed with a manual or facsimile impression of the seal of the City and attested by the signature of the Secretary. Each Bond shall be authenticated by the manual signature of an authorized officer or employee of the Registrar as hereinafter provided. The signatures of the President and the Secretary may be by manual or facsimile signature. The Bonds bearing the manual or facsimile signatures of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the Enterprise (subject to the requirement of authentication by the Registrar as hereinafter provided), notwithstanding that before the delivery thereof and payment therefor or before the issuance of the Bonds upon transfer or exchange, any or all of the persons whose manual or facsimile signatures appear thereon shall have ceased to fill their respective offices. The President and the Secretary shall, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures any facsimiles thereof appearing on the Bonds. At the time of the execution of the signature certificate, the President and the Secretary may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds.

No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly manually executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by the Registrar if manually signed by an authorized officer or employee of the Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds issued hereunder. By authenticating any of the Bonds initially delivered pursuant to this Ordinance, the Registrar shall be deemed to have assented to the provisions of this Ordinance.

Section 11. Registration, Transfer and Exchange.

(A) The Bonds shall be registered in the name of the Purchaser or its designee. Upon the surrender for transfer of any Bond at the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall enter such transfer on the registration records and shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same series, of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not previously assigned. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the series and the same maturity and interest rate of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not previously assigned. The Registrar may impose reasonable charges in connection with such exchanges and transfers of Bonds, which charges (as well as any tax or other governmental charge required to be paid with respect to such exchange or transfer) shall be paid by the registered owner requesting such exchange or transfer.

(B) The Registrar shall not be required to transfer or exchange (1) any Bond or portion thereof during a period beginning at the opening of business 15 days before the day of the mailing of notice of prior redemption as herein provided and ending at the close of business on the day of such mailing, or (2) any

Bond or portion thereof after the mailing of notice calling such Bond or any portion thereof for prior redemption, except for the unredeemed portion of the Bonds being redeemed in part.

(C) The person in whose name any Bond shall be registered on the registration records kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes; except as may be otherwise provided in Section 5 hereof with respect to payment of interest; and, subject to such exception, payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

(D) If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it and the Enterprise may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not previously assigned. If such lost, stolen, destroyed, or mutilated Bond shall have matured or is about to become due and payable, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

(E) The officers of the Enterprise are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.

(F) Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Registrar for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the Enterprise.

Section 12. Book Entry. The Bonds shall be registered in the name of the Purchaser and shall not be registered in book-entry format.

Section 13. Delivery of Bonds and Disposition of Proceeds. When the Bonds have been duly executed by appropriate Enterprise officers and authenticated by the Registrar, the Enterprise shall cause the Bonds to be delivered to the Purchaser on receipt of the agreed purchase price. The Bonds shall be delivered in such denominations as the Purchaser shall direct (but subject to the provisions of Sections 11 and 12 hereof); and the Registrar shall initially register the Bonds in such name or names as the Purchaser shall direct.

The proceeds of the Bonds shall be deposited promptly by the Enterprise into the Construction Account and shall be accounted for as described in the Custodial Agreement and are hereby pledged therefor, but the Purchaser of the Bonds or any subsequent Owner in no manner shall be responsible for the application or disposal by the Enterprise or any of its officers of any of the funds derived from the sale.

All proceeds of the Bonds shall be credited to the Construction Account and used by the Enterprise, together with any other available moneys therefor, to pay the Costs of the Project, and costs incidental to the issuance of the Bonds. After payment of all Costs of the Project and of issuance of the Bonds, or after adequate provisions therefor is made, any unexpended balance of the proceeds of the Bonds shall be deposited in the Bond Account and applied to the payment of the principal of and interest on the Bonds.

Section 14. Lien on Pledged Revenues; Use of Pledged Revenues. The Bonds constitute a pledge of, and an irrevocable lien (but not necessarily an exclusively such lien) on all of the Pledged Revenues. The Bonds and any Additional Bonds authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance thereof, it being the intention of the Enterprise that there shall be no priority among the Bonds and Additional Bonds, regardless of the fact that they may be actually issued and delivered at different times.

So long as any Bonds shall be Outstanding, either as to principal or interest, the Pledged Revenues shall, upon receipt by the Enterprise, be applied as follows.

(A) BOND ACCOUNT: First, there shall be credited from the Pledged Revenues to a special account hereby created, known as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bond Account,” the following amounts:

(1) Interest Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next maturing installment of interest on the Bonds then Outstanding.

(2) Principal Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, or commencing on the first day of the month one year next prior to the first principal payment date of any of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next installment of principal of the Bonds coming due at maturity, or pursuant to mandatory redemption, if any.

If prior to any interest payment date or principal payment date there has been accumulated in the Bond Account the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraph (1) or (2) (whichever is applicable) of this paragraph, may be appropriately reduced; but the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date. The moneys in the Bond Account shall be used only to pay the principal of, prior redemption premium if any, and interest on the Bonds as the same becomes due. The payments required in subparagraph (1) or (2) of this paragraph shall be made concurrently with payments required to be made to pay the principal of or interest on Additional Bonds pursuant to any ordinance authorizing the issuance of Additional Bonds.

(B) RESERVE ACCOUNT: Second, except as hereinafter provided, from any remaining Pledged Revenues there shall be credited monthly to a special account hereby created, known as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds Reserve Account” an amount, if any, which is necessary to maintain the Reserve Account as a continuing reserve in an amount not less than the Reserve Account Requirement or to pay the issuer of any Bond Reserve Insurance Policy (if any) any amounts owing to such issuer under the terms of such Bond Reserve Insurance Policy. Investment earnings on deposits in the Reserve Account shall remain in the Reserve Account if the amount on deposit in the Reserve Account does not equal the Reserve Account Requirement. No credit need be made to the Reserve Account so long as the moneys and/or a Bond Reserve Insurance Policy (if any) therein equal the Reserve Account Requirement (regardless of the source of such accumulations). The Reserve Account Requirement shall be accumulated and maintained as a continuing reserve to be used, except as provided in paragraphs C and E of this Section and Section 19 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the



Bonds resulting from the failure to credit to the Bond Account sufficient funds to pay said principal and interest as the same accrue or to pay the issuer of any Bond Reserve Insurance Policy (if any) any amounts owing to such issuer under the terms of the Bond Reserve Insurance Policy.

In lieu of all or a portion of the moneys required to be deposited in the Reserve Account by this Ordinance, the Enterprise may at any time or from time to time deposit a Bond Reserve Insurance Policy in the Reserve Account in full or partial satisfaction of the Reserve Account Requirement. Any such Bond Reserve Insurance Policy shall be payable (or available to be drawn upon) on any date on which moneys will be required to be withdrawn from the Reserve Account as provided herein. Upon deposit of any Bond Reserve Insurance Policy in the Reserve Account, the Enterprise may transfer moneys equal to the amount payable under the Bond Reserve Insurance Policy from the Reserve Account and apply such moneys to any lawful purpose.

If the tax covenant contained in Section 18L of this Ordinance does not permit the use of proceeds of any series of Bonds for a full funding of the Reserve Account in the amount necessary to have the Reserve Account funded at the Reserve Account Requirement, the maximum amount of proceeds of such series of Bonds which may be deposited to the Reserve Account pursuant to Section 18L shall be deposited to the Reserve Account upon the issuance of the Bonds and Pledged Revenues shall be deposited to the Reserve Account monthly so that not later than twelve calendar months after the date of issuance of the Bonds the amount on deposit in the Reserve Account shall equal the Reserve Account Requirement.

The payments required to be made by this paragraph shall be made concurrently with payments required to be made to any reserve fund or account pursuant to any ordinance authorizing Additional Bonds and concurrently with any repayment or similar obligations payable to any surety provider issuing any reserve fund insurance policy with respect to any Additional Bonds. If there are insufficient Pledged Revenues to comply with the requirements of the first sentence of this paragraph, available Pledged Revenues shall be credited or paid to the Reserve Account and to reserve funds or accounts which may be established by any ordinance authorizing Additional Bonds (or to the issuer of any Bond Reserve Insurance Policy or any other surety provider issuing any reserve fund insurance policy with respect to any Additional Bonds) pro rata, based upon the aggregate principal amount of the Bonds and any such Additional Bonds then Outstanding; provided, however, that compliance with the provisions of this sentence shall not cure any Event of Default caused by non-compliance with the first sentence of this paragraph.

(C) **TERMINATION UPON DEPOSITS TO MATURITY OR REDEMPTION DATE:** No payment need be made into the Bond Account, the Reserve Account, or both, if the amount in the Bond Account and the amount in the Reserve Account total a sum at least equal to the entire amount of the Outstanding Bonds, both as to principal and interest to their respective maturities, or to any redemption date on which the Enterprise shall have exercised its option to redeem the Bonds then Outstanding and thereafter maturing, including any prior redemption premiums then due, and both accrued and not accrued, in which case moneys in the Bond Account and Reserve Account in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue, and any moneys in excess thereof in the two Accounts may be withdrawn and used for any lawful purpose.

(D) **DEFRAYING DELINQUENCIES IN BOND AND RESERVE ACCOUNTS:** If on any required monthly payment date the Enterprise shall for any reason fail to pay into the Bond Account the full amount above stipulated, then an amount shall be paid into the Bond Account on such date from the Reserve Account equal to the difference between the amount paid and the full amount so stipulated. Any cash on deposit in the Reserve Account shall be transferred to the Bond Account to cover such a deficiency prior to the transfer of funds drawn under the Bond Reserve Insurance Policy. After such a

draw any available Pledged Revenues, after the payments required by paragraph A of this Section, shall be used first to repay the issuer of the Bond Reserve Insurance Policy (if any), to reinstate the Bond Reserve Insurance Policy and then to replenish cash in the Reserve Account. The cash so used shall be replaced in the Reserve Account from the first Pledged Revenues received that are not required to be otherwise applied by this Section, but excluding any payments required for any subordinate obligations; provided, however, that an amount equal to the amount withdrawn from the Reserve Account shall be deposited by the Enterprise in the Reserve Account no later than twelve months from the date of such withdrawal. If at any time the Enterprise shall for any reason fail to pay into the Reserve Account the full amount above stipulated from the Pledged Revenues, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first Pledged Revenues thereafter received not required to be applied otherwise by this Section, but excluding any payments required for any subordinate obligations. The moneys in the Bond Account and in the Reserve Account shall be used solely for the purpose of paying the principal and any redemption premium of and the interest on the Bonds, except that moneys in the Reserve Account shall be used to pay the issuer of any Bond Reserve Insurance Policy any amounts owing to such issuer under the terms of the Bond Reserve Insurance Policy; provided, however, that any moneys at any time in excess of the Reserve Account Requirement calculated with respect to the Bonds in the Reserve Account may be withdrawn therefrom and used for any lawful purpose; and provided, further, that any moneys in the Bond Account and in the Reserve Account in excess of accrued and unaccrued principal and interest requirements to the respective maturities of the Outstanding Bonds may be used as provided in paragraphs G and H of this Section.

(E) REBATE ACCOUNT: Second, concurrently with any payments required to be made pursuant to any ordinance authorizing the issuance of Additional Bonds with respect to any rebate funds established thereby, there shall be deposited in a special account hereby created, known as the "City of Westminster, Colorado, 2015 Water and Wastewater Utility Enterprise, Stormwater Revenue Bonds Rebate Account" amounts required by Section 148(f) of the Tax Code to be held until such time as any required rebate payment is made. Amounts in the Rebate Account shall be used for the purpose of making the payments to the United States required by Section 148(f) of the Tax Code. Any amounts in excess of those required to be on deposit therein by Section 148(f) of the Tax Code shall be withdrawn therefrom and deposited into the Bond Account. Funds in the Rebate Account shall not be subject to the lien created by this Ordinance to the extent such amounts are required to be paid to the United States Treasury.

(F) CONSTRUCTION ACCOUNT: A special fund is hereby created and established with the Custodian to be designated as the "City of Westminster, Colorado, 2015 Stormwater Revenue Bonds Construction Account." Moneys on deposit in the Construction Account shall be disbursed, upon the written direction of the Enterprise, to pay the Costs of the Project and shall be governed by the terms of the Custodial Agreement.

(G) INTEREST ON BOND RESERVE INSURANCE POLICY DRAWS: After the payments required by A, B and E of this Section, the Pledged Revenues shall be used to pay interest on amounts advanced under any Bond Reserve Insurance Policy or any similar policy, surety, letter of credit or similar instrument deposited in or credited to a reserve account for Additional Bonds.

(H) PAYMENT FOR SUBORDINATE OBLIGATIONS: After the payments required by paragraphs A, B, E and F of this Section, the Pledged Revenues shall be used by the Enterprise for the payment of interest on and principal of any obligations secured by Pledged Revenues subordinate to the lien of the Bonds, hereafter authorized to be issued, including reasonable reserves therefor.

(I) USE OF REMAINING REVENUES: After making the payments required to be made by this Section, any remaining Pledged Revenues may be used for any lawful purpose.

Section 14. General Administration of Accounts. The accounts designated in Section 14 hereof shall be administered as follows subject to the limitations stated in Section 18L hereof:

(A) **BUDGET AND APPROPRIATION OF ACCOUNTS:** The sums provided to make the payments specified in Section 14 hereof are hereby appropriated for said purposes, and said amounts for each year shall be included in the biennial budget and the appropriation ordinance or measures to be adopted or passed by the City Council in each year respectively while any of the Bonds, either as to principal or interest, are Outstanding and unpaid. No provision of any constitution, statute, charter, ordinance, resolution, or other order or measure enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the Enterprise to keep and perform the covenants contained in this Ordinance so long as any of the Bonds remain Outstanding and unpaid. Nothing herein shall prohibit the City Council, at its sole option, from appropriating and applying other funds of the Enterprise legally available for such purpose to the Bond Account or Reserve Account for the purpose of providing for the payment of the principal of, interest on or any premiums due with respect to the Bonds.

(B) **PLACES AND TIMES OF DEPOSITS:** Each of the special accounts described in Section 14 hereof shall be maintained as a book account kept separate and apart from all other accounts or funds of the Enterprise as trust accounts solely for the purposes herein designated therefor. For purposes of investment of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such book accounts pertaining to the Pledged Revenues or to such accounts and any other funds of the Enterprise to be continued under this Ordinance. Moneys in any such book account shall be continuously secured to the fullest extent required by the laws of the State for the securing of public accounts. Each periodic payment shall be credited to the proper book account not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.

(C) **INVESTMENT OF ACCOUNTS:** Any moneys in any account described in Section 14 of this Ordinance may be invested or reinvested in any Permitted Investment. Securities or obligations purchased as such an investment shall either be subject to redemption at any time at face value by the holder thereof at the option of such holder, or shall mature at such time or times as shall most nearly coincide with the expected need for moneys from the account in question. Securities or obligations so purchased as an investment of moneys in any such account shall be deemed at all times to be a part of the applicable account. The Enterprise shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given account whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such account.

(D) **NO LIABILITY FOR LOSSES INCURRED IN PERFORMING TERMS OF ORDINANCE:** Neither the Enterprise nor any officer of the Enterprise shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

(E) **CHARACTER OF FUNDS:** The moneys in any fund or account herein authorized shall consist of lawful money of the United States or investments permitted by Section 15C hereof or both such money and such investments. Moneys deposited in a demand or time deposit account in or evidenced by a certificate of deposit of a Commercial Bank pursuant to Section 15C hereof, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.

Section 16. Additional Bonds.

(A) **LIMITATIONS UPON ISSUANCE OF ADDITIONAL BONDS:** Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the Enterprise of Additional Bonds

payable from and constituting a lien upon the Pledged Revenues on a parity with the lien of the Bonds. Such Additional Bonds may be payable solely from Pledged Revenues or they may be payable from Pledged Revenues and another revenue or fund of the Enterprise (“Additional Pledged Revenues”). Regardless of whether payable solely from Pledged Revenues or from Pledged Revenues and Additional Pledged Revenues, such bonds or other obligations may be issued only if for the Fiscal Year immediately preceding the issuance of any Additional Bonds, the amount of Pledged Revenues in such Fiscal Year equaled or exceeded 125% of the Parity Maximum Annual Debt Service Requirement. In addition, if the Enterprise has drawn on the Bond Reserve Insurance Policy, the policy costs due and owing to the issuer of the Bond Reserve Insurance Policy shall be added to Parity Maximum Annual Debt Service for purposes of determining if the test in the preceding sentence has been met. For the purpose of satisfying the aforementioned 125% test, any Additional Pledged Revenues which are pledged to payment of the Bonds prior to or concurrently with the issuance of Additional Bonds, any rate, fee, toll or charge, now existing or hereafter imposed, which legally becomes a part of the Pledged Revenues prior to the issuance of Additional Bonds, and which increase is imposed prior to the issuance of Additional Bonds can be considered for its estimated effect on the amount of the Pledged Revenues as if increase had been in effect for the Fiscal Year immediately preceding the issuance of such Additional Bonds.

(B) **CERTIFICATE OF REVENUES:** A written certification by an officer or employee of the Enterprise that the requirements of paragraph A of this Section have been met shall be conclusively presumed to be accurate in determining the right of the Enterprise to authorize, issue, sell and deliver said Additional Bonds on a parity with the Bonds.

(C) **SUBORDINATE OBLIGATIONS PERMITTED:** Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the Enterprise of additional obligations payable from and constituting a lien upon the Pledged Revenues subordinate or junior to the lien of the Bonds.

(D) **SUPERIOR OBLIGATIONS PROHIBITED:** Nothing in this Ordinance shall be construed so as to permit the Enterprise to hereafter issue obligations payable from the Pledged Revenues having a lien thereon prior or superior to the Bonds.

Section 17.      Refunding Obligations.

(A) **GENERALLY.** If at any time after the Bonds, or any part thereof, shall have been issued and remain Outstanding, the Enterprise shall find it desirable to refund any Outstanding obligations payable from the Pledged Revenues, said obligations, or any part thereof, may be refunded, subject to the provisions of paragraph B of this Section, if (1) the obligations to be refunded, at the time of their required surrender for payment, shall then mature or shall then be callable for prior redemption at the Enterprise’s option upon proper call, or (2) the owners of the obligations to be refunded consent to such surrender and payment.

(B) **PROTECTION OF OBLIGATIONS NOT REFUNDED:** Any refunding obligations payable from the Pledged Revenues shall be issued with such details as the City Council may provide, so long as there is no impairment of any contractual obligation imposed upon the Enterprise by any proceedings authorizing the issuance of any unrefunded portion of obligations payable from the Pledged Revenues; but so long as any Bonds are Outstanding, refunding obligations payable from the Pledged Revenues may be issued on a parity with the unrefunded Bonds only if:

(1) Prior Consent. The Enterprise first receives the consent of the Owner or Owners of the unrefunded Bonds; or

(2) Requirements Not Increased. The refunding obligations do not increase for any Fiscal Year prior to and including the last maturity date of any unrefunded Bonds, the aggregate principal and interest requirements evidenced by such refunding obligations and by any Outstanding Bonds and Outstanding Additional Bonds not refunded, and the lien of any refunding parity obligations on the Pledged Revenues is not raised to a higher priority than the lien thereon of any obligations thereby refunded; or

(3) Earnings Test. The refunding obligations are issued in compliance with paragraphs A and B of Section 16 hereof.

Section 18. Protective Covenants. The Enterprise hereby additionally covenants and agrees with each and every owner of the Bonds that:

(A) USE OF BOND PROCEEDS: The Enterprise will proceed with the Project without delay and with due diligence.

(B) PAYMENT OF BONDS: The Enterprise will promptly pay the principal of and interest on every Bond issued hereunder and secured hereby on the dates and in the manner specified herein and in said Bonds according to the true intent and meaning hereof. Such principal and interest is payable solely from the Pledged Revenues.

(C) RATE MAINTENANCE COVENANT: The City shall prescribe, revise and collect rates, fees, tolls and charges for the use of the Stormwater Facilities that shall produce Stormwater Revenues sufficient to pay in each Fiscal Year an amount at least equal to one hundred twenty-five percent (125%) of the Parity Maximum Annual Debt Service Requirement plus any amounts required to meet then existing deficiencies pertaining to any fund or account relating to the Pledged Revenues or any securities payable therefrom plus one hundred percent (100%) of all amounts then due and owing to any provider of a bond insurance policy or reserve fund insurance policy, if hereafter obtained. In the event that the rates, fees, tolls and charges for the use of the Stormwater Facilities at any time should not be sufficient to make all of the payments and accumulations required by this Ordinance, the Enterprise shall increase its rates, fees, tolls and charges for the use of the Stormwater Facilities to such extent as to insure the payments and accumulations required by the provisions of this Ordinance.

(D) COLLECTION OF CHARGES: The City shall cause rates, fees, tolls and charges for the use of the Stormwater Facilities to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Pledged Revenues shall be adequate to meet the requirements of this Ordinance, including without limitation Section 18C of this Ordinance, and any other ordinance or instrument supplemental thereto. The rates, fees, tolls and charges for the use of the Stormwater Facilities shall be collected in any lawful manner.

(E) DEFENSE OF LEGALITY OF PLEDGED REVENUES: The City shall, to the extent permitted by law, defend the validity and legality of this Ordinance and rates, fees, tolls and charges for the use of the Stormwater Facilities against all claims, suits and proceedings which would diminish or impair the Pledged Revenues. Furthermore, the City shall amend from time to time the provisions of any ordinance or resolution of the City, as necessary to prevent impairment of the Pledged Revenues as required to meet the principal of, interest on, and prior redemption premium, if any, of the Bonds when due.

(F) FURTHER ASSURANCES: At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be

necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds and accounts hereby pledged or assigned, or intended so to be, or which the City or the Enterprise may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Ordinance. The City, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of said Pledged Revenues and other funds and accounts pledged hereunder and all the rights of every owner of any of the Bonds against all claims and demands of all Persons whomsoever.

(G) **CONDITIONS PRECEDENT:** Upon the issuance of any of the Bonds, all conditions, acts and things required by the Constitution or laws of the United States, the Constitution or laws of the State, the Charter, the Enterprise Ordinance or this Ordinance, to exist, to have happened, and to have been performed precedent to or in the issuance of the Bonds shall exist, have happened and have been performed, and the Bonds, together with all other obligations of the Enterprise, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States, the Constitution or laws of the State or the Charter, or the Enterprise Ordinance.

(H) **RECORDS:** So long as any of the Bonds remain Outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues and the accounts created or continued by this Ordinance.

(I) **AUDITS:** The City further agrees that it will, within 210 days following the close of each Fiscal Year, cause an audit of such books and accounts to be made by a certified public accountant, who is not an employee of the City, showing the Pledged Revenues. The City agrees to allow the owner of any of the Bonds to review and copy such audits and reports, at the City's offices, at his request. Copies of such audits and reports will be furnished to the Purchaser.

(J) **PERFORMING DUTIES:** The City will faithfully and punctually perform or cause to be performed all duties with respect to the Pledged Revenues required by the Charter, the Enterprise Ordinance, and the Constitution and laws of the State and the ordinances and resolutions of the Enterprise, including but not limited to the proper collection and enforcement of rates, fees, tolls and charges for the use of the Stormwater Facilities and the segregation of the Pledged Revenues and their application to the respective accounts herein designated.

(K) **OTHER LIENS:** As of the date of issuance of the Bonds, there are no liens or encumbrances of any nature whatsoever on or against any of the Pledged Revenues.

(L) **TAX COVENANT:** The Enterprise and the City covenant for the benefit of the registered owners of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the Enterprise or any facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the Enterprise in fulfilling the above covenant under the Tax Code and Colorado law have been met.

(M) ENTERPRISE'S EXISTENCE: The Enterprise will maintain its corporate identity and existence so long as any of the Bonds remain Outstanding, unless another political subdivision by operation of law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the Enterprise and is obligated by law to receive and distribute the Pledged Revenues in place of the Enterprise, without materially adversely affecting the privileges and rights of any owner of any Outstanding Bonds.

(N) SURETY BONDS: Each official or employee of the City having custody of the Pledged Revenues, or responsible for their handling, shall be fully bonded at all times, which bond shall be conditioned upon the proper application of such money. In lieu of such bond, the City may purchase one or more insurance policies deemed by the City to be sufficient to protect the City against any loss with regard to the Pledged Revenues arising from the malfeasance or misfeasance by any official or employee of the City having custody of the Pledged Revenues.

(O) PREJUDICIAL CONTRACTS AND ACTION PROHIBITED: No contract will be entered into, nor will any action be taken, by the Enterprise by which the rights and privileges of any Owner are impaired or diminished.

Section 19. Defeasance. When the Bonds have been fully paid both as to principal and interest, all obligations hereunder shall be discharged and the Bonds shall no longer be deemed to be Outstanding for any purpose of this Ordinance, except as set forth in Section 18L hereof. Payment of any Bonds shall be deemed made when the Enterprise has placed in escrow with a Trust Bank an amount sufficient (including the known minimum yield from Governmental Obligations) to meet all requirements of principal, interest, and any prior redemption premiums on such Bonds as the same become due to maturity or a designated prior redemption date; and, if Bonds are to be redeemed prior to maturity pursuant to Section 6A hereof, when the Enterprise has given to the Registrar irrevocable written instructions to give notice of prior redemption in accordance with Section 6D hereof. The Governmental Obligations shall become due at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule agreed upon between the Enterprise and such Trust Bank at the time of creation of the escrow and shall not be callable prior to their scheduled maturities by the issuer thereof.

In the event that there is a defeasance of only part of the Bonds of any maturity, the Registrar shall, if requested by the Enterprise, institute a system to preserve the identity of the individual Bonds or portions thereof so defeased, regardless of changes in bond numbers attributable to transfers and exchanges of Bonds; and the Registrar shall be entitled to reasonable compensation and reimbursement of expenses from the Enterprise in connection with such system.

Section 20. Delegated Powers. The officers of the Enterprise are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing; the printing of the Bonds; and the execution of such certificates as may be required by the Purchaser, including, but not necessarily limited to, the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The President and Secretary are hereby authorized and directed to execute and deliver such documents as required hereby.

Section 21. Events of Default. Each of the following events is hereby declared an "event of default:"

- (A) **NONPAYMENT OF PRINCIPAL:** If payment of the principal of any of the Bonds shall not be made when the same shall become due and payable at maturity or by proceedings for prior redemption;
- (B) **NONPAYMENT OF INTEREST:** If payment of any installment of interest on the Bonds shall not be made when the same becomes due and payable;
- (C) **INCAPABLE TO PERFORM:** If the Enterprise shall for any reason be rendered incapable of fulfilling its obligations hereunder;
- (D) **DEFAULT OF ANY PROVISION:** If the Enterprise shall default in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Ordinance on its part to be performed, other than those delineated in paragraphs A and B of this Section, and if such default shall continue for 60 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Enterprise by the owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding; or
- (E) **BANKRUPTCY OR INSOLVENCY:** A petition in bankruptcy or similar proceedings shall, pursuant to the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law, be filed against the Enterprise or the City and not dismissed within 60 days, or shall be filed by the Enterprise.

Section 22. Remedies. Upon the happening and continuance of any event of default as provided in Section 21 hereof, the owner or owners of not less than 25% in aggregate principal amount of the Outstanding Bonds, or a trustee therefor, may protect and enforce their rights hereunder by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent of such appointment being hereby granted), injunctive relief, or requiring the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all owners. The failure of any owner to proceed does not relieve the Enterprise or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right available to the owners of Bonds and the exercise of any right by any owner shall not be deemed a waiver of any other right.

Section 23. Duties Upon Default. Upon the happening of any of the events of default as provided in Section 21 of this Ordinance, the Enterprise and the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on said Bonds promptly as the same become due. Proceeds derived from the Pledged Revenues, so long as any of the Bonds herein authorized, either as to principal or interest, are Outstanding and unpaid, shall be paid into the Bond Account and the Reserve Account, pursuant to the terms hereof and to the extent provided herein, and used for the purposes herein provided. In the event the Enterprise or City fails or refuses to proceed as in this Section provided, the owner or owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of such owners as hereinabove provided.

Section 24. Replacement of Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign, or if the Enterprise shall determine that it wishes to replace said Registrar or Paying Agent, the Enterprise may, upon notice mailed to each owner of any Bond at his address last shown on the registration records, appoint a successor Registrar or Paying Agent, or both. No resignation or dismissal of the Registrar or Paying Agent may take effect until a successor is appointed. Every such successor Registrar or Paying Agent shall be a bank or trust company having a



shareowner's equity (e.g., capital, surplus, and undivided profits), however denominated, of not less than \$10,000,000 or be the Enterprise. It shall not be required that the same institution serves as both Registrar and Paying Agent hereunder, but the Enterprise shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

Section 25. Severability. If any one or more sections, sentences, clauses or parts of this Ordinance shall for any reason be held invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, but shall be confined in its operation to the specific sections, sentences, clauses or parts of this Ordinance so held unconstitutional or invalid, and the inapplicability and invalidity of any section, sentence, clause or part of this Ordinance in any one or more instances shall not affect or prejudice in any way the applicability and validity of this Ordinance in any other instances.

Section 26. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed. All rules of the City Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the City Council be, and the same hereby are, suspended.

Section 27. Amendment.

(A) The Enterprise may, without the consent of, or notice to the owners of the Bonds, adopt such ordinances supplemental hereto (which supplemental amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

(1) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Ordinance, or to make any provisions with respect to matters arising under this Ordinance or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the owners of the Bonds;

(2) to subject to the lien of this Ordinance additional revenues, properties or collateral;

(3) to grant or confer upon the Registrar for the benefit of the registered owners of the Bonds any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the registered owners of the Bonds; or

(4) to qualify this Ordinance under the Trust Indenture Act of 1939.

(B) Exclusive of the amendatory ordinances permitted by paragraph A of this Section, this Ordinance may be amended or supplemented by ordinance adopted by the City Council in accordance with the law, without receipt by the Enterprise of any additional consideration but with the written consent of the owners of at least 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that, without the written consent of the owners of all of the Bonds adversely affected thereby, no such Ordinance shall have the effect of permitting:

(1) An extension of the maturity of any Bond authorized by this Ordinance; or

(2) A reduction in the principal amount of any Bond, the rate of interest thereon, or the prior redemption premium thereon; or

(3) The creation of a lien upon or pledge of Pledged Revenues ranking prior to the lien or pledge created by this Ordinance; or

(4) A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental ordinance; or

(5) The establishment of priorities as between Bonds issued and Outstanding under the provisions of this Ordinance; or

(6) The modification of or otherwise affecting the rights of the owners of less than all of the Bonds then Outstanding.

Copies of any waiver, modification or amendment to this Ordinance shall be delivered to any entity then maintaining a rating on the Bonds.

Section 28. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Bonds, as received by or otherwise credited to the Enterprise, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Bonds and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the Enterprise. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Enterprise irrespective of whether such persons have notice of such liens.

Section 29. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bonds. Such recourse shall not be available either directly or indirectly through the Council or the Enterprise, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Section 30. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bonds shall contain a recital that they are issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

Section 31. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the Enterprise in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after authorization of the Bonds.

Section 32. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 33. Ordinance Irrepealable. After any of the Bonds herein authorized are issued, this Ordinance shall constitute a contract between the Enterprise and the owners of the Bonds, and shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, cancelled and discharged as herein provided.

Section 34. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 35. Declaration of Emergency. In order to effect the Project while favorable market conditions exist, it is hereby declared that an emergency exists and that this ordinance is immediately necessary for the preservation of the public peace, health, safety and financial well-being of the City. This ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

Section 36. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect immediately upon enactment following final passage. This ordinance shall be recorded in “The Ordinance Book” of the City kept for that purpose, and shall be authenticated by the signatures of the Mayor and City Clerk, and published in accordance with law.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY  
ORDINANCE on February 9, 2015.

CITY OF WESTMINSTER, COLORADO,  
ACTING BY AND THROUGH ITS  
WATER AND WASTEWATER UTILITY  
ENTERPRISE

---

President

(SEAL)

ATTEST:

---

Secretary

APPROVED AS TO LEGAL FORM:

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City Attorney

---

Date

STATE OF COLORADO )  
 )  
 COUNTIES OF ADAMS ) SS.  
 AND JEFFERSON )  
 )  
 CITY OF WESTMINSTER )

I, Linda Yeager, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the “City”), acting in my capacity as Secretary of the City of Westminster, Colorado, Water and Wastewater Utility Enterprise (the “Enterprise”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council of the City, acting in its capacity as the governing body of the Enterprise (the “Council”) at a regular meeting of the Council held at the City Hall on February 9, 2015.

2. The passage of the Ordinance on first reading as an emergency on February 9, 2015 was duly moved and seconded and the Ordinance was approved by vote of a \_\_\_ of \_\_\_ of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Herb Atchison				
Bruce Baker				
Bob Briggs				
Maria De Cambra				
Alberto Garcia				
Emma Pinter				
Anita Seitz				

3. The members of the Council were present at such meeting and voted on the passage of the Ordinance as set forth above.

4. The Ordinance has been signed by the President, sealed with the corporate seal of the City, attested by me as Secretary, and duly recorded in the books of the City; and that the same remains of record in the book of records of the City.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance.

6. Notices of the meeting of February 9, 2015, in the forms attached hereto as Exhibit A, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

7. The ordinance was published in full after adoption in the Westminster Window, a newspaper of general circulation within the City on February \_\_, 2015. The affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this 9<sup>th</sup> day of February, 2015.

(SEAL)

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Secretary

EXHIBIT A

(Attach Notices of Meetings)

**EXHIBIT B**

(Attach Affidavit of Publication)

24362616 v1





## Agenda Item 10 B

### Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** Councillor's Bill No. 12 Amending Title XI, W.M.C., with Annual Code Updates

**Prepared By:** Walter Patrick, Planner

### Recommended City Council Action

Adopt Councillor's Bill No. 12 on first reading making revisions to Title XI of the Westminster Municipal Code.

### Summary Statement

Each year staff proposes updates to the Westminster Municipal Code (W.M.C.) to remain current with development trends and 'stay ahead of the curve' with regard to zoning regulations and requirements. Due to staff workload, the 2013 and 2014 code updates did not occur. As a result, the list of proposed updates contains more items than in previous years. Many of the proposed code revisions are "housekeeping" in nature and some are more substantive. A detailed list of proposed zoning code updates is outlined in the background section of this Agenda Memorandum. Staff discussed the proposed amendments at a City Council Study Session on November 17, 2014. The City Council direction from that meeting is contained in the attached Councillor's Bill.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City initiate code updates through revisions to the W.M.C.?

**Alternatives**

1. Modify some or all of the proposed code changes.
2. Remove some of the individual revisions for further discussion at a future study session.
3. Take no action on the proposed code changes.

These options are not recommended as each of the proposed updates reflect changes to the City Code that staff believes will reduce ambiguity and help improve efficiency in the development process. Additionally, these include corrections or clarifications that are necessary to remove conflicting information from the existing code language. However, these code changes do reflect a change in policy on a number of issues. Taking no action will keep in place the existing City policy on these issues. Though staff sees value in these changes, the existing policy is viable and can remain without detrimental impact.

**Background Information**

Periodic updates to the City Code allows the City to remain current with development trends and continually improve its land development code to reflect the City’s vision for future development. Staff is proposing a number of updates and revisions, the majority of which are not significant changes to the code.

The attached proposed ordinance includes code revisions intended to reflect Council’s direction of the proposed code changes discussed at the November 17, 2014, Study Session. During the discussion at the Study Session, the City Council recommended removing the proposed regulations regarding Community Gardens from the list of proposed code changes, doing more research on the subject, and bringing that topic to a future City Council Study Session. The Community Gardens’ discussion is anticipated to be scheduled in the second quarter of 2015. The City Council also suggested adding distillery and winery to the proposed list of definitions and verifying with the City Attorney’s Office that the proposed definitions for brewery, brewpub, distillery and winery were in conformance with current State of Colorado regulations.

**Summary of Proposed Revisions for the years 2014/2015**

1) Add the following definitions. Most of these definitions are for new uses that staff also proposes adding to the land use table due to increased interest from potential business owners. Most of the proposed definitions are analogous to other uses already permitted in the City.

**“Animal Day Care, Indoor”** shall mean a facility where non-livestock animals may be groomed, trained, exercised, and socialized, but not kept or boarded outside overnight, bred, or sold. Outdoor runs or other outdoor areas are not permitted.

**“Animal Day Care, Outdoor”** shall mean a facility where non-livestock animals may be groomed, trained, exercised, and socialized, but not kept or boarded overnight, bred, or sold. Outdoor runs and exercise areas are permitted.

**"Brewery"** shall mean a facility that is primarily for the on-site manufacturing of malt liquors, which may include a tap room that is less than or equal to thirty percent of the facility’s total floor area, including any outdoor seating or accessory sales area. For the purposes of this definition, “Tap Room” shall mean a use

associated with and on the same premises as a brewery, at which guests may consume and purchase, for on or off premise consumption, the manufacturer’s products and other nonalcoholic beverages.

**"Brewpub"** shall mean a facility that is primarily a restaurant where malt liquor is manufactured on the premises as an accessory use. A brewpub may include some off-site distribution of its malt liquor consistent with state law.

**"Distillery"** shall mean a facility for the manufacturing of spirituous liquors, as that term is defined in state law.

**"Donation Facility"** shall mean a non-retail facility or collection point with bins, containers, sheds, or other facilities designed and intended for the depositing of clothing, textiles, or other household goods for pick-up.

**"Health/Fitness Facility"** shall mean an indoor fitness center, gymnasium, health and athletic club which may include exercise equipment, indoor and outdoor courts, spa, sauna, pool and associated amenities.

**"Kennel"** shall mean premises where more than five (5) nonlivestock animals, excluding offspring not exceeding four (4) months of age belonging to one (1) of the adult animals, are kept for any purpose, including boarding or training. The term "kennel" does not include pet shop.

**"Studio"** shall mean a small, single purpose facility containing no more than 4,000 square feet, for activities such as dance, martial arts, visual arts or calisthenics for improving strength and circulation or other similar uses as deemed appropriate by the City.

**"Veterinary Office and Clinic, Indoor"** shall mean a facility for the care of sick or injured animals. Such facilities may include veterinarians’ offices, administrative offices, space for examination, surgery, and recovery, and for overnight indoor boarding of animals while under treatment.

**"Veterinary Office and Clinic, Outdoor"** shall mean a facility for the care of sick or injured animals. Such facilities may include veterinarians’ offices, administrative offices, space for examination, surgery, and recovery, and for overnight indoor and outdoor boarding of animals while under treatment.

**"Winery"** shall mean a facility for the manufacturing of vinous liquors, as that term is defined in state law.

2) Add the following new uses to the land use table. Staff receives regular inquiries about where these kinds of uses can be located and would therefore like to include them in the zoning code. For example, the number of craft breweries has increased dramatically in recent years; however, the current Municipal Code does not address this use. The table below lists all zoning districts except Planned Unit Development (PUD). Uses in PUDs are addressed in the Preliminary Development Plan and the Official Development Plan for new developments. Staff consulted with the City Attorney’s Office on each proposed definition and land uses.

<b>OFFICE AND SIMILAR USES:</b>	<b>RE</b>	<b>R1</b>	<b>RA</b>	<b>R2</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b>T1</b>	<b>B1</b>	<b>C1</b>	<b>C2</b>	<b>M1</b>	<b>O1</b>
Veterinary Office and Clinic, Indoor									P	P	P	P	
Veterinary Office and Clinic, Outdoor									S	S	S	P	
Studios								P	P	P	P	P	

<b>BUSINESS AND COMMERCIAL USES:</b>	<b>RE</b>	<b>R1</b>	<b>RA</b>	<b>R2</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b>T1</b>	<b>B1</b>	<b>C1</b>	<b>C2</b>	<b>M1</b>	<b>O1</b>
Animal Day Care, Indoor									P	P	P	P	
Animal Day Care, Outdoor										S	S	P	
Brewery										S	S	S	
Brewpub										P	P	P	
Donation Facility										S	S	S	
Kennel										S	S	S	

P=Permitted Use, S=Special Use Permit, RE=One Family Residential District (Large Lot), R1=One Family Residential District (Medium Lot), RA=One Family Residential District (Small Lot), R2=Two-Family Residential District, R3=Multiple-Family Residential District (Low Density), R4=Multiple-Family Residential District (High Density), R5=Mobile Home District, T1=Transitional District, B1=Business District, C1=Commercial District, C2=Heavy Commercial District, M1=Industrial District, O1=Open District.

3) Revise the ‘Skilled Nursing’ section of the Growth Management Program to clarify that Skilled Nursing Facilities giving care to a patient for under 100 days are not to be considered residential ‘Senior Housing’ and therefore do not need to compete in the Growth Management competition. Commercial skilled nursing facilities would offer care for short term medical needs, such as rehabilitation, that operate much like a medical facility with patients staying at the facility no longer than 100 days, which is the maximum amount of time that Medicare pays for skilled nursing care. This type of short term care facility was recently approved for development in the Park Centre Business Park. Residential skilled nursing, however, would include uses that are more residential in nature, such as memory care facilities, where the patients are actually living in the facility for extended periods of time.

4) Add a new Growth Management designation for the Westminster Downtown that would allow new development to gain Service Commitments from a pool of commitments. This would allow development to occur more quickly than if each project had to go through the Service Commitment Competition. This method was used for the Legacy Ridge and Legacy Ridge West developments. Proposed development would still be required to go through staff review.

5) Add a new Growth Management designation to allow Service Commitments to be awarded at the discretion of the City Manager during the time between regularly scheduled yearly competitions. This would allow an opportunity for qualified applicants who have a superior development to proceed more quickly to the development review process. An award in this category would only occur if the project can meet ALL minimum requirements as listed in the Design Guidelines of the applicable project type AND exceed the average score of the competition winners from the previous 5 years by at least 25%.

6) Add language stating that businesses shall maintain a valid state license if such licenses are required by state law. This would refer to a variety of uses including group homes, day care, and any establishment serving liquor. The addition of this language will remove any arguments as to whether state licensure is required within the City boundary.

7) Add language allowing the City Manager or designee to grant up to a 10 percent change to height and setback requirements in cases where such changes are warranted and do not negatively impact adjacent properties. This would allow property owners the possibility of obtaining approval for a minor change without having to go to a public hearing. This allowance is typical in other municipalities.

8) For consistency and simplicity, revise the mailed notices requirements for public hearings for Comprehensive Plan Amendments to closely match the requirements of PDP and ODP mailed notice requirements.

9) Revise the language under Section 11-5-8 that discusses the approval process for PDPs. The code currently states that the original PDP's shall be subject to 'review and approval by the Planning Commission.' This should be clarified to state the Planning Commission only **reviews** PDPs. Approval of PDPs is the responsibility of the City Council.

10) Remove the requirement for PDP amendments to have all property owners, within the entire PDP, sign the amendment application. The Land Development Code currently states that an amendment to a Preliminary Development Plan may be initiated by: (a) All owner(s) of the property covered by the plan; or (b) by the City. Requiring all owners to initiate a PDP Amendment can be quite onerous in instances of redevelopment within PDP's that have a multitude of owners where a single property owner within a PDP has the ability to essentially thwart a development proposal without good cause. Staff proposes to remove the requirement for PDP amendments to have all property owners sign the amendment application but would still require adequate notification. This would allow an applicant to make a valid application to amend the PDP for their property.

11) Revise the statement that adjusts Park Development Fees annually from January 1 to April 15 since the official Consumer Price Index (CPI) is not released until March and this fee increases annually based on the CPI.

12) In November of 2013, the City updated and replaced the COMPREHENSIVE LAND USE PLAN to a more progressive plan that acts as a true 'community plan' instead of just a 'land planning' document. The new document is titled the 'COMPREHENSIVE PLAN.' Staff now proposes to replace all references of the term 'COMPREHENSIVE LAND USE PLAN' in the code to 'COMPREHENSIVE PLAN.'

13) Clarify the terms PDP and PUD in Chapter 11-5, to distinguish between a zoning classification and a development plan approval document.

14) Remove outdated references to the department's Plan Submittal Guidelines.

### **Strategic Plan**

The proposed code updates support many of the City's Strategic Goals. These include: Dynamic, Diverse Economy; Ease of Mobility; Excellence in City Services; Vibrant and Inclusive Neighborhoods; Beautiful, Desirable, Environmentally Responsible City.

Regular updates to the City Code touch on each strategic goal listed above and ensure that the City will remain current with the development trends and continue to promote orderly and rational development.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment - Councillor's Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **12**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE AMENDING SECTIONS 11-2-1, 11-3-2, 11-3-4, 11-3-5, 11-4-4, 11-4-5, 11-4-6, 11-4-8, 11-4-16, 11-5-3, 11-5-4, 11-5-5, 11-5-7, 11-5-8, 11-5-9, 11-5-10, 11-5-13, 11-5-14, 11-5-15, 11-6-8 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING ANNUAL LAND USE REGULATION CODE UPDATES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-2-1, W.M.C., is hereby AMENDED by the addition of the following definitions:

**11-2-1: DEFINITIONS:** (3599 3644 3714) The following words, terms and phrases, when used in this Title, shall have the following meaning, unless the context clearly indicates otherwise:

“Animal Day Care, Indoor” shall mean a facility where non-livestock animals may be groomed, trained, exercised, and socialized, but not kept or boarded outside overnight, bred, or sold. Outdoor runs or other outdoor areas are not permitted.

“Animal Day Care, Outdoor” shall mean a facility where non-livestock animals may be groomed, trained, exercised, and socialized, but not kept or boarded overnight, bred, or sold. Outdoor runs and exercise areas are permitted.

"Brewery" shall mean a facility that is primarily for the on-site manufacturing of malt liquors, which may include a tap room that is less than or equal to thirty percent of the facility's total floor area, including any outdoor seating or accessory sales areas. For the purposes of this definition, "Tap Room" shall mean a use associated with and on the same premises as a brewery, at which guests may consume and purchase, for on or off premise consumption, the manufacturer's products and other nonalcoholic beverages.

"Brewpub" shall mean a facility that is primarily a restaurant where malt liquor is manufactured on the premises as an accessory use. A brewpub may include some off-site distribution of its malt liquor consistent with state law.

“Distillery” shall mean a facility for the manufacturing of spirituous liquors, as that term is defined in state law.

“Donation Facility” shall mean a non-retail facility or collection point with bins, containers, sheds, or other facilities designed and intended for the depositing of clothing, textiles, or other household goods for pick-up.

“Health/Fitness Facility” shall mean an indoor fitness center, gymnasium, health and athletic club which may include exercise equipment, indoor and outdoor courts, spa, sauna, pool and associated amenities.

“Kennel” shall mean premises where more than five (5) nonlivestock animals, excluding offspring not exceeding four (4) months of age belonging to one (1) of the adult animals, are kept for any purpose, including boarding or training. The term "kennel" does not include pet shop.

“Studio” shall mean a small, single purpose facility containing no more than 4,000 square feet, for activities such as dance, martial arts, visual arts or calisthenics for improving strength and circulation or other similar uses as deemed appropriate by the City.

“Veterinary Office and Clinic, Indoor” shall mean a facility for the care of sick or injured animals. Such facilities may include veterinarians’ offices, administrative offices, space for examination, surgery, and recovery, and for overnight indoor boarding of animals while under treatment.

“Veterinary Office and Clinic, Outdoor” shall mean a facility for the care of sick or injured animals. Such facilities may include veterinarians’ offices, administrative offices, space for examination, surgery, and recovery, and for overnight indoor and outdoor boarding of animals while under treatment.

“Winery” shall mean a facility for the manufacturing of vinous liquors, as that term is defined in state law.

Section 2. 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 3664) The following words, terms, and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

Government-Sponsored Senior Housing and Non-Profit Senior Housing: Government-sponsored senior housing projects provided by non-profit section 501(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 and long-term care facilities: 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. “Long-term” implies residency of longer than one hundred (100) days.
- 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: 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.

Section 3. Section 11-3-4, W.M.C., is hereby AMENDED by the addition of two new subsections as follows:

**11-3-4: CATEGORIES OF AWARD:**

(H) CATEGORY M: RESIDENTIAL MID-YEAR DEVELOPMENT: For development proposals falling outside the annual growth management competition time frame and that significantly exceed the minimum Residential Design Guideline requirements for the applicable category. An award may be made by the City Manager upon a finding that the minimum Residential Design Guidelines score for the development exceeds the five-year average score of projects awarded service commitments in that category by twenty-five (25) percent.

**(H) CATEGORY R: RECLAIMED WATER:** For irrigation use by projects that connect to the City’s reclaimed water system.

**(J) CATEGORY W: DOWNTOWN WESTMINSTER:** For use by builders of new residential developments within the Westminster Center Urban Reinvestment Project generally bounded by 92<sup>nd</sup> Avenue, 88<sup>th</sup> Avenue, Harlan Street, and US Highway 36.

**Section 4.** Section 11-4-4, subsection (C) and the use chart for OFFICE AND SIMILAR USES and BUSINESS AND COMMERCIAL USES in subsection (E), W.M.C., are hereby AMENDED as follows:

**11-4-4: ALLOWED USES:** (2534 2896 2975 3295 3497 3664)

(C) Uses are allowed only insofar as they possess a valid state license, if required, and 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.

(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.:-

<b>OFFICE AND SIMILAR USES:</b>	<b>RE</b>	<b>R1</b>	<b>RA</b>	<b>R2</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b>T1</b>	<b>B1</b>	<b>C1</b>	<b>C2</b>	<b>M1</b>	<b>O1</b>
Aerobics, Art, Ballet, Dance, Exercise Instruction, and <u>Classes, Studios</u>								P	P	P	P	P	
Medical/Dental/ <del>Veterinary Office and Clinic</del>								P	P	P	P	P	
<u>Veterinary Office and Clinic, Indoor</u>									<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Veterinary Office and Clinic, Outdoor</u>									<u>S</u>	<u>S</u>	<u>S</u>	<u>P</u>	

<b>BUSINESS AND COMMERCIAL USES:</b>	<b>RE</b>	<b>R1</b>	<b>RA</b>	<b>R2</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b>T1</b>	<b>B1</b>	<b>C1</b>	<b>C2</b>	<b>M1</b>	<b>O1</b>
<u>Animal Day Care, Indoor</u>									<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Animal Day Care, Outdoor</u>										<u>S</u>	<u>S</u>	<u>P</u>	
<del>Artist's Studios</del> /Art Galleries									P	P	P		
<u>Brewery, Distillery, Winery</u>										<u>S</u>	<u>S</u>	<u>S</u>	
<u>Brewpub</u>										<u>P</u>	<u>P</u>	<u>P</u>	
<u>Donation Facility</u>										<u>S</u>	<u>S</u>	<u>S</u>	
<u>Kennel</u>										<u>S</u>	<u>S</u>	<u>S</u>	



Section 5. Section 11-4-5, W.M.C., is hereby AMENDED to read as follows:

**11-4-5: DENSITY SCHEDULE:** (2534 2841 2975)

(A) In addition Subject to the provisions of Section 11-4-6, W.M.C., the following regulations shall apply to lot area, lot width, lot frontage, lot depth, height, building setbacks, floor area, and coverage of lots and structures in all zoning districts except Planned Unit Development. In the event of any conflict or inconsistency between this Section and the City's Comprehensive Plan, the Comprehensive Plan shall control.

(B) The City Manager or the Manager's designee may grant an increase in the height limit and/or a reduction in the setback requirements of up to 10% if the Manager finds that such reduction does not constitute a significant change in the site plan for the property and does not create a significant negative impact on adjoining properties.

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

**11-4-6: SPECIAL REGULATIONS:** (2534 2841 2975 3427 3497 3531 3599 3634 3644 3739) The following additional regulations apply as indicated below:

(R) CITY EXEMPTION. All property, uses, structures, and facilities owned or operated by the City or the Westminster Urban Renewal Authority are exempt from complying with all zoning and subdivision regulations and are exempt from all Preliminary Development Plan, Official Development Plan, Specific Plan, and platting procedures contained in this Code. In addition, the purchase and sale of land by the City or the Westminster Urban Renewal Authority for open space, park, rights-of-way, or other public purposes ~~is~~ are exempt from complying with all zoning and subdivision regulations and all Preliminary Development Plan, Official Development Plan, Specific Plan, and platting requirements contained in this Code.

Section 7. Section 11-4-8, subsection (B) and sub-subsections (C)(6), (15) and (16), W.M.C., are hereby AMENDED to read as follows:

**11-4-8: USES BY SPECIAL PERMIT:** (2534 2975 3053 3497)

(B) The following special uses may be granted according to the provisions of this Section:

(1) Ambulance Service.

~~(1)~~(2) Animal Day Care, Outdoor.

~~(2)~~(3) Brewery, Distillery, or Winery.

~~(3)~~(4) Donation Center.

~~(4)~~(5) Group Care Facility.

~~(5)~~(6) Institutional Care Facility.

~~(6)~~(7) Kennel.

~~(7)~~(8) Tattoo or Body Piercing Parlor.

(9) Thrift Stores five thousand (5,000) sq. ft. or greater.

~~(8)~~(10) Veterinary Office and Clinic, Outdoor.

(C) APPLICATION REQUIREMENTS: All applications for special use permits must include the following information:

(6) Vicinity map showing immediately adjacent property, structures, existing land use, existing zoning and Comprehensive Land Use Plan classification(s), streets, sidewalks, and curb cuts.

(15) In the case of a Brewery, the floor plan must delineate the perimeter of the tap room and outdoor seating, showing maximum occupancy of each, and must show location of product storage. The applicant must also address the following in writing: products to be brewed and production limit of each; plans for wholesale of the manufactured product; plans for truck traffic; days per week and hours per day of operation for the tap room and the manufacturing facility; plans for safe storage and service of manufactured product, including training of servers or sellers; parking plans. The applicant must also provide state discharge permit, if any, and state liquor license and liquor license application.

(156) In addition, reasonable additional information, including, but not limited to, a traffic study prepared by a professional traffic consultant may be required by the City Manager or designee if required to evaluate the application.

Section 8. Section 11-4-16, subsection (D), W.M.C., is hereby AMENDED as to read as follows:

**11-4-16: ADOPTION, IMPLEMENTATION AND COMPLIANCE WITH CITY'S COMPREHENSIVE LAND USE PLAN: (2534)**

(D) AMENDMENTS:

(1) The City may, from time to time, initiate the amendment of the land use designation of the Comprehensive Land Use Plan for any parcel in whole or in part. Any proposed amendment shall be reviewed and adopted, after notice and public hearing, as required in Section 11-4-16(B), W.M.C.

(2) The owner of a parcel may request anthe amendment of the land use designation of the Comprehensive Land Use Plan only as to the parcel owned by him/her. Application for such an amendment shall be made to the Planning Manager, who shall arrange for notice and public hearings before the Planning Commission and the City Council, such notice and hearings to be in compliance with Section 11-4-16(B), W.M.C.

(3) The owner, or the City for City-proposed amendments, shall be responsible for:

(a) also Determining and preparing a list of the owners of record title of all property within three hundred feet (300') of the parcel property for which an amendment is sought. Such list shall contain the name and mailing address of property owners from the County Assessor's records.

(b) Preparing an accurately scaled map using County Assessor's maps identifying the subject site, and the location of the properties to be notified.

(c) Delivering to the Planning Manager the items listed in paragraphs (a) and (b) above in a City-approved format at least fifteen (15) days prior to the date of hearing.

(d) Mailing, by first-class mail, the individual notices to the listed property owners, at least ten (10) days prior to the date of the hearing. Also, the applicant shall provide the Planning Manager, prior to the hearing, a certification that the required notices were mailed and the date of such mailing(s).

(e) Paying the cost of the notices to be mailed and of published notice required in Section 11-4-16(B), W.M.C.

~~and shall prepare notice of the proposed amendment to be mailed by first class mail to such owners at the address appearing in the records of the County Treasurer. Such notices, together with addressed, stamped envelopes, a certified list of property owners to be notified, and a map identifying the location and address of the property within three hundred feet (300') shall be delivered to the City Clerk at least ten (10) days prior to the date of hearing. On or prior to the date set for hearing, the City Clerk shall certify to the Department of Community Development that the required notices were sent. The owner shall bear the cost of the notices to be mailed and of published notice.~~

(4) The owner shall have the burden of proving that the requested amendment will be in the public good and in compliance with the overall purpose and intent of the Comprehensive ~~Land Use Plan~~, and the Council shall so find before approving an amendment. An opportunity for a more profitable use shall not, by itself, be grounds for an amendment.

Section 9. Section 11-5-3, subsections (A) and (D), W.M.C., are hereby AMENDED to read as follows:

**11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534 3739)**

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development (PUD):

(1) The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.

(2) There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

(D) Any application for zoning or rezoning to ~~PUD~~Planned Unit Development shall satisfy the requirements of standards set forth in Section 11-5-14, W.M.C.

Section 10. Section 11-5-4, subsection (D), W.M.C., is hereby amended to read as follows:

**11-5-4: PRELIMINARY DEVELOPMENT PLAN (PDP) REQUIREMENT: (2534 3634)**

(D) The requirement set forth above for a separate Preliminary Development Plan ~~for a Planned Unit Development~~ may be waived by the City Manager or his or her designee if it is determined that the information required in this Code for the Preliminary Development Plan can be reasonably combined with the information required for the Official Development Plan. In such cases, an application for approval of a Combined PDP/ODP for the property shall be submitted and processed in accordance with the procedures for the approval of a PDP as set forth in Section 11-5-7, W.M.C. The application for approval of the Combined PDP/ODP shall contain all the information required for PDP's and ODP's as set forth in Sections 11-5-7 and 11-5-8, W.M.C., ~~below.~~

Section 11. Section 11-5-5, subsections (C) and (D), W.M.C., are hereby amended to read as follows:

**11-5-5: OFFICIAL DEVELOPMENT PLAN (ODP) REQUIREMENT: (2534 3739)**

(C) For any property zoned Planned Unit Development or Specific Plan, the City shall have the option to require that any ODP filed with the City cover the entire ownership or substantially the same ownership, as determined by the City.

(D) For any property not zoned Planned Unit Development or Specific Plan, any ODP filed with the City shall reflect a plan for the development or redevelopment of all contiguous land ~~under or substantially under~~ the same ownership or substantially the same ownership. This requirement shall apply to all ODP's, even if the landowner has no immediate plans for the development or redevelopment of such land. The intent is to insure that a unified plan is approved for all land ~~held by under~~ held by under the same ownership or substantially ~~under~~ the same ownership.

Section 12. The title of Section 11-5-7 and sub-subsections (A)(2), (3) and (4) and subsection (B), 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 3664)**

(A) APPLICATION PROCEDURES FOR PDP'S:

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

(3) Upon a determination by the project planner that 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~~by the Community Development Department's ~~Plan Submittal Guidelines, 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~~a neighborhood notification process as specified by described ~~in~~ the Community Development Department's ~~Plan Submittal Guidelines, 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.

(B) APPROVAL PROCESS FOR PDP'S: ~~All original PDP's shall be subject to review and approval by the Planning Commission and City Council in accordance with the procedures set forth in Section 11-5-13, W.M.C.~~ All original PDPs shall be subject to Planning Commission review and recommendation to the City Council, who shall have final approval authority.

Section 13. The titles of Section 11-5-8 and subsections (A) and (B) and sub-subsections (A)(2), (3), and (4), W.M.C., are hereby AMENDED to read as follows:

**11-5-8: FORMAT AND APPROVAL PROCESS FOR OFFICIAL DEVELOPMENT PLANS (ODP'S):** (2534 2598 3027 3028 3599 3664)

(A) APPLICATION PROCEDURES FOR ODP'S:

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

(3) Upon a determination by the project planner that 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~~by the Community Development Department's ~~Plan Submittal Guidelines, a copy of which is available in the Planning Division office.~~ Staff ~~C~~omments 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 as specified by described ~~in~~ the Community Development Department's ~~Plan Submittal Guidelines, 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.

(B) APPROVAL PROCESS FOR ODP'S:

Section 14. The title of Section 11-5-9 and sub-subsections (A)(2) and (B)(1), W.M.C., are hereby AMENDED to read as follows:

**11-5-9: FORMAT AND APPROVAL PROCESS FOR AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS (PDP'S):** (2534 3599)

(A) APPLICATION PROCEDURES FOR PDP AMENDMENTS:

(2) An amendment to a PDP may be initiated by:

(a) ~~All owner(s) of the property covered by the plan~~The owner(s) of the property in the area proposed for PDP amendment; or

(b) By the City, when the City Council determines that:

(i) 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 PDP no longer meets the requirements of Section 11-5-14, W.M.C.

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

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

(B) APPROVAL PROCEDURES FOR PDP AMENDMENTS:

(1) Administrative approvals. After considering the criteria set out in Section 11-5-14, W.M.C.,~~The City Manager may, but shall not be required to, approve any amendment to a PD~~reimnary Plan,~~without hearing or notice,~~ that does not:

(a) Add a new land use to the ~~PD~~reimnary Plan; or

(b) Change the land area devoted to any use in the PDP by more than ten percent (10%); or

(c) Change the density or intensity of use within the PDP by more than ten percent (10%);

~~or~~

(d) Change the setback or height of any building in the PDP by more than ten percent (10%);

or

(e) Constitute a significant change in the PDP, in the opinion of the City Manager, after the applicant certifies that notice of the proposed amendment has been mailed to any property owners within the Preliminary Development Plan that are within three hundred feet of the area proposed for PDP amendment.

A report of any administratively approved PDP amendment shall be submitted to the Planning Commission and City Council detailing action taken by the City Manager under this procedure.

Section 15. The title of Section 11-5-10 and sub-subsections (A)(1), (2), (3) and (4), W.M.C., are hereby AMENDED to read as follows:

**11-5-10: FORMAT AND APPROVAL PROCESS FOR AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS (ODP'S):** (2534 3599 3634 3664)

(A) APPLICATION PROCEDURES FOR ODP AMENDMENTS:

(1) (1) Applicants 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 that does not meet a criteria for administrative approval described in subsection (B)(1) below,~~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~~by the Community Development Department's ~~Plan Submittal Guidelines, 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~~by the Community Development Department's ~~Plan Submittal Guidelines, a copy of which is available in the Planning Division office.~~ Staff ~~C~~omments 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~~as specified by the Community Development Department's ~~Plan Submittal Guidelines, 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 16. Section 11-5-11, sub-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 3664)**

(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~~by the Community Development Department's ~~Plan Submittal Guidelines, a copy of which is available in the Planning Division office.~~

Section 17. Section 11-5-12, subsection (B), W.M.C., is hereby AMENDED to read as follows:

**11-5-12: APPLICATION FORMAT AND CONTENT FOR LANDSCAPE AND IRRIGATION DRAWINGS AND PRIVATE IMPROVEMENTS AGREEMENT: (2534 3133 3664)**

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

Section 18. Section 11-5-13, sub-subsection (A)(7), W.M.C., is hereby AMENDED to read as follows:

**11-5-13: PUBLIC HEARINGS FOR LAND DEVELOPMENT APPROVALS: (2534 3368 3739)**

(A) The following public hearing procedure shall apply to any application for the approval of a PDP, amended PDP, ODP, amended ODP, Specific Plan, or Specific Plan Amendment and any zoning or rezoning for which a public hearing is required pursuant to this Chapter. For any City-initiated application, the term "applicant" shall mean the City.

(7) It shall be the responsibility of the applicant to:

(a) Prepare the list of property owners who are required to receive notice under sub-subsection (6), above. Such list shall contain the name and mailing address of property owners from the County Assessor's records, ~~keyed to the appropriate lot and block number on the County Assessor's maps.~~

(b) Prepare an accurately scaled map using County Assessor's maps identifying the subject site, and the location ~~and lot and block number~~ of the properties to be notified.

(c) Deliver to the Planning Manager the items listed in paragraphs (a) and (b) above in a City-approved format ~~acceptable to the Planning Manager~~ at least fifteen (15) days prior to the date of hearing.

(d) Mail, by first-class mail, the individual notices to the listed property owners, at least ten (10) days prior to the date of the hearing. Also, the applicant shall provide the Planning Manager, prior to the hearing, a certification that the required notices were mailed and the date of such mailing(s).

Section 19. The title to Section 11-5-14 and sub-subsections (A)(1), (2), (3), (4), (5) and (6), W.M.C., are hereby amended to read as follows:

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

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

(1) The Planned Unit Development (PUD) zoning and the proposed land uses in the associated Preliminary Development Plan ~~therein~~ are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.

(2) The Preliminary Development Plan ~~UD~~ exhibits the application of sound, creative, innovative, and efficient planning principles.

(3) Any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan (PDP).

(4) The PDP ~~UD~~ is compatible and harmonious with existing public and private development in the surrounding area.

(5) The PDP ~~UD~~ provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.

(6) The PDP ~~UD~~ has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.

Section 20. Section 11-5-15, sub-subsection (A)(4), W.M.C., is hereby amended to read as follows:

**11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS:** (2534)

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

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

Section 21. Section 11-6-4, sub-subsection (A)(1), W.M.C., is hereby AMENDED to read as follows:

**11-6-4: PUBLIC AND PRIVATE IMPROVEMENT AGREEMENTS AND SURETY REQUIREMENTS:** (2534 3634 3664)

(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 Community Development Department's Plan Submittal Guidelines, a copy of which is available in the Planning Division office.~~

Section 22. Section 11-6-8, sub-subsection (C)(2), W.M.C., is hereby AMENDED to read as follows:

**11-6-8: DEDICATION OF PROPERTY FOR PUBLIC PURPOSES:** (2534 2694 2876 2912 3086 3664)

(C) PARK DEVELOPMENT FEES:

(1) Park development fee. Every person, firm or corporation applying for and obtaining any building permit for the original construction of any dwelling unit shall be required to pay, prior to the occupancy of the first unit in any building or structure, and as a condition precedent to the issuance of any occupancy certificate, a park development fee, based upon the number of dwelling units to be constructed, as follows:

Single-family detached	\$1,547 per unit
Single-family attached or mobile home	\$1,256 per unit
Multi-family, congregate care or independent living senior housing	\$1,031 per unit
Assisted living senior housing	\$ 358 per bed

~~Skilled nursing facilities as defined in this Code shall be exempt from the park development fee requirements of this Section.~~

The above fees shall be automatically ~~increased~~adjusted annually ~~as of January 1, by April 15<sup>th</sup>,~~ in accordance with the Consumer Price Index (CPI) as established for the Denver metropolitan area. No occupancy certificate shall be issued, nor shall any occupancy of the premises be permitted, until such fees have been paid in full. Such fees shall be used only for the development of park and recreation facilities and services.

Section 23. This ordinance shall take effect upon its passage after second reading.

Section 24. 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 9th day of February, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of February, 2015.

ATTEST:

\_\_\_\_\_  
Mayor



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City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office



Agenda Memorandum

City Council Meeting  
February 9, 2015



**SUBJECT:** Resolution Nos. 5 through 11 re Residential Service Commitment Competition Awards

**Prepared By:** Grant Penland, Principal Planner

**Recommended City Council Action**

1. Adopt Resolution No. 5 awarding Category B-1 Service Commitments to the Connections at Westminster Single Family Detached Residential project.
2. Adopt Resolution No. 6 awarding Category B-1 Service Commitments to the Huron Plaza Single Family Detached Residential project.
3. Adopt Resolution No. 7 awarding Category B-1 Service Commitments to the Ryland Homes at City Park Single Family Detached Residential project.
4. Adopt Resolution No. 8 awarding Category B-1 Service Commitments to the Winters Subdivision Single Family Detached Residential project.
5. Adopt Resolution No. 9 awarding Category B-3 Service Commitments to the Alpine Vista Multi-Family Residential project.
6. Adopt Resolution No. 10 awarding Category B-4 Service Commitments to the Legacy at Westminster Promenade East Traditional Mixed Use Neighborhood Development project.
7. Adopt Resolution No. 11 awarding Category B-4 Service Commitments to The Plaza at Country Club Village Traditional Mixed Use Neighborhood Development project.

**Summary Statement**

- The City received 8 Category B (new residential) and 2 Category E (new senior housing) applications for the 2015 Growth Management Program 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 (SCs) to the following 7 projects:
  - Alpine Vista: Single Family Detached (Category B-3)
  - Connections at Westminster: Single Family Detached (Category B-1)
  - Huron Plaza: Single Family Detached (Category B-1)
  - Legacy at Westminster Promenade East: Traditional Mixed Use Neighborhood Development (TMUND) (Category B-4)
  - The Plaza at Country Club Village: TMUND (Category B-4)
  - Ryland Homes at City Park: Single Family Detached (Category B-1)
  - Winters Subdivision: Single Family Detached (Category B-1)
- The attached resolutions will award a total of 446 SCs beginning in 2015, enough for 653 units at 0.5 SCs per unit for multi-family and 1.0 SCs per unit for single-family detached residential. Comprehensive Plan (CP) amendments and Preliminary Development Plan (PDP) and Official Development Plans (ODP) will need to be approved by December 31, 2016, or the SCs would expire unless extended by Council. The resolutions relate to the City’s Growth Management Program and are based on the findings established in Section 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 2015 Service Commitments competition, should the City award Service Commitments as outlined below?

**Alternatives**

1. Do not award Service Commitments to any of the projects. In this event, the property owners/developers can make a request during next year's residential competition. This alternative is not recommended and the most significant outcome of this alternative would be that the projects will be delayed until the next competition cycle in one year, which can result in discontinued interest in the site by the developer.
2. Award Service Commitments to all 10 projects submitted. This alternative is not recommended, as the projects not recommended for award fail to meet the intent and purpose of the award criteria, and the total Service Commitments awarded would exceed the total number previously allocated by City Council for the 2015 competition.
3. Award Service Commitments to those projects City Council deems appropriate. This alternative is not recommended, as the projects not recommended for award fail to meet the intent and purpose of the award criteria.

**Background Information**

The City's Growth Management Program was established in 1978 to aid the City in balancing growth with the City's ability to provide and expand services including water, water treatment, sewer, police, fire, parks and recreation, etc. Within the Growth Management Program, there is a provision that SCs for residential projects shall be awarded 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. The intent of these SC competitions is for a limited number of new residential projects to proceed to the City's development review process. Although each applicant must submit a sketch plan for this competition, the City does not formally review each site plan at this stage and does not require engineering studies and plans for the projects. Any project awarded SCs must process any required documents, including CP amendments, if necessary. It is not necessary for applicants to process their CP amendments prior to the awards. 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 2015 competition for all new residential and senior housing projects in October 2013. Council approved a total of 550 SCs for this competition, including 450 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 2015.

Project Type	Project Name/ Location	Developer	Acres	Gross DU/ Acre	Score / % of Possible	# of SCs Requested	Recommended Award	Units Based on Award
SENIOR E	Affinity at Westminster/ SEC of 128th & Zuni	Inland Group	10.07	16.09	1950 / 25%	57	0	0
MULTI B-3	Alpine Vista/NEC of Lowell & 88th	Alpine Vista Construction	10.147	14.60	3375 / 34%	65	60	120
SFD B-1	Connections at Westminster/NEC of Yates & 88th	Berkeley Homes/ Harvard Communities	8.93	7.28	4025 / 36%	65	65	65
SFD B-1	Huron Plaza/NWC of Huron & 128th	Tri Pointe Homes, Inc.	31.86	2.42	2350 / 21%	77	77	77
TMUND	Legacy at Westminster Promenade East/NEC of Westminster Blvd & Promenade South Drive	Legacy Partners	6.2	48.39	3050 / 31%	150	138 (No Townhomes)	276
TMUND	The Plaza at Country Club Village/NEC of Federal & 120th	Bosch Land Group	1.76	10.23	N/A	9	9	18
SFD B-1 & SFA B-2	Ryland Homes at City Park/SWC of Sheridan & 104th	Ryland Homes	25.6	3.20	3975 / 29% & 2900 / 26%	65.8	65 – SFD	65
SENIOR E	Stoney River Memory Care/ SEC of Orchard Parkway & 141st	Evergreen Senior Housing, LLC	4	10.00	2450 / 32%	14	0	0
SFA B-2	Village at City Park/SWC of Sheridan & 102nd	KB Home	13.19	7.88	2600 / 23%	72.8	0	0
SFD B-1	Winters Subdivision/NWC of Wadsworth & 110th	TBD/Semi-Custom	13.72	2.33	3975 / 35%	32	32	32
<b>TOTALS</b>			<b>125.477</b>			<b>607.6</b>	<b>446</b>	<b>653</b>

The following charts represent the current year SC competition submittals in comparison to projects awarded from 1998 to 2014 in each residential category. Percentage of points possible is utilized for comparison, as the total points possible have varied throughout the competition’s history.

<b>2015 Competition:</b>	Total Points Possible	Total Points Scored	% of Total Points Scored	Type	Average Score% 1998-2014
<u>SFD</u>				SFD	37%
Connections	11325	4025	<b>36%</b>		
Huron Plaza	11325	2350	<b>21%</b>		
Ryland	11325	3275	<b>29%</b>		
Winters	11325	3975	<b>35%</b>		
<u>SFA</u>				SFA	41%
Ryland	11150	2900	<b>26%</b>		
Village at City Park	11150	2600	<b>23%</b>		
<u>MF</u>				MF	37%
Alpine Vista	9775	3375	<b>35%</b>		
Legacy at Promenade	9775	3050	<b>31%</b>		
<u>Senior</u>				Senior	42%
Affinity	7825	1950	<b>25%</b>		
Stoney River	7825	2450	<b>31%</b>		
<u>TMUND</u>				TMUND	n/a
Plaza at Country Club Village	n/a	n/a	<b>n/a</b>		

Additional information about all of the submittals is detailed below:

Overview of each project recommended for award:

Alpine Vista

The Alpine Vista property is located at the northwest corner of 88th Avenue and Lowell Boulevard. The property was annexed in 2003, and subsequently a PDP and an ODP were approved for 100 residential townhome units (9.85 du/acre). The Alpine Vista annexation agreement set aside 70 SCs for 100 single family attached units. Sixteen townhome units were previously constructed on site, and the majority of the infrastructure is in place. The current CP land use designation for the property is R-8, which allows up to 8 dwelling units per acre.

The applicant is requesting the award of 65 SCs for 130 multi-family residential units with a proposed density of 14.6 du/acre. This proposed increase in density would require a CP Amendment to R-18. The proposed multifamily “stacked flats” are a substantial deviation from the existing townhome configuration. Staff also noted that 150 proposed incentive points for eliminating garages along public street frontages will not be achievable through the proposed site development. Therefore, staff reduced the score that is reflected in the table above.

Though staff is generally supportive of a small increase in density in order to foster completion of the development, the proposed land use pattern and housing product type are not proposed to be well integrated with the existing townhomes. Furthermore, the roadways proposed will no longer function as rights-of-way. Therefore, staff recommends the project be conditionally awarded only 60 Multi-Family Residential (Category B-3) SCs, which would accommodate a maximum of 12 du/acre for the project. This will accomplish a similar development pattern and will help transition land use within the area.

Connections at Westminster

The Connections at Westminster property is located at the northeast corner of Yates Street and 88th Avenue. The applicant is requesting the award of 65 SCs for 65 single family detached

residential units. The CP designates the property R-8 and the applicant is proposing a maximum density of 7.3 dwelling units per acre.

Staff is supportive of the housing product type proposed and the density is in conformance with the CP. Therefore, staff recommends award of 65 Single Family Detached (Category B-1) SCs for the project. However, based upon the product type proposed, the need for public streets was identified and should be a condition of award. This condition is included within the draft award resolution for the project, attached hereto.

#### Huron Plaza

The Huron Plaza project is located at the northwest corner of Huron Street and 128th Avenue. The project was originally awarded 107 SCs in 2013, but a PDP or ODP were never approved for the project. The applicant is requesting the award of 77 SCs on 36.8 acres for single family detached residential dwellings. The CP designates the property R-3.5 and the applicant is proposing a maximum density of 2.1 du/acre.

Though the proposal scored low in comparison to prior years' Single Family Detached SC award recipients, staff is supportive of awarding the project based upon the property's topographic site constraints and the difficulty in obtaining a significant point total in comparison to other single family detached projects. Additionally, as identified within the CP, only a small percentage (approximately 16%) of available residential land is designated for single family detached development. In order to ensure the continued availability of a wide range of housing types, including single family detached, staff is supportive of awarding SCs to the project. Based upon the aforementioned need for varied housing types and the project's conformance with the CP land use designation of R-3.5, staff recommends award of 77 Single Family Detached (Category B-1) SCs for the project.

#### Legacy at Westminster Promenade East

The Legacy at Westminster Promenade East proposal is located between the Ice Center and the Westin at the Promenade. The applicant is requesting the award of 150 SCs for 276 multi-family units (4-story) and 24 townhomes on 6.2 acres, with a density of 48.4 du/acre. The CP designates the property mixed use center.

The following is staff's evaluation of the manner in which the project meets the fundamental TMUND goals and principles:

- Compact, Walkable Development: The current layout of the Promenade contains a grand pedestrian way. The introduction of multi-family residential will integrate with the Promenade to provide a very compact and walkable development. However, the proposal for townhomes adjacent to the main pedestrian way within the Promenade will not sufficiently activate the pedestrian realm. In order to fulfil the vision of the district as a mixed-use activity center, staff finds it essential to include uses such as retail, office, entertainment, or restaurants along the main pedestrian connections, in lieu of lower density residential uses.
- Mixed-Use "Village" Center: The front door of Legacy at Promenade East is the grand pedestrian way of the Promenade, which serves as the neighborhood's linear "Village" Center, providing direct pedestrian access to the entertainment, restaurant, retail, hotel and convention uses. This urban, mixed use entertainment center is counterbalanced by the mixed use recreation center of Westminster, at City Park, to the east. As previously stated, staff finds that it is imperative to provide uses along the Promenade's main pedestrian way that will satisfactorily activate the space. Therefore, staff is supportive of the proposed 4-story multi-family proposal, but is not supportive of the townhomes proposed adjacent to Westminster Promenade Lake.
- Pedestrian-Oriented District: As proposed, the Legacy at Promenade East development does not adequately achieve a pedestrian oriented district. As previously referenced, the proposal for townhomes adjacent to the main pedestrian way within the Promenade will not fulfill the vision of the area to create an activated district with both day and night populations.

However, if the northern portion of the site is developed with an internally parked urban-style multifamily building as proposed, along with a pedestrian activating use along the main pedestrian way in lieu of townhomes, the project will achieve a pedestrian oriented district.

- Interconnected Street/Blocks: The Promenade has well-connected streets that provide easy access throughout the development. The Legacy at Promenade East will integrate within the existing street network.
- Narrow Streets: The existing private local streets at Legacy at Promenade East include two ingress/egress drives that connect with Promenade East Drive, and an existing looped, local street that is 22 feet from flow-line to flow-line. The street network is designed to promote the pedestrian character of Legacy at Promenade East.
- Variety of Parks: One of the main amenities offered by Legacy at Promenade East is the convenient access to a variety of Parks and Open Space. At the Westminster Promenade front door to the neighborhood is the grand pedestrian way of the Promenade, lined by urban fountains, amenity areas, and the Westminster Promenade Lake and Falls water feature. City of Westminster Open Space and trail amenities are situated directly to the north of the neighborhood, on the opposite side of Promenade Drive East. That trail connection links the neighborhood to the Big Dry Creek Regional Trail and Open Space and active use opportunities of Westminster City Park, Christopher Fields and the City Park Recreation Center.

Community Development staff is supportive of the proposed, 4-story multi-family units. However, staff does not support the townhomes proposed to be located adjacent to the lake and believes that a mixed use building or a structure consisting of uses such as office, retail, or restaurants will be better suited for this location and further support a TMUND project. The intent of the Promenade is to provide uses that will activate the space, encourage pedestrian activity and reduce the perception of Westminster Boulevard as a barrier between the east and west portions of the Promenade district. Therefore, staff recommends award of 138 TMUND SCs to the project, excluding any SCs for the proposed townhomes.

#### The Plaza at Country Club Village

The Plaza at Country Club Village proposal is located at the northeast corner of Federal Boulevard and 120th Avenue. The applicant is requesting the award of 9 SCs for 18 multi-family units proposed over commercial on 1.76 acres. The CP designates the property retail commercial. A CP change will be required to change the designation to mixed use, which staff supports at this location based upon the CP land use policy stating, "Ensure that new residential development is located adjacent to and within walking distance to commercial and public services such as grocery stores and personal services, schools, parks and open space."

The following is staff's evaluation of the manner in which the project meets the fundamental TMUND goals and principles:

- Compact, Walkable Development: The current layout of Country Club Village consists of a number of uses (office, retail, and restaurants) all connected via an internal road network and numerous pedestrian walkways.
- Mixed-Use "Village" Center: Country Club Village provides a good mix of office, retail, and services. The inclusion of residential will add to the variety of uses.
- Pedestrian-Oriented District: Numerous office tenants, an athletic club, and several retailers are located within the site development and are connected via walkways providing the public a pedestrian oriented district.
- Interconnected Street/Blocks: Country Club Village has well-connected streets that provide easy access throughout the development.
- Narrow Streets: The uses within Country Club Village are connected via an internal, narrow road network. Two existing roadways also include on-street parking.
- Variety of Parks: The site currently contains a plaza area and the proposed development will also include a park north of the proposed mixed use building, supplying opportunities to both residents and visitors. Additionally, a recently funded grant will connect the site to both the Big Dry Creek Trail and the Ranch Creek Trail, providing pedestrian access to Westminster

City Park, Stanley Lake, the Metzger Farm Open Space and the Ranch Creek Open Space, among other destinations.

Community Development staff is supportive of the proposed vertical mixed building and the CP promotes higher density development in proximity to non-residential uses. Therefore, staff recommends award of 8 TMUND SCs in the category to the project.

*Ryland Homes at City Park*

The Ryland Homes at City Park property is located at the southwest corner of Sheridan and 104th Avenue. The applicant is requesting the award of 65.8 SCs for 28 single family detached units and 54 duplexes on 25.6 acres. The CP designates the property R-3.5 and the applicant is proposing a maximum density of 3.2 dwelling units per acre. The housing types proposed are in two SC categories, Single Family Attached and Single Family Detached.

Though the proposal scored low in comparison to prior years' Single Family Detached SC award recipients, staff is supportive of awarding the project Single Family Detached SCs based upon the property's topographic site constraints and the difficulty in obtaining a significant point total in comparison to other single family detached projects. As identified within the CP, only a small percentage (approximately 16%) of available residential land is designated for Single Family Detached residential development. Also, though the CP does indicate that Single Family Attached may be allowed within the R-3.5 designation depending on location and design, staff has identified this site as being more suitable for Single Family Detached residential based upon its proximity to the existing Waverly Acres Single Family Detached development. The proposed duplex homes would represent deviation from the established development pattern in the area.

In order to ensure the continued availability of Single Family Detached residential housing and provide a consistent development pattern for the area, staff is supportive of awarding only Single Family Detached SCs to the project, without the inclusion of any Single Family Attached SCs. Therefore, based upon the aforementioned need for Single Family Detached residential housing and the project's conformance with the CP land use designation of R-3.5, staff recommends award of 65 Single Family Detached (Category B-1) SCs for the project.

*Winters Subdivision*

The Winters Subdivision is located at the southwest corner of Wadsworth Boulevard and 111th Avenue. The site was originally platted in 2007 for 18 lots ranging from approximately 12,000 to 24,000 square feet with CP designations of R-2.5 (Winters North) and R-3.5 (Winters South). The project was awarded 24 SCs for single family detached units in 2013. The applicant has proposed a revised plan and is requesting the award of 32 SCs for 32 single family detached units on 13.72 acres, with a density of 2.33 du/acre. The proposal includes lots that are a minimum of 10,000 square feet in area.

The proposed density conforms to the CP and the project's score is commensurate with prior years' Single Family Detached SC award recipients. Therefore, Community Development staff supports recommending award of 32 Single Family Detached (Category B-1) SCs to the project.

Three projects that are not being recommended for award at this time include Affinity at Westminster (Senior Housing), Stoney River Memory Care (Senior Housing), and Village at City Park (Single Family Attached Residential).

The Affinity at Westminster project is located at the southeast corner of 128th Avenue and Zuni Street. The applicant is requesting the award of 57 SCs for a 162 unit independent living facility with a proposed density of 16 du/acre. The property is not within the incorporated City limits and the Comprehensive Plan Sphere of Influence Area designates the property R-8 and would therefore require annexation, CP amendment, and rezoning to Planned Unit Development (PUD). The proposal scored relatively low in comparison to prior years' Senior Housing SC award recipients and the proposed project density is double



that contemplated in the CP. Therefore, Community Development staff does not support recommending the project for award.

The Stoney River Memory Care project is located at the southeast corner of Orchard Parkway and 141st Avenue. The applicant is requesting the award of 14 SCs for a 40 unit senior housing facility with a proposed density of 10 du/acre. The CP designates the property Office/R&D High Intensity. This proposed residential use would necessitate a CP amendment to R-18. The proposal scored relatively low in comparison to prior years' Senior Housing SC award recipients and the CP does not contemplate residential uses for the property. The land use designation for the property was discussed significantly with the recent Comprehensive Plan update. The desire to retain the area for higher-intensity employment uses was a strong focus of consideration when determining the appropriate land use designation. Therefore, Community Development staff does not support recommending the project for award.

The Village at City Park property is located at the southwest corner of Sheridan and 102nd Avenue. The applicant is requesting the award of 72.8 SCs for 104 single family attached dwelling units on 13.19 acres. The CP designates the property R-3.5 and the applicant is proposing a maximum density of 7.88 dwelling units per acre. This proposed housing product and requested increase in density would necessitate a CP amendment to R-8. The proposal scored relatively low in comparison to prior years' Single Family Attached SC award recipients and the proposed project density is double than contemplated in the Comprehensive Plan. As previously mentioned, only a small percentage (approximately 16%) of available residential land is designated for single family detached development and changing the CP to R-8 would further reduce the availability. Additionally, the City's overall water budget was based upon the CP's land use designations and therefore did not contemplate an increase in water use for this property. Therefore, Community Development staff does not support recommending the project for award.

Notification letters were emailed on February 4, 2015, 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 February 9, 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 and Inclusive Neighborhoods" and "Beautiful, Desirable, Environmentally Responsible City," by 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.

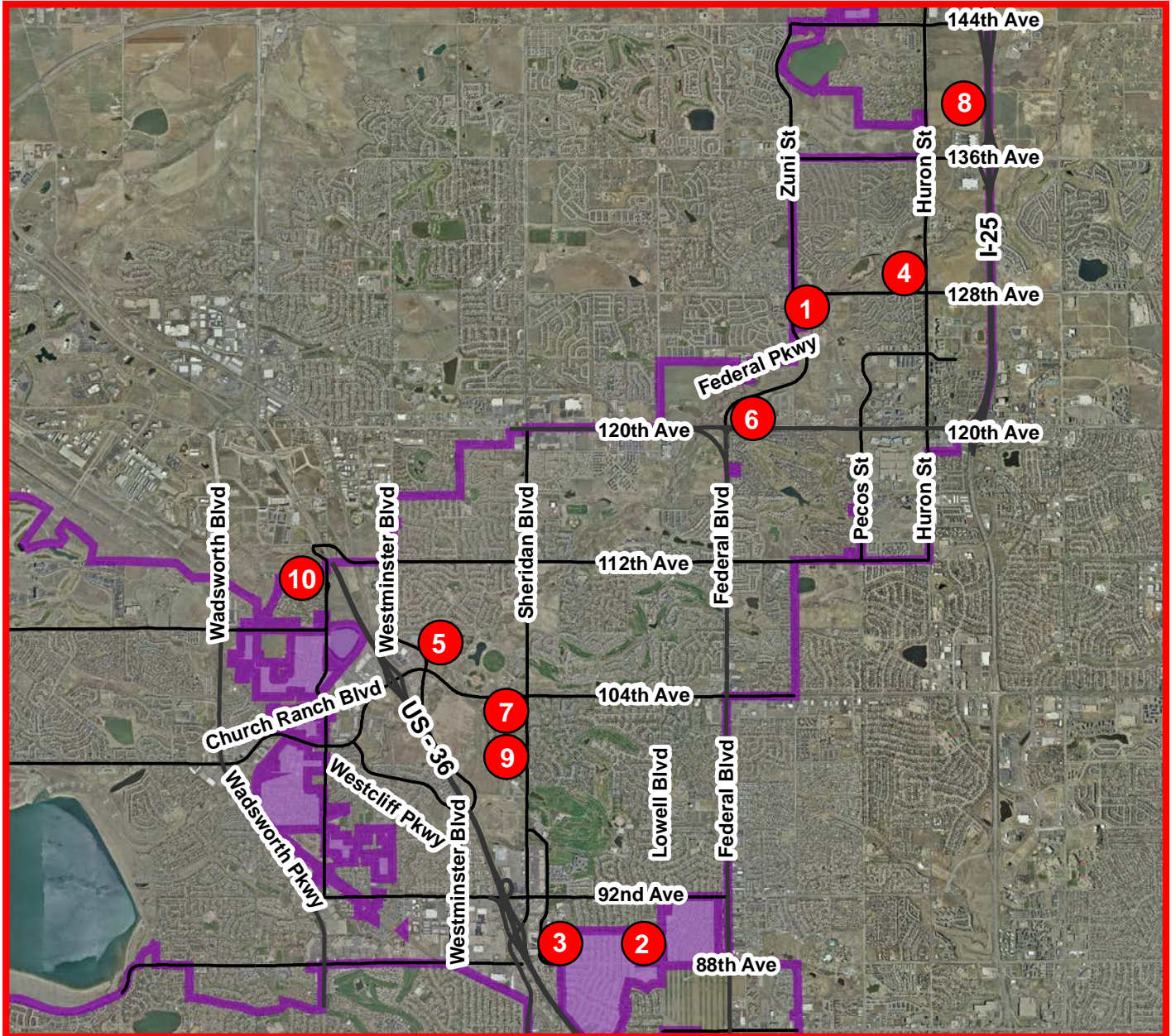
Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

- Attachment A - 2015 Service Commitment Competition Entries Map
- Resolution No. 5 (Category B-1)
- Resolution No. 6 (Category B-1)
- Resolution No. 7 (Category B-1)
- Resolution No. 8 (Category B-1)
- Resolution No. 9 (Category B-3)
- Resolution No. 10 (Category B-4)
- Resolution No. 11 (Category B-4)

# Attachment A - 2015 Service Commitment Competition Entries

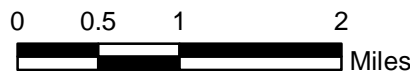


City of Westminister Planning/Engineering (GIS) - DWG - 01-07-2015

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- SENIOR (E)
- MULTI (B-3)
- SFD (B-1)
- SFD (B-1)
- TMUND
- TMUND
- SFD (B-1) & SFA (B-2)
- SENIOR (E)
- SFA (B-2)
- SFD (B-1)

- Affinity at Westminister
- Alpine Vista
- Connections at Westminister
- Huron Plaza
- Legacy at Westminister
- The Plaza at Country Club Village
- Ryland Homes at City Park
- Stoney River Memory Care
- Village at City Park
- Winters Subdivision



RESOLUTION

RESOLUTION NO. 5

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**A RESOLUTION CONCERNING  
CATEGORY B-1 (NEW SINGLE FAMILY DETACHED RESIDENTIAL DEVELOPMENT)  
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 of Westminster has previously allocated 450 Service Commitments for the year 2015 for use in servicing new residential developments in Category B and 100 Service Commitments for the year 2015 for use in servicing new senior housing developments in Category E, based on the criteria set forth in Chapter 11-3 of the Westminster Municipal Code; and

WHEREAS, the City Council of the City of Westminster desires to allocate 65 Service Commitments for the year 2015 for use in servicing the new residential development in Category B-1 listed below, based on the criteria set forth in Section 11-3-1 of the Westminster Municipal.

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

(1) Category B-1 Service Commitment awards are hereby made to the specific project listed below as follows:

<b>Service Commitment Category</b>	<b>Project Name (Location)</b>	<b>Award</b>
Single Family Detached, Category B-1	Connections at Westminster (NEC of Yates & 88th)	65
	<b>TOTAL</b>	<b>65</b>

(2) These Service Commitment awards to the project listed above are conditional and subject to the following:

(a) If applicable, the applicant must successfully amend the Comprehensive Plan.

- (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 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 Title XI, Chapter 3, 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 2015 are effective as of the date of this Resolution (February 9, 2015) 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:
- (i.) The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2016.
  - (ii.) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2016, or the entire Service Commitment award for the project shall expire.
  - (iii.) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2019), or the entire Service Commitment award for the project shall expire.
  - (iv.) 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.

(n) Based upon the housing product type proposed (small lot single family detached), the project must provide a public street right-of-way connection through the development that includes sidewalks on both sides of the street.

PASSED AND ADOPTED this 9th day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Attorney's Office

RESOLUTION

RESOLUTION NO. **6**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**A RESOLUTION CONCERNING  
CATEGORY B-1 (NEW SINGLE FAMILY DETACHED RESIDENTIAL DEVELOPMENT)  
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 of Westminster has previously allocated 450 Service Commitments for the year 2015 for use in servicing new residential developments in Category B and 100 Service Commitments for the year 2015 for use in servicing new senior housing developments in Category E, based on the criteria set forth in Chapter 11-3 of the Westminster Municipal Code; and

WHEREAS, the City Council of the City of Westminster desires to allocate 77 Service Commitments for the year 2015 for use in servicing the new residential development in Category B-1 listed below, based on the criteria set forth in Section 11-3-1 of the Westminster Municipal.

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

(1) Category B-1 Service Commitment awards are hereby made to the specific project listed below as follows:

<b>Service Commitment Category</b>	<b>Project Name (Location)</b>	<b>Award</b>
Single Family Detached, Category B-1	Huron Plaza (NWC of Huron & 128th)	77
	<b>TOTAL</b>	<b>77</b>

(2) These Service Commitment awards to the project listed above are conditional and subject to the following:

(a) If applicable, the applicant must successfully amend the Comprehensive Plan.

(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 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 Title XI, Chapter 3, 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 2015 are effective as of the date of this Resolution (February 9, 2015) 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:

(i.) The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2016.

(ii.) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2016, or the entire Service Commitment award for the project shall expire.

(iii.) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2019), or the entire Service Commitment award for the project shall expire.

(iv.) 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.

PASSED AND ADOPTED this 9th day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Attorney's Office



RESOLUTION

RESOLUTION NO. 7

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**A RESOLUTION CONCERNING  
CATEGORY B-1 (NEW SINGLE FAMILY DETACHED RESIDENTIAL DEVELOPMENT)  
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 of Westminster has previously allocated 450 Service Commitments for the year 2015 for use in servicing new residential developments in Category B and 100 Service Commitments for the year 2015 for use in servicing new senior housing developments in Category E, based on the criteria set forth in Chapter 11-3 of the Westminster Municipal Code; and

WHEREAS, the City Council of the City of Westminster desires to allocate 63 Service Commitments for the year 2015 for use in servicing the new residential development in Category B-1 listed below, based on the criteria set forth in Section 11-3-1 of the Westminster Municipal.

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

(1) Category B-1 Service Commitment awards are hereby made to the specific project listed below as follows:

<b>Service Commitment Category</b>	<b>Project Name (Location)</b>	<b>Award</b>
Single-Family Detached, Category B-1	Ryland Homes at City Park (SWC of Sheridan & 104th)	65
	<b>TOTAL</b>	<b>65</b>

(2) These Service Commitment awards to the project listed above are conditional and subject to the following:

(a) If applicable, the applicant must successfully amend the Comprehensive Plan.

- (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 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 Title XI, Chapter 3, 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 2015 are effective as of the date of this Resolution (February 9, 2015) 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:
- (i.) The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2016.
  - (ii.) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2016, or the entire Service Commitment award for the project shall expire.
  - (iii.) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2019), or the entire Service Commitment award for the project shall expire.
  - (iv.) 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.

PASSED AND ADOPTED this 9th day of February, 2015.

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

ATTEST:

\_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Attorney's Office

RESOLUTION

RESOLUTION NO. 8

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**A RESOLUTION CONCERNING  
CATEGORY B-1 (NEW SINGLE FAMILY DETACHED RESIDENTIAL DEVELOPMENT)  
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 of Westminster has previously allocated 450 Service Commitments for the year 2015 for use in servicing new residential developments in Category B and 100 Service Commitments for the year 2015 for use in servicing new senior housing developments in Category E, based on the criteria set forth in Chapter 11-3 of the Westminster Municipal Code; and

WHEREAS, the City Council of the City of Westminster desires to allocate 32 Service Commitments for the year 2015 for use in servicing the new residential development in Category B-1 listed below, based on the criteria set forth in Section 11-3-1 of the Westminster Municipal.

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

(1) Category B-1 Service Commitment awards are hereby made to the specific project listed below as follows:

<b>Service Commitment Category</b>	<b>Project Name (Location)</b>	<b>Award</b>
Single Family Detached, Category B-1	Winters Subdivision (SWC Wadsworth Blvd & 111 <sup>th</sup> )	32
	<b>TOTAL</b>	<b>32</b>

(2) These Service Commitment awards to the project listed above are conditional and subject to the following:

(a) If applicable, the applicant must successfully amend the Comprehensive 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 Title XI, Chapter 3, 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 2015 are effective as of the date of this Resolution (February 9, 2015) 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:
- (i.) The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2016.
  - (ii.) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2016, or the entire Service Commitment award for the project shall expire.
  - (iii.) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2019), or the entire Service Commitment award for the project shall expire.
  - (iv.) 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.

PASSED AND ADOPTED this 9th day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Attorney's Office

RESOLUTION

RESOLUTION NO. 9

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**A RESOLUTION CONCERNING  
CATEGORY B-3 (NEW MULTI-FAMILY RESIDENTIAL DEVELOPMENT)  
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 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 of Westminster has previously allocated 450 Service Commitments for the year 2015 for use in servicing new residential developments in Category B and 100 Service Commitments for the year 2015 for use in servicing new senior housing developments in Category E, based on the criteria set forth in Chapter 11-3 of the Westminster Municipal Code; and

WHEREAS, the City Council of the City of Westminster desires to allocate 60 Service Commitments for the year 2015 for use in servicing the new residential development in Category B-3 listed below, based on the criteria set forth in Section 11-3-1 of the Westminster Municipal.

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

(1) Category B-3 Service Commitment awards are hereby made to the specific project listed below as follows:

<b>Service Commitment Category</b>	<b>Project Name (Location)</b>	<b>Award</b>
Multiple Family, Category B-3	Alpine Vista (NEC of Lowell & 88th)	60
	<b>TOTAL</b>	<b>60</b>

(2) These Service Commitment awards to the project listed above are conditional and subject to the following:

(a) If applicable, the applicant must successfully amend the Comprehensive 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 Title XI, Chapter 3, 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 2015 are effective as of the date of this Resolution (February 9, 2015) 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:
- (i.) The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2016.
  - (ii.) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2016, or the entire Service Commitment award for the project shall expire.
  - (iii.) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2019), or the entire Service Commitment award for the project shall expire.
  - (iv.) 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.
- (n) The project must propose development that is compatible with the architectural style and massing of the existing Alpine Vista Townhomes.



(o) Prior to issuance of any building permit for the project, all landscaping (including walls and trash enclosures) shall be installed and approved by the City Official Development Plan inspector pursuant to the approved Official Development Plan for Lots 15 and 16 of the Alpine Vista Townhomes, 1st Replat, Subdivision.

PASSED AND ADOPTED this 9th day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Attorney's Office

RESOLUTION

RESOLUTION NO. **10**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**A RESOLUTION CONCERNING  
CATEGORY B-4 (NEW TRADITIONAL MIXED USE NEIGHBORHOOD DEVELOPMENT)  
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-4 (new Traditional Mixed Use Neighborhood Development) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked by the degree to which it meets the goals and development principles of the said criteria; and

WHEREAS, the City's ability to absorb and serve new multi-family development 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 450 Service Commitments for the year 2015 for use in servicing new residential developments in Category B and 100 Service Commitments for the year 2015 for use in servicing new senior housing developments in Category E, based on the criteria set forth in Chapter 11-3 of the Westminster Municipal Code; and

WHEREAS, the City Council of the City of Westminster desires to allocate 138 Service Commitments for the year 2015 for use in servicing the new residential development in Category B-4 listed below, based on the criteria set forth in Section 11-3-1 of the Westminster Municipal.

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

(1) Category B-4 Service Commitment awards are hereby made to the specific project listed below as follows:

<b>Service Commitment Category</b>	<b>Project Name (Location)</b>	<b>Award</b>
TMUND, Category B-4	Legacy at Westminster Promenade East (NEC of Westminster Blvd & Promenade Drive North)	138
	<b>TOTAL</b>	<b>138</b>

(2) These Service Commitment awards to the project listed above are conditional and subject to the following:

- (a) If applicable, the applicant must successfully amend the Comprehensive 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 amended 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 Title XI, Chapter 3, 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 2015 are effective as of the date of this Resolution (February 9, 2015) 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:
  - i. The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2016.
  - ii. The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2016, or the entire Service Commitment award for the project shall expire.
  - iii. The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2019), or the entire Service Commitment award for the project shall expire.
  - iv. 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.

(n) This award is limited to the 276 multi-family residential units proposed for the project and does not include the 24 proposed townhomes.

PASSED AND ADOPTED this 9th day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Attorney's Office

RESOLUTION

RESOLUTION NO. **11**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

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**A RESOLUTION CONCERNING  
CATEGORY B-4 (NEW TRADITIONAL MIXED USE NEIGHBORHOOD DEVELOPMENT)  
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-4 (new Traditional Mixed Use Neighborhood Development) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked by the degree to which it meets the goals and development principles of the said criteria; and

WHEREAS, the City's ability to absorb and serve new multi-family development 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 450 Service Commitments for the year 2015 for use in servicing new residential developments in Category B and 100 Service Commitments for the year 2015 for use in servicing new senior housing developments in Category E, based on the criteria set forth in Chapter 11-3 of the Westminster Municipal Code; and

WHEREAS, the City Council of the City of Westminster desires to allocate 9 Service Commitments for the year 2015 for use in servicing the new residential development in Category B-4 listed below, based on the criteria set forth in Section 11-3-1 of the Westminster Municipal.

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

(1) Category B-4 Service Commitment awards are hereby made to the specific project listed below as follows:

<b>Service Commitment Category</b>	<b>Project Name (Location)</b>	<b>Award</b>
TMUND, Category B-4	Plaza at County Club Village (NEC Federal & 120th)	9
	<b>TOTAL</b>	<b>9</b>

(2) These Service Commitment awards to the project listed above are conditional and subject to the following:

- (a) If applicable, the applicant must successfully amend the Comprehensive 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 amended 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 Title XI, Chapter 3, 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 2015 are effective as of the date of this Resolution (February 9, 2015) 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:
  - (i.) The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2016.
  - (ii.) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2016, or the entire Service Commitment award for the project shall expire.
  - (iii.) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2019), or the entire Service Commitment award for the project shall expire.
  - (iv.) 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.

PASSED AND ADOPTED this 9th day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Attorney's Office



**Agenda Memorandum**

City Council Meeting  
February 9, 2015



**SUBJECT:** Resolution No. 12, Resolution No. 13, and Resolution No. 14 re Intergovernmental Agreements with the Colorado Department of Transportation for the Federal Boulevard Bridge Replacement Project

**Prepared By:** Andrew Hawthorn, PE, Senior Engineer

**Recommended City Council Action**

1. Adopt Resolution No. 12, Resolution No. 13, and Resolution No. 14 authorizing the City Manager to execute three Intergovernmental Agreements between the City of Westminster and the Colorado Department of Transportation (CDOT) pertaining to the receipt of \$665,261 from the State for grading, storm water detention and culvert extension work performed by the City (Resolution No. 12); the payment of \$514, 011 to the State for requested roadway and traffic signal improvements at the intersection of Federal Boulevard and future Westminster Station Drive (Resolution No. 13); and the payment of \$661,666 to the State for requested architectural enhancements, all related to the CDOT replacement of the Federal Boulevard Bridge over the Burlington Northern/Santa Fe and Regional Transportation District rail tracks (Resolution No. 14).
2. Authorize a payment of \$510,416 to CDOT pursuant to the three Intergovernmental Agreements as outlined, plus authorize a contingency of \$117,568, for a total authorized expenditure of \$627,984.

**Summary Statement**

- In 2012, City staff was notified that the existing Federal Boulevard Bridge over the railroad tracks, located at approximately 69<sup>th</sup> Avenue in Westminster, was to be replaced by CDOT.
- The City has created a favorable identity over the past few decades by providing enhancements on many bridges, including a few that are owned by CDOT. The City Council directed staff to pursue similar improvements to this replacement bridge on Federal Boulevard.
- City Council action on the attached Resolutions is now necessary to authorize expenditures to CDOT for the City-requested enhancements and receive a payment from CDOT for work performed by the City that benefits the bridge replacement project.
- The City project totals \$1,175,677 (\$514,011 for the Federal Boulevard and Westminster Station Drive intersection improvements plus \$661,666 for the bridge architectural enhancements) prior to the CDOT credit of \$665,362 for storm water drainage and culvert work. The net amount that the City will pay CDOT is \$510,416, not including contingency. The recommended \$117,568 contingency is proposed at 10% of the City project total cost and is reasonable for a project of this magnitude and complexity. Construction is expected to be underway in February 2015, and the project will be completed by summer 2016.
- Funds for these expenses are currently available in the Federal Boulevard Bridge Enhancements project and the Westminster Station North project of the General Capital Improvement Fund.

**Expenditure Required:** \$627,984

**Source of Funds:** General Capital Improvement Fund: Federal Bridge Enhancements (\$191,004)  
Westminster Station North (\$436,980)



### **Policy Issue**

Should the City enter into three Intergovernmental Agreements with the Colorado Department of Transportation for roadway, intersection, and architectural enhancements on the Federal Boulevard Bridge replacement at 69<sup>th</sup> Avenue in Westminster?

### **Alternative**

The City is not obligated to participate in this project, so the alternative action would be to not adopt some or any of the Resolutions and, thus, elect to not pursue the proposed enhancements to the new Federal Boulevard Bridge and/or the traffic signal at Westminster Station Drive. The first Resolution should be adopted to secure a credit from the State for work that has been or will be performed by the City that benefits the bridge replacement project. In the opinion of staff, the second Resolution, which pertains to the installation of a traffic signal at the intersection of Federal Boulevard and Westminster Station Drive (a/k/a 69<sup>th</sup> Avenue), is critical to the future success of the commuter rail station and surrounding transit-oriented development (TOD) area. The third Resolution addresses highly desirable enhancements to the new bridge that will eventually serve as an entryway into the Commuter Rail Westminster Station.

### **Background Information**

In 2012, City staff was notified that the existing Federal Boulevard Bridge over the Burlington Northern/Santa Fe railroad was to be replaced as part of the Bridge Enterprise Fund administered through the Colorado Department of Transportation (CDOT). The replacement of this bridge, currently scheduled for construction in 2015-16, is very timely given the current construction activity and redevelopment efforts occurring in this area, particularly with the Westminster Station planned opening in mid-2016. , CDOT has historically taken the position that bridge replacement projects on the State Highway system can only provide “in kind” structures to those being replaced, and the cost of any desired aesthetic enhancements must be borne by the local jurisdiction. Since the City has created a favorable identity over the past few decades by providing such enhancements to many bridges, including a few that are owned by CDOT, City Council directed staff to pursue similar improvements to this proposed bridge on Federal Boulevard.

During the initial project scoping meeting with CDOT, staff requested that CDOT consider adding certain elements into their project, which include the addition of a traffic signal at the future Westminster Station Drive intersection, enhancements to the vehicular and pedestrian railings across the new bridge and a wider median to allow the future installation of a “City of Westminster” monument sign. In particular, staff believes that the installation of the proposed traffic signal at the intersection of Federal Boulevard and future Westminster Station Drive is an important element to be added to the scope of work for this bridge replacement project. This signalized intersection will serve as the major entrance to the station and TOD area, especially for Regional Transportation District (RTD) buses that travel the Federal Boulevard route. Northbound buses, as well as other motorists, will be very dependent upon this traffic signal in order to safely navigate left-turns onto Westminster Station Drive. CDOT staff has incorporated these requests into the plans.

Additionally, it is important to note that the City will be receiving reimbursement from CDOT for certain public improvements that the City is constructing that directly benefit this State project. These items are associated with the Little Dry Creek drainage project and the Westminster Station infrastructure project. Specifically, CDOT will pay the City \$665,261 for a proportionate share of the proposed regional water quality facility at Westminster Station Drive, the extension of drainage culverts under Federal Boulevard and grading into City-owned property that will eliminate the need to construct retaining walls for the bridge replacement. The culvert extensions are expected to be complete by the end of March. CDOT has budgeted and approved the reimbursement credit; the IGA is needed to formalize and document the agreement.

The purpose of the proposed Intergovernmental Agreements (IGAs) with CDOT is to obligate the funds for the project. The funds have already been appropriated in the General Capital Improvement Fund for Federal Boulevard Bridge Enhancements and Westminster Station North project budgets. CDOT requires that the Local Agency's City Council approve Resolutions (attached) that will authorize the execution of the IGAs. Since the three IGAs are interlinked, one Council action is recommended to adopt the three resolutions.

This project meets Council's Strategic Plan goals of *Excellence in City Services*; a *Dynamic, Diverse Economy*; and *Ease of Mobility* by providing an improved transportation system.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments: Resolutions  
Vicinity Map

RESOLUTION

RESOLUTION NO. **12**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

**A RESOLUTION**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) DEFINING REIMBURSEMENT OBLIGATIONS RELATED TO THE FEDERAL BOULEVARD BRIDGE OVER BNSF PROJECT (CDOT PROJECT C M356-028, SUBACCOUNT NUMBER 20513)**

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

WHEREAS, The Intergovernmental Agreement attached to this Resolution identifies Colorado Department of Transportation (CDOT) reimbursement obligations payable to the City of Westminster for the Federal Boulevard Bridge over BNSF project in the City of Westminster.

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

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation for the Federal Boulevard over BNSF project pertaining to CDOT reimbursement obligations related to construction performed by the City for the benefit of CDOT is hereby approved in substantially the form presented with minor revisions as may be approved by the City Attorney.
2. The City Manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached with minor revisions as may be approved by the City Attorney.

PASSED AND ADOPTED this 9<sup>th</sup> day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

**CONTRACT**

**THIS CONTRACT** made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and CITY OF WESTMINSTER hereinafter referred to as the “Contractor” or the “Local Agency.”

**RECITALS**

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function: 3200, GL Acct: 4511000010, WBS Element: 20513.20.10, (Contract Encumbrance Amount: \$665,261.00.)
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for CDOT'S reimbursement for impacts to local agency's current and/or upcoming projects caused by CDOT project FBR R600-417 (18908) and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work
5. The Local Agency has requested that State funds be made available for project C M356-028 US287/69TH:Impacts to Local Agency referred to as the “Project” or the “Work.” Such Work will be performed in Westminster, Colorado, specifically described in Exhibit A.
6. The State has funds available and desires to provide 100% of the funding for the work.
7. The Local Agency desires to comply with all state and other applicable requirements, including the State's general administration of the project through this contract, in order to obtain state funds for the project.
8. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as Exhibit B.
9. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and Exhibit B.
10. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
11. The Local Agency can more advantageously perform the Work.

**THE PARTIES NOW AGREE THAT:**

**Section 1. Scope of Work**

The Project or the Work under this contract shall consist of CDOT'S reimbursement for impacts to local agency's current and/or upcoming projects caused by CDOT project FBR R600-417 (18908), in Westminster Colorado, as more specifically described in Exhibit A.

**Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 24 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibit C (Local Agency Contract Administration Checklist)
5. Other Exhibits in descending order of their attachment.

### Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

### Section 4. Project Funding Provisions

A. The Local Agency has determined the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as Exhibit B.

B. The Local Agency has determined the total cost of the work to be **\$665,261.00**, which is to be funded as follows:

State funds:       **\$665,261.00**

C. The maximum amount payable to the Local Agency under this contract shall be **\$665,261.00**, unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred.

D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

### Section 5. Project Payment Provisions

A. The State will reimburse the Local Agency for incurred costs relative to the project following the State's review and approval of such charges, subject to the terms and conditions of this Contract.

B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of Performance of the Work, not exceeding the maximum total amount described in Section 4. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:

1. In accordance with the provisions of Section 4 and with the terms and conditions of this contract;
2. Necessary for the accomplishment of the Work;
3. Reasonable in the amount for the goods and services provided;
4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
5. Incurred for Work performed after the effective date of this contract;
6. Satisfactorily documented.

C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.

1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

D. The Local Agency will prepare and submit to the State charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in

accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State.

- E. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
  - 1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
  - 2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
  - 3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
  - 4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

### **Section 6. State and Local Agency Commitments**

The Local Agency Contract Administration Checklist in Exhibit C describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in Exhibit C.

#### **A. Design [if applicable]**

- 1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:
  - a. perform or provide the Plans, to the extent required by the nature of the Work.
  - b. prepare final design (Construction Plans)
  - c. provide final design (Construction Plans)
  - d. provide final design (Construction Plans)
  - e. stamp the Plans produced by a Colorado Registered Professional Engineer.
  - f. provide final assembly of Plans and contract documents.
  - g. be responsible for the Plans being accurate and complete.
  - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.
- 2. If the Local Agency is the responsible party:
  - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.

#### **B. State's obligations**

- 1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
- 2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Local Agency Contract Administration Checklist, Exhibit C, within the Work of this contract.

### **Section 7. Utilities**

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

### **Section 8. Environmental Obligations**

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

### **Section 9. Maintenance Obligations**

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency will use good faith efforts to make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State will make periodic inspections of the project to verify that such improvements are being adequately maintained.

### **Section 10. Record Keeping**

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit the project records.

### **Section 11. Termination Provisions**

This contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
  
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.  
Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.  
If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.
  
- C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

### **Section 12. Legal Authority**

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

**Section 13. Representatives and Notice**

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

**If to State**

CDOT Region: 1  
Tom Magenis  
Project Manager  
4670 Holly Street  
Denver, CO 80216  
303-398-6716

**If to the Local Agency**

CITY OF WESTMINSTER  
Andrew Hawthorn  
Project Manager  
4800 WEST 92ND AVE  
WESTMINSTER, CO 80031-6387  
303-658-2428

**Section 14. Successors**

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**Section 15. Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

**Section 16. Governmental Immunity**

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees, and the Local Agency, its officials and employees, is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

**Section 17. Severability**

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

**Section 18. Waiver**

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

**Section 19. Entire Understanding**

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

**Section 20. Survival of Contract Terms**



Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State or Local Agency as provided herein in the event of such failure to perform or comply by the Local Agency or the State.

### **Section 21. Modification and Amendment**

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

### **Section 22. Disputes**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

### **Section 23. Statewide Contract Management System**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§Statewide Contract Management System** applies. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

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

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

## Section 24. Special Provisions.

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored**

*projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.*

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

**Revised 1-1-09**

**Section 25. SIGNATURE PAGE**

Agreement Routing Number:

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

**\* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p><b>THE LOCAL AGENCY CITY OF WESTMINSTER</b></p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO John W. Hickenlooper, GOVERNOR</b></p> <p>Colorado Department of Transportation <b>Donald E. Hunt, Executive Director</b></p> <p>_____</p> <p>By: <b>Joshua Laipply, P.E., Chief Engineer</b></p> <p>Date: _____</p>
<p>Attest (Seal) By: _____</p> <p>City Clerk</p> <p>Approved as to form: _____</p> <p>City Attorney</p>	<p><b>LEGAL REVIEW Cynthia H. Coffman, Attorney General</b></p> <p>By: _____</p> <p>Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.**

<p><b>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____</p> <p>Colorado Department of Transportation</p> <p>Date: _____</p>
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## EXHIBIT A SCOPE OF WORK

### **Project Description:**

The “Project” to be performed under this contract is the “Local Agency Reimbursement, Federal Boulevard & 69<sup>th</sup> Ave (Project C M356-028, Project Code #20513). This is a CDOT pass-through project that will be funded by Bridge Enterprise. The items are described below:

- Box Culvert & Large Diameter Pipe Extensions
- City Property Encroachment locations
- Water Quality Pond Construction

**EXHIBIT B**  
**LOCAL AGENCY**  
**ORDINANCE**  
**or**  
**RESOLUTION**

## **EXHIBIT C – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

### **LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. M 356-028	STIP No. N/A	Project Code 20513	Region 1
Project Location Federal Blvd (US 287) & 69 <sup>th</sup> Ave over the BNSF/RTD Railroad			Date 11/07/14
Project Description Local Agency projects that have been impacted by CDOT's bridge replacement			
Local Agency City of Westminster		Local Agency Project Manager Andrew Hawthorn	
CDOT Resident Engineer Jacob Ojera		CDOT Project Manager Tom Magenis	
<b>INSTRUCTIONS:</b>			
This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i> .			
The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.			
Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.			
The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
5.1	Prepare Design Data - CDOT Form 463	N/A	
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	N/A	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	N/A	
5.11	Justify Force Account Work by the Local Agency	X	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	N/A	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X



NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)	N/A	
6.2	Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  Jacob Ojera _____ 10/08/14 CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
<b>ADVERTISE, BID AND AWARD</b>			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence		
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
<b>CONSTRUCTION MANAGEMENT</b>			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i> )	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	N/A	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	N/A	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." City Engineer _____ Local Agency Professional Engineer or _____ Phone number _____ CDOT Resident Engineer	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	x	
8.8	Perform Construction Surveying	x	
8.9	Monument Right-of-Way	x	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	x	
	Provide the name and phone number of the person authorized for this task.		
	City Engineer _____ Phone number _____		
	Local Agency Representative _____ Phone number _____		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	x	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	x	
8.16	Prepare and Submit Monthly Progress Reports	x	
8.17	Resolve Contractor Claims and Disputes	x	
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task.		X
	City Engineer _____ Phone number _____		
	CDOT Resident Engineer _____ Phone number _____		
<b>MATERIALS</b>			
9.1	Conduct Materials Pre-Construction Meeting	x	
9.2	Complete CDOT Form 250 - Materials Documentation Record	N/A	
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project	N/A	
	• Update the form as work progresses	N/A	
	• Complete and distribute form after work is completed	N/A	
9.3	Perform Project Acceptance Samples and Tests	x	
9.4	Perform Laboratory Verification Tests	x	
9.5	Accept Manufactured Products	x	
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components	x	
	• Bridge modular expansion devices (0" to 6" or greater)	x	
	• Fabrication of bearing devices	x	
9.6	Approve Sources of Materials	x	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input type="checkbox"/>		
	• Generate IAT schedule	x	
	• Schedule and provide notification	x	
	• Conduct IAT	x	
9.8	Approve mix designs		
	• Concrete	x	
	• Hot mix asphalt	x	
9.9	Check Final Materials Documentation	x	
9.10	Complete and Distribute Final Materials Documentation	x	

<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	N/A	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	N/A	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	N/A	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	N/A	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	N/A	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	N/A	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	N/A	
<b>FINALS</b>			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	x	
11.3	Advertise for Final Settlement	x	
11.4	Prepare and Distribute Final As-Constructed Plans	x	
11.5	Prepare EEO Certification	N/A	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	x	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	x	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	N/A	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	N/A	
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	x	
11.12	Complete and Submit CDOT Form 950 - Project Closure	N/A	
11.13	Retain Project Records for Six Years from Date of Project Closure	x	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	x	

cc: CDOT Resident Engineer/Project Manager  
 CDOT Region Program Engineer  
 CDOT Region EEO/Civil Rights Specialist  
 CDOT Region Materials Engineer  
 CDOT Contracts and Market Analysis Branch  
 Local Agency Project Manager

RESOLUTION

RESOLUTION NO. **13**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

**A RESOLUTION**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) DEFINING LOCAL FUNDING OBLIGATIONS RELATED TO THE FEDERAL BOULEVARD BRIDGE OVER BNSF, ROADWAY AND INTERSECTION IMPROVEMENTS (CDOT PROJECT FBR R600-417, SUBACCOUNT NUMBER 18908)**

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

WHEREAS, The Intergovernmental Agreement attached to this Resolution identifies local funding obligations of the City of Westminster and funding obligations administered by the Colorado Department of Transportation for the Federal Boulevard Bridge over BNSF, roadway and intersection improvement project in the City of Westminster.

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

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation for the Federal Boulevard over BNSF, roadway and intersection improvement project pertaining to local funding obligations related to construction is hereby approved in substantially the form presented with minor revisions as may be approved by the City Attorney.
2. The City Manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached with minor revisions as may be approved by the City Attorney.

PASSED AND ADOPTED this 9<sup>th</sup> day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

## CONTRACT

**THIS CONTRACT** made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation, hereinafter referred to as the “State” and CITY OF WESTMINSTER, 4800 West 92<sup>nd</sup> Avenue, Westminster, Colorado, 80031, CDOT Vendor #: 2000053, hereinafter referred to as the “Contractor” or the “Local Agency”, the State and the Local Agency together shall be referred to as the “Parties.”

### RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function <<>>, GL Acct. <<>>, WBS Element or Cost Center <<>>, (Contract Encumbrance Amount: \$0.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for the Local Agency’s contribution of funding for the aesthetic enhancements on the Federal Boulevard (US 287) Bridge over BNSF RR and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the project work. The Local Agency understands that before the project work begins, the Local Agency must receive an official written “Notice to Proceed” prior to commencing any part of the project work. The Local Agency further understands, before the project work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the project work described in form #463, as it may be revised.
5. The Local Agency has made funds available for project FBR R600-417 (18908), which shall consist of the Local Agency’s contribution of funding for the enhancements on the Federal Boulevard (US 287) Bridge over BNSF RR, referred to as the “Project” or the “Work.” Such Work will be performed in Westminster, Colorado, specifically described in **Exhibit A**.
6. The Local Agency has funds available and desires to provide 100% of the funding for the Work.

7. The Parties have estimated the total cost of the Work and the Local Agency is prepared to provide the funding required for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to expend its funds for the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

8. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B**.

9. The parties hereto desire to agree upon the division of responsibilities with regard to the project.

## **THE PARTIES NOW AGREE THAT:**

### **Section 1. Scope of Work**

The Project or the Work under this contract shall consist of the Local Agency's contribution of funding for the enhancements on the Federal Boulevard (US 287) Bridge over BNSF RR, in Westminster, Colorado, as more specifically described in **Exhibit A**.

### **Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This contract
2. Exhibit A (Scope of Work)
3. Other Exhibits in descending order of their attachment.

### **Section 3. Term**

This contract shall be effective upon approval of the Chief Engineer or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

### **Section 4. Project Funding Provisions**

A. The Parties have estimated the total cost of the work and the Local Agency is prepared to provide the funding for the Work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to expend its funds for the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

B. The Local Agency has estimated the total cost of the Work to be \$514,011.00, which is to be funded as follows:

Local Agency Items Total	<u>\$626,950.00</u>
**Base Credit (See below for info)	<u>-\$163,877.00</u>
Indirect, charges (11%)	<u>\$50,938.00</u>
Total Funds for Project code # 18908	<u><b>\$514,011.00</b></u>

The Local Agency's actual financial responsibility for project Code # 18908 will be based on the total of the contractor's actual bid Prices and CDOT's Indirect, charges.in Recital 1.

**\*\*Base Item Credit to Local Agency:** CDOT's Bridge Enterprise program has agreed to provide a base credit, to the Local Agency, for the cost difference between CDOT's Bridge Enterprise program base-case items and the Local Agency's enhancement items. Furthermore, the base-case is what CDOT's Bridge Enterprise program would have been required to construct if no Local Agency involvement. This credit will be based on estimated cost only.

Maximum Base Item Credit to the City is not exceed \$163,877.00.

It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions by CDOT (in accord with the procedure in the previous sentence) prior to bid and award. The local Agency is responsible for any additional costs.

Local Agency shall approve in writing any and all changes, subtractions, additions or deletions to this Work. Local Agency is not responsible for any costs not previously approved in writing. Local Agency costs are strictly limited to Work as shown in the approved plan set entitled Westminster Enhancement Plans.

**C. The maximum estimated amount payable by the Local Agency under this contract shall be \$514,011.00**, unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

## **Section 5. Project Payment Provisions**

A. The Local Agency will reimburse the State for incurred costs relative to the project following the Local Agency's review and approval of such charges, subject to the terms and conditions of this contract.

B. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

C. The State will prepare and submit to the Local Agency, no more than monthly, charges for costs incurred relative to the project. The State's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

## **Section 6. State and Local Agency Commitments**

The Local Agency Contract Administration Checklist in **Exhibit C** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in **Exhibit C**.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:
  - a. perform or provide the Plans, to the extent required by the nature of the Work.
  - b. prepare final design (Construction Plans) in accord with the requirements of



the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.

- c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.
- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.
- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

B. Construction [if applicable]

- 1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.
- 2. If the State is the responsible party:
  - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the State Agency Project Engineer (SAPE), to perform that administration. The SAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
  - b. if bids are to be let for the construction of the project, the State shall, in conjunction with the Local Agency, advertise the call for bids and upon concurrence by the Local Agency will award the construction contract(s) to the low responsive, responsible bidder(s).
    - (1) in advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the

State/contractor shall incorporate Form 1273 in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).

- (2) the Local Agency has the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.
- (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project.

- c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

### **Section 7. ROW Acquisition and Relocation**

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local

Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at <http://www.coloradodot.info/business/manuals/right-of-way>.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

### **Section 8. Utilities**

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing that all such clearances have been obtained.

### **Section 9. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

### **Section 10. Environmental Obligations**

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

### **Section 11. Maintenance Obligations**

Upon the execution of this Contract, the Local Agency shall be responsible for the maintenance of:

### Water Quality Detention Pond Facility:

The Local Agency shall at its own cost and expense:

- Water Quality Detention Pond Facility and access to facility is to be constructed by the Local Agency.
- Maintain and operate the Water Quality Detention Pond and access to the facility to ensure that the facility is in proper working conditions.

The Local Agency agrees it will not remove or alter the facility in such a way that is reducing the documented treatment area, or negatively effects the Department's outfall system that services US 287 (Federal Blvd).

The Local Agency, at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, shall maintain:

- All Aesthetic Enhancements associated with Project #FBR. R600-417, Project Code #18908 which include:
  - a. Pedestrian Railing (Steel) (Special)
  - b. Pipe Railing
  - c. Guardrail Type 10M/10M (Special)

The Local Agency will use good faith efforts to make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

### **Section 12. Record Keeping**

The State shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The State shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agency and FHWA to inspect the project and to inspect, review and audit the project records.

### **Section 13. Termination Provisions**

This contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

#### **Section 14. Legal Authority**

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

#### **Section 15. Representatives and Notice**

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 1 and the Local Agency. All communication, notices, and correspondence shall be addressed

to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to the State:  
Tom Magenis  
CDOT Region 1  
4670 Holly Street, Unit D  
Denver, Colorado 80216  
(303) 398-6716

If to the Local Agency:  
Andrew Hawthorn  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031  
(303) 658-2428

### **Section 16. Successors**

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

### **Section 17. Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### **Section 18. Governmental Immunity**

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

### **Section 19. Severability**

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

### **Section 20. Waiver**

The waiver of any breach of a term, provision, or requirement of this contract shall not be

construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

### **Section 21. Entire Understanding**

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

### **Section 22. Survival of Contract Terms**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

### **Section 23. Modification and Amendment**

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

### **Section 24. Disputes**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**CONTRACTOR:**

**STATE OF COLORADO:  
JOHN W. HICKENLOOPER  
GOVERNOR**

**City of Westminster**  
Legal Name of Contracting Entity

By \_\_\_\_\_  
Joshua Laipply, P.E., Chief Engineer  
*For* Donald E. Hunt, Executive Director  
Department of Transportation

**2000053**  
CDOT Vendor Number

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Print Name & Title of Authorized Officer

**CORPORATIONS:**  
(A corporate seal or attestation is required.)

**Attest (Seal) By** \_\_\_\_\_  
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

**Approved as to form:** \_\_\_\_\_  
City Attorney



**Project Description**

The “Project” to be performed under this contract is the “Bridge Enterprise Bridge Replacement, Federal Blvd & 69<sup>th</sup> Ave over BNSF RR” (Project #FBR. R600-417, Project Code #18908). The items are described below:

- CDOT’s contractor will install the Local Agency’s aesthetic enhancement items:
  - Pedestrian Railing (Steel) (Special)
  - Pipe Railing
  - Guardrail Type 10M/10M (Special)
- The Local Agency is responsible for inspecting during installation and accepting the final product for the items listed above.
- Install stormwater piping and outfall into the water quality pond.

The north portion of the State’s bridge project will outfall stormwater into a Water Quality Detention Pond Facility which will be constructed and maintained by the Local Agency, at no cost to the State.

**LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION**

## **LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. FBR R600-417	STIP No. SDR6739, SST8102 SST8000	Project Code 18908	Region 1
Project Location Federal Blvd (US 287) & 69 <sup>th</sup> Ave over the BNSF/RTD Railroad			Date 11/07/14
Project Description Bridge Enterprise Bridge Replacement			
Local Agency City of Westminster CDOT Resident Engineer Jacob Ojera		Local Agency Project Manager Andrew Hawthorn CDOT Project Manager Tom Magenis	
<p><b>INSTRUCTIONS:</b> This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement		X
5.4	Conduct Design Scoping Review Meeting		X
5.5	Conduct Public Involvement		X
5.6	Conduct Field Inspection Review (FIR)		X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)		X
5.9	Obtain Utility and Railroad Agreements		X
5.10	Conduct Final Office Review (FOR)		X
5.11	Justify Force Account Work by the Local Agency		X
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		X
5.13	Document Design Exceptions - CDOT Form 464		X
5.14	Prepare Plans, Specifications and Construction Cost Estimates		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.15	Ensure Authorization of Funds for Construction		X
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  Jacob Ojera _____ 10/08/14 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
<b>ADVERTISE, BID AND AWARD</b>			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids		X
7.3	Distribute "Advertisement Set" of Plans and Specifications		X
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		X
7.5	Open Bids		X
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence		X
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract		X
7.10	Provide "Award" and "Record" Sets of Plans and Specifications		X
<b>CONSTRUCTION MANAGEMENT</b>			
8.1	Issue Notice to Proceed to the Contractor		X
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)		X
	Pre-survey		
	• Construction staking		X
	• Monumentation		X
	Partnering (Optional)		X
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)		X
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)		X
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)		X
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		X
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Jacob Ojera _____ 303-398-6732 _____ Local Agency Professional Engineer or Phone number		X

Exhibit C

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	CDOT Resident Engineer		
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	x
	Construction inspection and documentation	X	x
8.6	Approve Shop Drawings	X	x
8.7	Perform Traffic Control Inspections		x
8.8	Perform Construction Surveying		x
8.9	Monument Right-of-Way		x
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates		x
	Provide the name and phone number of the person authorized for this task.		
	_____ Phone number _____		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		X
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders		X
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status		X
8.16	Prepare and Submit Monthly Progress Reports		X
8.17	Resolve Contractor Claims and Disputes		X
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task.		X
	Jacob Ojera _____ 303 398 6732 _____ CDOT Resident Engineer Phone number		
<b>MATERIALS</b>			
9.1	Conduct Materials Pre-Construction Meeting		X
9.2	Complete CDOT Form 250 - Materials Documentation Record		X
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project		X
	• Update the form as work progresses		X
	• Complete and distribute form after work is completed		X
9.3	Perform Project Acceptance Samples and Tests		X
9.4	Perform Laboratory Verification Tests		X
9.5	Accept Manufactured Products		X
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components		X
	• Bridge modular expansion devices (0" to 6" or greater)		X
	• Fabrication of bearing devices		X
9.6	Approve Sources of Materials		X
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		
	• Generate IAT schedule		X
	• Schedule and provide notification		X
	• Conduct IAT		X
9.8	Approve mix designs		
	• Concrete		X
	• Hot mix asphalt		X
9.9	Check Final Materials Documentation		X
9.10	Complete and Distribute Final Materials Documentation		X

<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements		X
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist		X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		X
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements		X
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire		X
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		X
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		X
<b>FINALS</b>			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter		X
11.3	Advertise for Final Settlement		X
11.4	Prepare and Distribute Final As-Constructed Plans		X
11.5	Prepare EEO Certification		X
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications		X
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)		X
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer		X
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		X
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

- cc: CDOT Resident Engineer/Project Manager  
 CDOT Region Program Engineer  
 CDOT Region EEO/Civil Rights Specialist  
 CDOT Region Materials Engineer  
 CDOT Contracts and Market Analysis Branch  
 Local Agency Project Manager

RESOLUTION

RESOLUTION NO. **14**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

**A RESOLUTION**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) DEFINING LOCAL FUNDING OBLIGATIONS RELATED TO THE FEDERAL BOULEVARD BRIDGE OVER BNSF ARCHITECTURAL ENHANCEMENTS (CDOT PROJECT CC 2873-171, SUBACCOUNT NUMBER 19885)**

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

WHEREAS, The Intergovernmental Agreement attached to this Resolution identifies local funding obligations of the City of Westminster and funding obligations administered by the Colorado Department of Transportation for the Federal Boulevard Bridge over BNSF architectural enhancements project in the City of Westminster.

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

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation for the Federal Boulevard over BNSF architectural enhancements project pertaining to local funding obligations related to construction is hereby approved in substantially the same form with minor changes as may be approved by the City Attorney.
2. The City Manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached with minor revisions as may be approved by the City Attorney.

PASSED AND ADOPTED this 9<sup>th</sup> day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney



## CONTRACT

**THIS CONTRACT** made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation, hereinafter referred to as the “State” and CITY OF WESTMINSTER, 4800 West 92<sup>nd</sup> Avenue, Westminster, Colorado, 80031, CDOT Vendor #: 2000053, hereinafter referred to as the “Contractor” or the “Local Agency”, the State and the Local Agency together shall be referred to as the “Parties.”

### RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function <<>>, GL Acct. <<>>, WBS Element or Cost Center <<>>, (Contract Encumbrance Amount: \$0.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for the Local Agency’s contribution of funding for enhancements and 69<sup>th</sup> Ave traffic signal on Federal Boulevard near the bridge at Federal Boulevard (US 287) over BNSF, and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the project work. The Local Agency understands that before the project work begins, the Local Agency must receive an official written “Notice to Proceed” prior to commencing any part of the project work. The Local Agency further understands, before the project work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the project work described in form #463, as it may be revised.
5. The Local Agency has made funds available for project CC 2873-171 (19885), which shall consist of the Local Agency’s contribution of funding for enhancements on Federal Boulevard near the bridge at Federal Boulevard (US 287) over BNSF RR, referred to as the “Project” or the “Work.” Such Work will be performed in Adams County & Westminster, Colorado, specifically described in **Exhibit A**.
6. The Local Agency has funds available and desires to provide 100% of the funding for the Work.

7. The Parties have estimated the total cost of the Work and the Local Agency is prepared to provide the funding required for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to expend its funds for the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

8. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B**.

9. The parties hereto desire to agree upon the division of responsibilities with regard to the project.

## **THE PARTIES NOW AGREE THAT:**

### **Section 1. Scope of Work**

The Project or the Work under this contract shall consist of the Local Agency's contribution of funding for enhancements on Federal Boulevard near the bridge at Federal Boulevard (US 287) over BNSF RR, in Westminster, Colorado, as more specifically described in **Exhibit A**. These enhancements shall be constructed concurrently with the construction of the Federal Boulevard Bridge over BNSF RR.

### **Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This contract
2. Exhibit A (Scope of Work)
3. Other Exhibits in descending order of their attachment.

### **Section 3. Term**

This contract shall be effective upon approval of the Chief Engineer or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

### **Section 4. Project Funding Provisions**

A. The Parties have estimated the total cost of the work and the Local Agency is prepared to provide the funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to expend its funds for the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

B. The Local Agency has estimated the total cost of the Work for **Project CC 2873-171 (19885)** to be \$661,666, which is to be funded as follows:

- a. Local Agency Items Total \$541,905.00
- b. Construction Engineering (CE) and Indirect charge \$119,761.00

Total Funds for Project code 19885: \$661,666.00

The Local Agency's actual financial responsibility for project code # 19885 will be based on the total of the contractor's actual bid Prices, Force account item's and CDOT's Construction Engineering CE and Indirect, charges.

It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions by CDOT (in accord with the procedure in the previous sentence) prior to bid and award. The local Agency is responsible for any additional costs.

Local Agency shall approve in writing any and all changes, subtractions, additions or deletions to this Work. Local Agency is not responsible for any costs not previously approved in writing. Local Agency costs are strictly limited to Project Code #19885 Work as shown in the approved plan set entitled Westminster Enhancement Plans.

**C. The maximum estimated amount payable by the Local Agency under this contract shall be \$661,666**, unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

### **Section 5. Project Payment Provisions**

A. The Local Agency will reimburse the State for incurred costs relative to the project following the Local Agency's review and approval of such charges, subject to the terms and conditions of this contract.

B. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

C. The State will prepare and submit to the Local Agency, no more than monthly, charges for costs incurred relative to the project. The State's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

## **Section 6. State and Local Agency Commitments**

The Local Agency Contract Administration Checklist in **Exhibit D** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in **Exhibit D**.

### **A. Design [if applicable]**

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:

- a. perform or provide the Plans, to the extent required by the nature of the Work.
- b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
- c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.
- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.

- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.
- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.
2. If the State is the responsible party:
  - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the State Agency Project Engineer (SAPE), to perform that administration. The SAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
  - b. if bids are to be let for the construction of the project, the State shall, in conjunction with the Local Agency, advertise the call for bids and upon concurrence by the Local Agency will award the construction contract(s) to the low responsive, responsible bidder(s).
    - (1) in advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the State/contractor shall incorporate Form 1273 in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
    - (2) the Local Agency has the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.

- (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project.
- c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

### **Section 7. ROW Acquisition and Relocation**

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at <http://www.coloradodot.info/business/manuals/right-of-way>.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

## **Section 8. Utilities**

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing that all such clearances have been obtained.

## **Section 9. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

## **Section 10. Environmental Obligations**

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

## **Section 11. Maintenance Obligations**

Upon the execution of this Contract, the Local Agency shall be responsible for the maintenance of Aesthetic Enhancements.

The Local Agency, at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, shall maintain:

- All Aesthetic Enhancements associated with Project #CC 2873-171, Project Code #19885 of the construction plan set, which include:
  - a. All raised median planter components and sculpture foundations

- b. Raised median planter lighting components
- c. Median cover material (Decorative)

The Local Agency will use good faith efforts to make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

All other items constructed under this Contract shall be maintained by the State at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA

### **Section 12. Record Keeping**

The State shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The State shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agency and FHWA to inspect the project and to inspect, review and audit the project records.

### **Section 13. Termination Provisions**

This contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any



damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

#### **Section 14. Legal Authority**

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

#### **Section 15. Representatives and Notice**

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 1 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to the State:  
Tom Magenis  
CDOT Region 1  
4670 Holly Street, Unit D  
Denver, Colorado 80216  
(303) 398-6716

If to the Local Agency:  
Andrew Hawthorn  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031  
(303) 658-2428

#### **Section 16. Successors**

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

#### **Section 17. Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of

action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### **Section 18. Governmental Immunity**

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

### **Section 19. Severability**

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

### **Section 20. Waiver**

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

### **Section 21. Entire Understanding**

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

### **Section 22. Survival of Contract Terms**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

### **Section 23. Modification and Amendment**

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

#### **Section 24. Disputes**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

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**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**CONTRACTOR:**

**STATE OF COLORADO:  
JOHN W. HICKENLOOPER  
GOVERNOR**

**City of Westminster**  
Legal Name of Contracting Entity

By \_\_\_\_\_  
Joshua Laipply, P.E., Chief Engineer  
*For* Donald E. Hunt, Executive Director  
Department of Transportation

**2000053**  
CDOT Vendor Number

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Print Name & Title of Authorized Officer

**CORPORATIONS:**  
(A corporate seal or attestation is required.)

**Attest (Seal) By** \_\_\_\_\_  
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

**Approved as to form:** \_\_\_\_\_  
City Attorney

**SECTION 1: Project Description**

The “Project” to be performed under this contract is the “Local Agency Project, Federal Blvd & 69<sup>th</sup> Ave (Project #CC 2873-171, Project Code #19885). The State will construct certain items concurrently with the construction of the Federal Boulevard Bridge over BNSF RR on or near Federal Boulevard, as shown in the approved plan set entitled Westminster Enhancement Plans. The items are described below:

- CDOT’s contractor will construct the Local Agency’s items:
  - Roadway Items associated with 69<sup>th</sup> Ave (Westminster Station Drive)
  - Two Light Standards south of the bridge
  - Enhanced Raised Median Planter Components
    - The Local Agency is responsible for inspecting during installation and accepting the final product for the items listed above.
  - Enhanced Lighting
    - The Local Agency is responsible for inspecting during installation and accepting the final product for the items listed above.
  - Traffic Signal at 69<sup>th</sup> Ave (Westminster Station Drive)
    - ADA curb ramps
  - Miscellaneous Items:
    - Removal of structure
    - Mobilization
    - Force Account for Minor Contract Revisions

**LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION**

**LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. CC 2873-171	STIP No. SDR6739, SR17041	Project Code 19885	Region 1
Project Location Federal Blvd (US 287) & 69 <sup>th</sup> Ave over the BNSF/RTD Railroad			Date 11/07/14
Project Description Enhancements for Bridge Replacement			
Local Agency City of Westminster		Local Agency Project Manager Andrew Hawthorn	
CDOT Resident Engineer Jacob Ojera		CDOT Project Manager Tom Magenis	
<p><b>INSTRUCTIONS:</b></p> <p>This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
5.1	Prepare Design Data - CDOT Form 463		x
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement		x
5.4	Conduct Design Scoping Review Meeting		x
5.5	Conduct Public Involvement		x
5.6	Conduct Field Inspection Review (FIR)		x
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		x
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)		x
5.9	Obtain Utility and Railroad Agreements		x
5.10	Conduct Final Office Review (FOR)		x
5.11	Justify Force Account Work by the Local Agency		x
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		x
5.13	Document Design Exceptions - CDOT Form 464		x
5.14	Prepare Plans, Specifications and Construction Cost Estimates		x
5.15	Ensure Authorization of Funds for Construction		X



NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  Jacob Ojera _____ 10/08/14 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
<b>ADVERTISE, BID AND AWARD</b>			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids		X
7.3	Distribute "Advertisement Set" of Plans and Specifications		X
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		X
7.5	Open Bids		X
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDDE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence		X
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract		X
7.10	Provide "Award" and "Record" Sets of Plans and Specifications		X
<b>CONSTRUCTION MANAGEMENT</b>			
8.1	Issue Notice to Proceed to the Contractor		X
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)		X
	Pre-survey		
	• Construction staking		X
	• Monumentation		X
	Partnering (Optional)		X
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i> )		X
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )		X
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )		X
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		X
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Jacob Ojera _____ 303-398-6732 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer		X

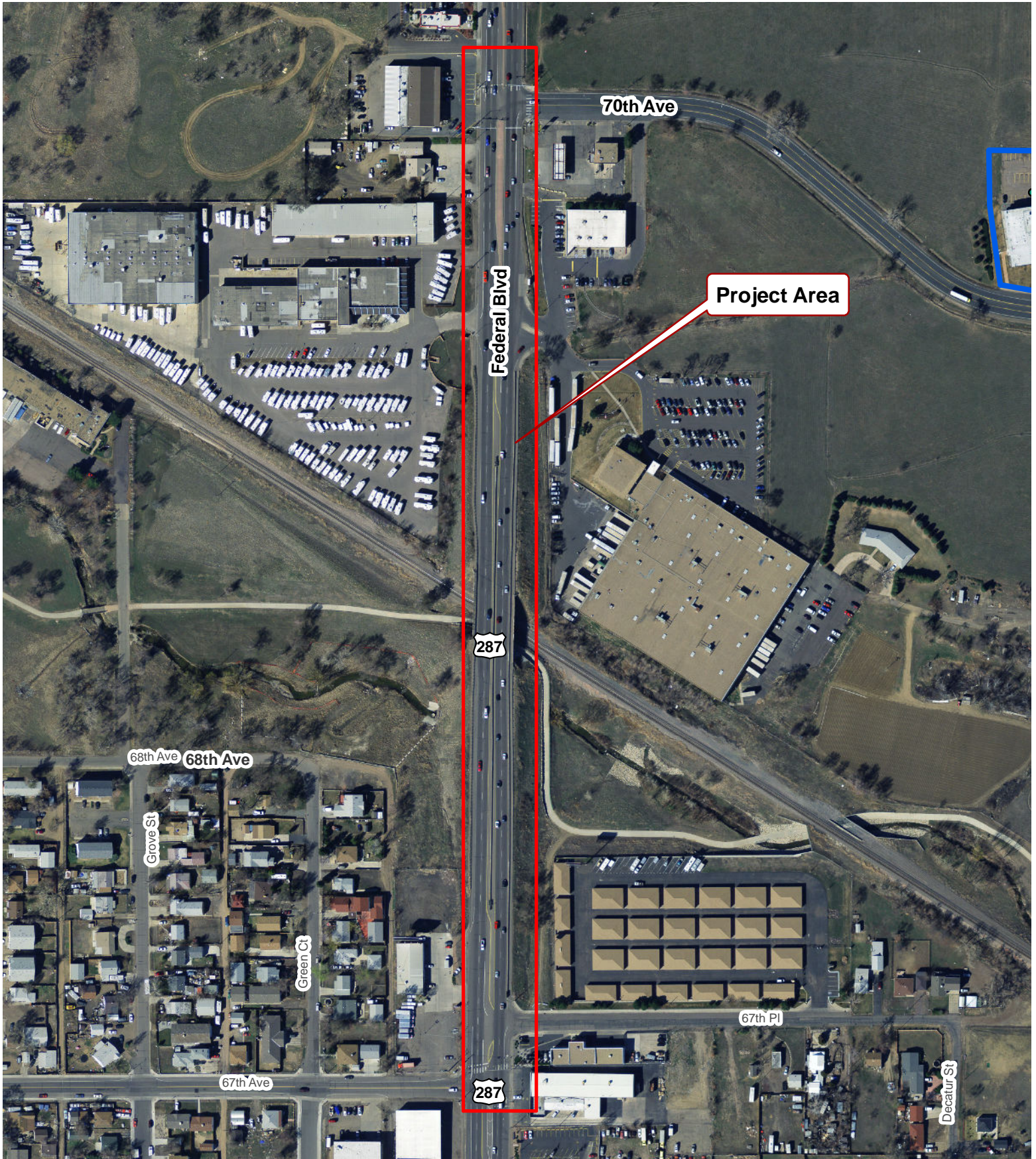
Exhibit C

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	x
	Construction inspection and documentation	X	x
8.6	Approve Shop Drawings	X	x
8.7	Perform Traffic Control Inspections		x
8.8	Perform Construction Surveying		x
8.9	Monument Right-of-Way		x
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates		x
	Provide the name and phone number of the person authorized for this task.		
	_____ Phone number _____		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		X
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders		X
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status		X
8.16	Prepare and Submit Monthly Progress Reports		X
8.17	Resolve Contractor Claims and Disputes		X
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task.		X
	<u>Jacob Ojera</u> 303 398 6732 CDOT Resident Engineer Phone number		
<b>MATERIALS</b>			
9.1	Conduct Materials Pre-Construction Meeting		X
9.2	Complete CDOT Form 250 - Materials Documentation Record		X
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project		X
	• Update the form as work progresses		X
	• Complete and distribute form after work is completed		X
9.3	Perform Project Acceptance Samples and Tests		X
9.4	Perform Laboratory Verification Tests		X
9.5	Accept Manufactured Products		X
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components		X
	• Bridge modular expansion devices (0" to 6" or greater)		X
	• Fabrication of bearing devices		X
9.6	Approve Sources of Materials		X
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		
	• Generate IAT schedule		X
	• Schedule and provide notification		X
	• Conduct IAT		X
9.8	Approve mix designs		
	• Concrete		X
	• Hot mix asphalt		X
9.9	Check Final Materials Documentation		X
9.10	Complete and Distribute Final Materials Documentation		X

<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements		X
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist		X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		X
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements		X
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire		X
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		X
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		X
<b>FINALS</b>			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter		X
11.3	Advertise for Final Settlement		X
11.4	Prepare and Distribute Final As-Constructed Plans		X
11.5	Prepare EEO Certification		X
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications		X
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)		X
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer		X
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		X
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

- cc: CDOT Resident Engineer/Project Manager  
 CDOT Region Program Engineer  
 CDOT Region EEO/Civil Rights Specialist  
 CDOT Region Materials Engineer  
 CDOT Contracts and Market Analysis Branch  
 Local Agency Project Manager

# Vicinity Map



Project Area



0 125 250 500 Feet