



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are 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 except when addressing the City Council during Section 12 of the agenda.

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

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

8. Consent Agenda
 - A. Financial Report for February 2010
 - B. Metzger Farm Open Space Master Plan
 - C. Special Legal Services for Retirement Plan
 - D. 2010 Water Meter and Meter Parts Purchases
 - E. Purchase of Excess Workers' Compensation Insurance
 - F. City Park Playground Construction Contract
 - G. Wolff Run Park Renovations Construction Contract
 - H. Osceola Street and Perry Street Sewer Replacement Construction Contract and Design Contract Amendment
 - I. Big Dry Creek Wastewater Treatment Facility Renovation/Expansion Project Construction Contract Change Order
 - J. Governor's Energy Office Contract to Manage and Administer the EECBG Residential Energy Rebate Program
 - K. Application to State Historical Fund for Shoenberg Farm Concrete Silo
 - L. IGA with Boulder County re Cherry Creek Tree Farm Open Space Tree Donation Program
 - M. Second Reading of Councillor's Bill No. 8 re 2009 4th Quarter Budget Supplemental Appropriation
 - N. Second Reading of Councillor's Bill No. 9 re City Park Playground Supplemental Appropriation
 - O. Second Reading on Councillor's Bill No. 10 re Gas and Electric Franchise with PSCo d/b/a Xcel Energy
9. Appointments and Resignations
 - A. Resolution No. 7 re Appointments to Fill Vacancies on Various Boards and Commissions
10. Public Hearings and Other New Business
 - A. Resolution No. 8 re Compliance Hearing for the 144th Avenue and Zuni Street Annexation
 - B. Resolution No. 9 re Compliance Hearing for the 144th Avenue and Tejon Street Annexation
 - C. Councillor's Bill No. 11 re Amended Redevelopment Assistance Agreement for the Northgate Shopping Center
11. Old Business and Passage of Ordinances on Second Reading

12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session

- A. City Council
- B. Executive Sessions
 - 1. Discuss strategy and progress on potential sale, acquisition, trade or exchange of certain real property for park expansion pursuant to WMC 1-11-3(C) (2), WMC 2-1-6, WMC 2-11-2 and CRS 24-6-402(4) (a) and (e)
 - 2. Discuss City-RTD Northwest Rail Plan negotiations and strategy and provide direction and instructions to the City’s negotiators, as allowed by WMC 1-11-3(C)(4) and (7) and CRS 24-6-402(4)(e)
 - 3. Discuss strategy and progress on the sale, acquisition, trade or exchange of property or property rights for the McKay Lake Drainageway Project, pursuant to WMC section 1-11-3 (C)(2), (7) and (8) and CRS 24-6-402 (4)(a) and (e)

13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MARCH 8, 2010 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Girl Scouts from Troop 2317 presented the colors and led the Mayor, Council, staff and audience in the Pledge of Allegiance.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Major, to approve the minutes of the regular meeting of February 22, 2010, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that City Council would not meet in study session on March 15 due to a conflict with the National League of Cities Annual Conference.

Immediately following this meeting, the City Council would conduct a post-meeting in the Board Room. The public was welcome to attend.

PRESENTATIONS

Councillor Winter read a proclamation declaring March 8 through 13 to be Girl Scout Week in recognition of the organizations 98th anniversary on March 12. She presented the proclamation to Girl Scouts from Troop 2317.

Councillor Lindsey read a proclamation declaring March 27 from 8:30 to 9:30 p.m. to be Earth Hour and urged Westminster citizens and businesses to turn off all non-essential lighting during that hour to evidence a commitment to take steps to conserve energy on a daily basis. She presented the proclamation to Nick Pizzuti, Chairman of the Environmental Advisory Board.

Mr. Pete Adler, Treasurer of the American Public Works Association Colorado Chapter, presented the Public Works Project Award in the Wastewater Treatment/Collection – Large Community category to Councillor Kaiser and Mike Wong, Project Manager for the 94th and Quitman Lift Station Elimination Project. The award had been announced at the 24th Annual American Public Works Association Colorado Chapter Awards Banquet on January 25, 2010. Completion of this project was resulting in net savings to the City of more than \$1.4 million over the next 20 years, including the cost of treating the additional wastewater at the Big Dry Creek Wastewater Treatment Facility and the construction costs associated with the project.

Mayor McNally and City Councillors joined to present Certificates of Achievement to 19 Westminster youths who had been nominated through the Metropolitan Mayors' and Commissioners' Youth Award program for municipal-level recognition. The award honored young people, ages 13 through 19, who had overcome personal adversity, created positive change in a difficult environment or made strides beyond their limitations. The 19 individuals recognized had faced trauma with courage, emotional and physical health ailments with determination, financial hardship with resourcefulness, and challenges in school with perseverance. They had been honored by Council at a pre-meeting reception and now proudly accepted their certificates in the presence of their families and friends.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: based on the City Manager's recommendation, determine that the public interest would best be served by authorizing the City Manager to execute a fee agreement with Hadden Acquisitions, LLC for negotiating water share purchases in 2010 and 2011 in an amount not to exceed \$554,000; based on the City Manager's recommendation, determine that the public interest would be served by authorizing the City Manager to execute contracts between the Public Work and Utilities Department and the consulting firms J&T Consulting, Inc. and The Engineering Company, each to furnish engineering services, authorize the City Manager to execute supplemental, project-specific contracts with these engineering firms, and authorize an expenditure not to exceed a combined total of \$500,000 for these two engineering consultants over the next two years; authorize the City Manager to execute an agreement with the low bidder, Arrow-J Landscaping and Design, Inc., in the amount of \$75,685.85 for the construction of the Quail Creek/Bull Canal Wetland Mitigation Project and authorize a construction contingency in the amount of \$4,800; based upon the City Manager's recommendation, find that the public interest would be served in authorizing the City Manager to execute a contract with Sink Combs Dethlefs in the amount of \$102,874 for a facility conceptual master plan and design development, construction documents, specifications and project management for Phase I construction of the Swim and Fitness Center renovation; and final passage of Councillor's Bill No. 7 on second reading, vacating a portion of Tennyson Street from Main Street to 120th Avenue.

Councillor Major moved, seconded by Mayor Pro Tem Dittman, to approve all items on the consent agenda except Item 8C, Quail Creek/Bull Canal Wetland Mitigation Project Construction Contract. The motion carried.

QUAIL CREEK/BULL CANAL WETLAND MITIGATION PROJECT CONSTRUCTION CONTRACT

It was moved by Councillor Major, seconded by Mayor Pro Tem Dittman, to authorize the City Manager to execute an agreement with the low bidder, Arrow-J Landscaping and Design, Inc., in the amount of \$75,685.85 for the construction of the Quail Creek/Bull Canal Wetland Mitigation Project and authorize a construction contingency in the amount of \$4,800. Councillor Kaiser announced that he would abstain from voting due to a potential conflict of interest. Mayor McNally called for the vote, and the motion passed with six Council members voting affirmatively and Councillor Kaiser abstaining.

RESOLUTION NO. 6 AMENDING GENERAL FUND STABILIZATION RESERVE FISCAL POLICY

It was moved by Councillor Winter and seconded by Councillor Lindsey to adopt Resolution No. 6 amending the fiscal policy regarding the General Fund Stabilization Reserve, establishing it as a separate fund. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 8 RE 2009 4TH QUARTER BUDGET SUPPLEMENTAL APPROPRIATION

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Lindsey, the Council voted unanimously at roll call to pass Councillor's Bill No. 8 on first reading providing for supplemental appropriation of funds to the 2009 budget of the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds.

COUNCILLOR'S BILL NO. 9 RE CITY PARK PLAYGROUND SUPPLEMENTAL APPROPRIATION

Councillor Lindsey moved to pass Councillor's Bill No. 9 on first reading authorizing a supplemental appropriation in the amount of \$150,000 reflecting the City's receipt of a Jefferson County Joint Venture Grant for the City Park Playground. Councillor Major seconded the motion, and it carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 10 RE GAS AND ELECTRIC FRANCHISE WITH PSCO – XCEL ENERGY

It was moved by Councillor Briggs and seconded by Councillor Major to pass Councillor's Bill No. 10 on first reading granting a gas and electric franchise to Public Service Company of Colorado, subject to execution of a final agreement regarding street and signal lighting. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Councillor Kaiser, seconded by Major, to adjourn. The motion passed unanimously, and the meeting adjourned at 7:40 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, Human Resources Manager
Dee Martin, Human Resources Administrator

Recommended City Council Action

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

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the second grouping of 2010, employees with 20, 25, 30, and 35 years of service will be celebrated tonight.
 - Mayor Pro Tem Dittman will present the 35-year certificate.
 - Councillor Kaiser will present the 30-year certificates.
 - Mayor McNally will present the 25-year certificates.
 - Councillor Winter will present the 20-year certificates.

Expenditure Required: \$ 10,000

Source of Funds: General Fund Department Budgets for Community Development, Fire and Parks, Recreation & Libraries

Policy Issue

None identified

Alternative

None identified

Background Information

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

Bob Belich	Fire Engineer	Fire
Bill Walenczak	Director of PR&L	Parks, Recreation & Libraries
Jean Matthews	Senior Police Officer	Police
Mike Jones	Utilities Technician	Public Works & Utilities

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

Marty McCullough	City Attorney	City Attorney’s Office
Terri Hamilton	Planner III	Community Development
Rosemary Hudnall	Administrative Secretary	Fire
Jackie Osantowski	Guest Relations Clerk II	Parks, Recreation & Libraries

The following 30-year employees will be presented with a certificate and service pin:

Jeff Brotzman	Print Shop Coordinator	General Services
Steve Bourcy	Parks Foreman	Parks, Recreation & Libraries
Marty Chase	Parks Contract Maintenance Specialist	Parks, Recreation & Libraries
Carol Gifford	Employee Development Analyst	General Services

The following 35-year employee will be presented with a certificate and service pin:

Lee Birk	Police Chief	Police
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On March 17, 2010, the City Manager hosted an employee awards luncheon. During that time, 4 employees received their 15 year service pin, 5 employees received their 10 year service pin, and 10 employees received their 5 year service pin. Recognition was also given to those celebrating their 20th, 25th, 30th 35th and 40th anniversaries. This was the second luncheon in 2010 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the second luncheon was 475 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

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

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Financial Report for February 2010
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

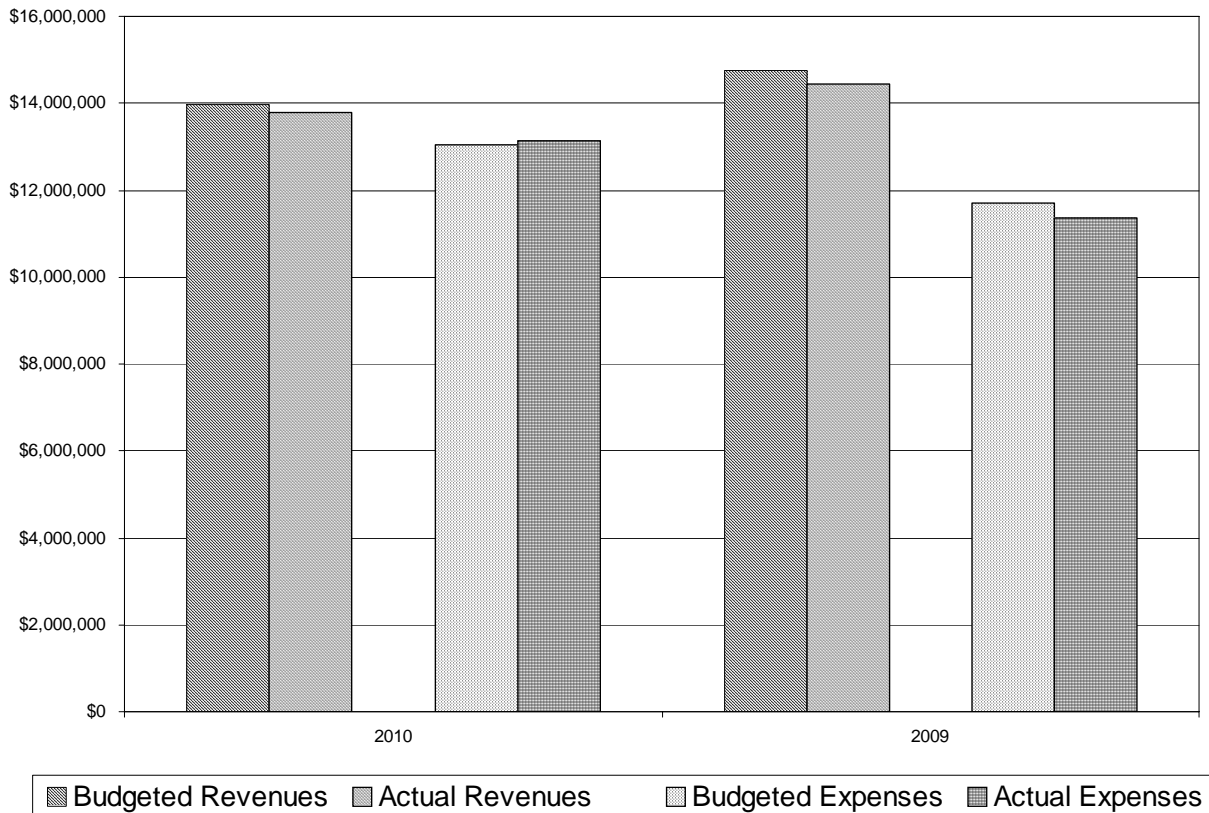
Accept the Financial Report for February as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, “budget” refers to the pro-rated budget. Revenues also include carryover where applicable. The revenues are pro-rated based on 10-year historical averages. Expenses are also pro-rated based on 5-year historical averages.

The General Fund expenditures exceed revenues and carryover by \$680,297. The following graph represents Budget vs. Actual for 2009-2010.

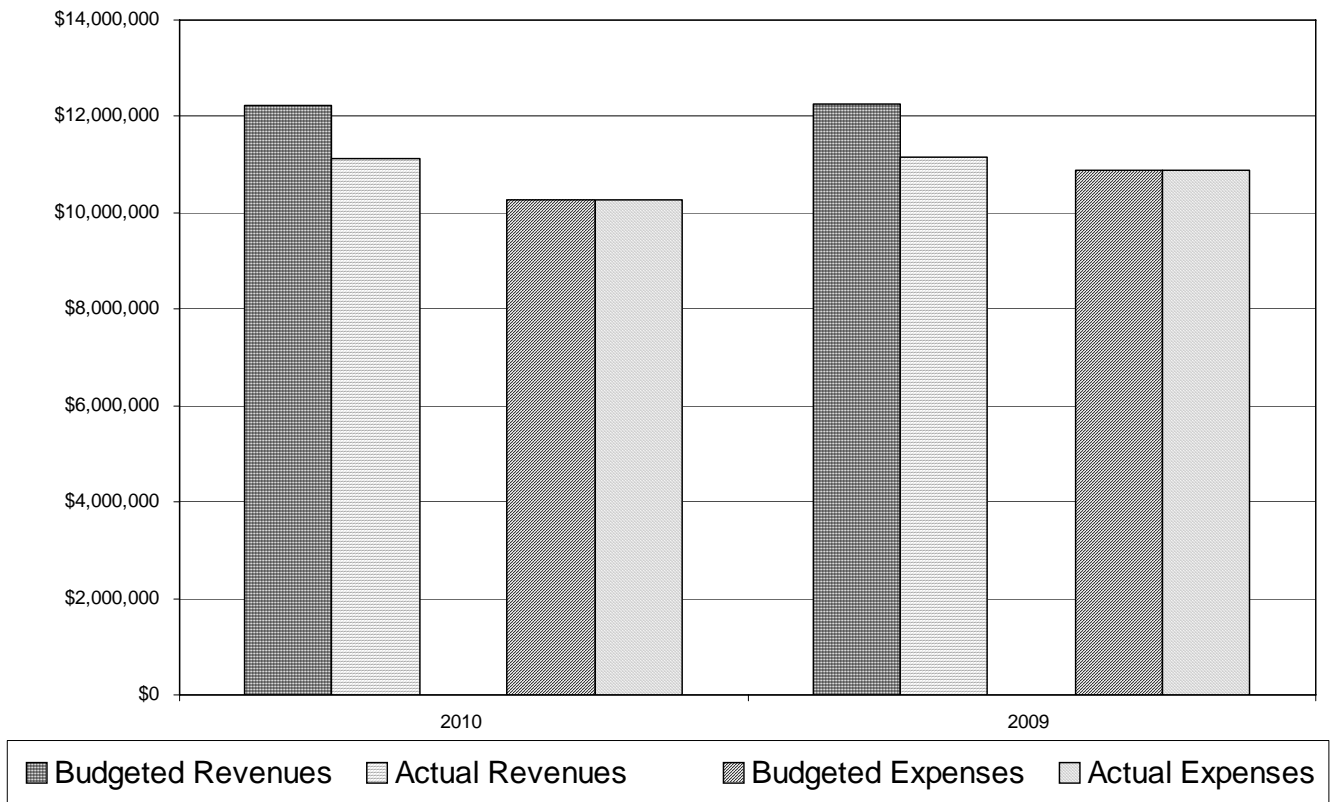
**General Fund
Budget vs Actual**



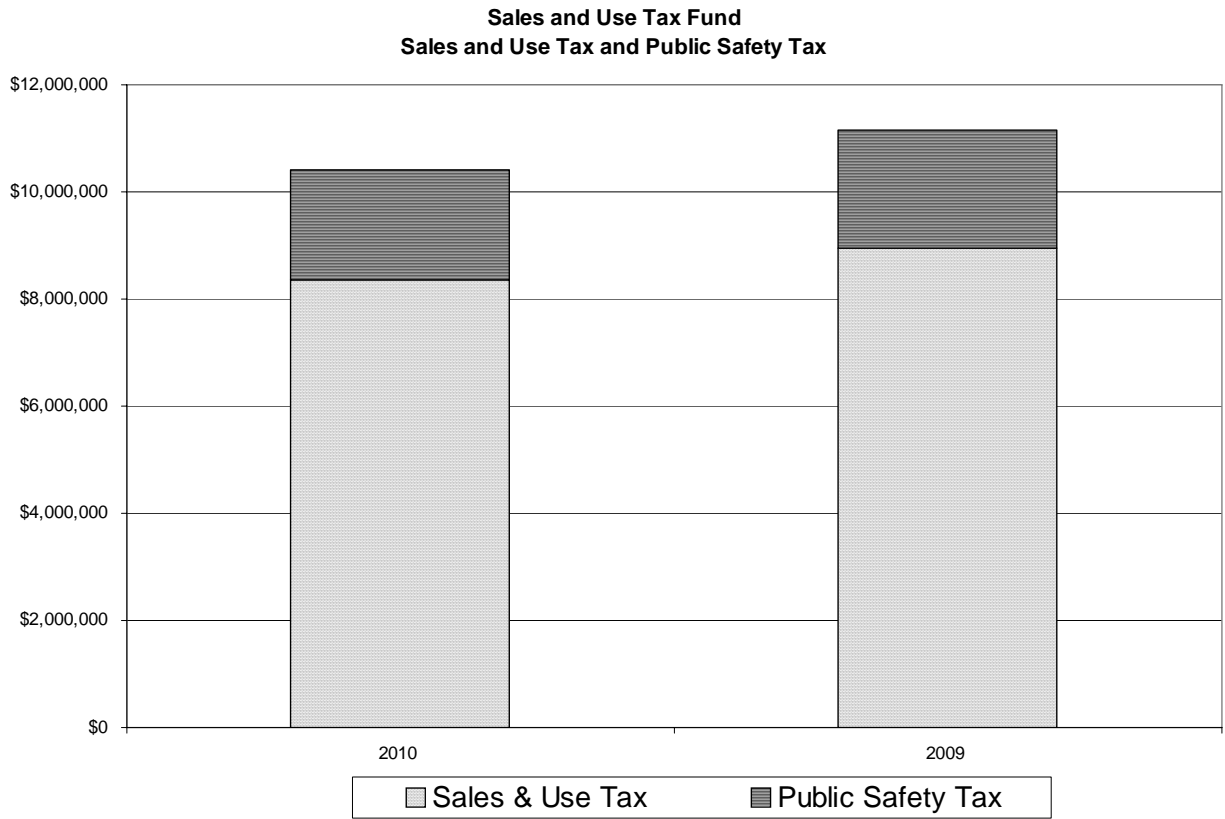
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$835,935.

- On a year-to-date cash basis, sales and use tax returns are down 3.9% from 2009.
- On a year-to-date basis, across the top 25 shopping centers, and including urban renewal area money, total sales and use tax receipts are down 4.1% from the prior year.
- The top 50 Sales Taxpayers, who represent about 62% of all collections, were down 1.2% after adjusting for urban renewal area money that is not available for General Fund use.
- Year to date, urban renewal areas make up 42.4% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 6.3% of this money is available for General Fund use.
- The Westminster Mall is down 40.0% on a year-to-date basis.
- Building Use Tax is down 49.6% year-to-date from 2009.

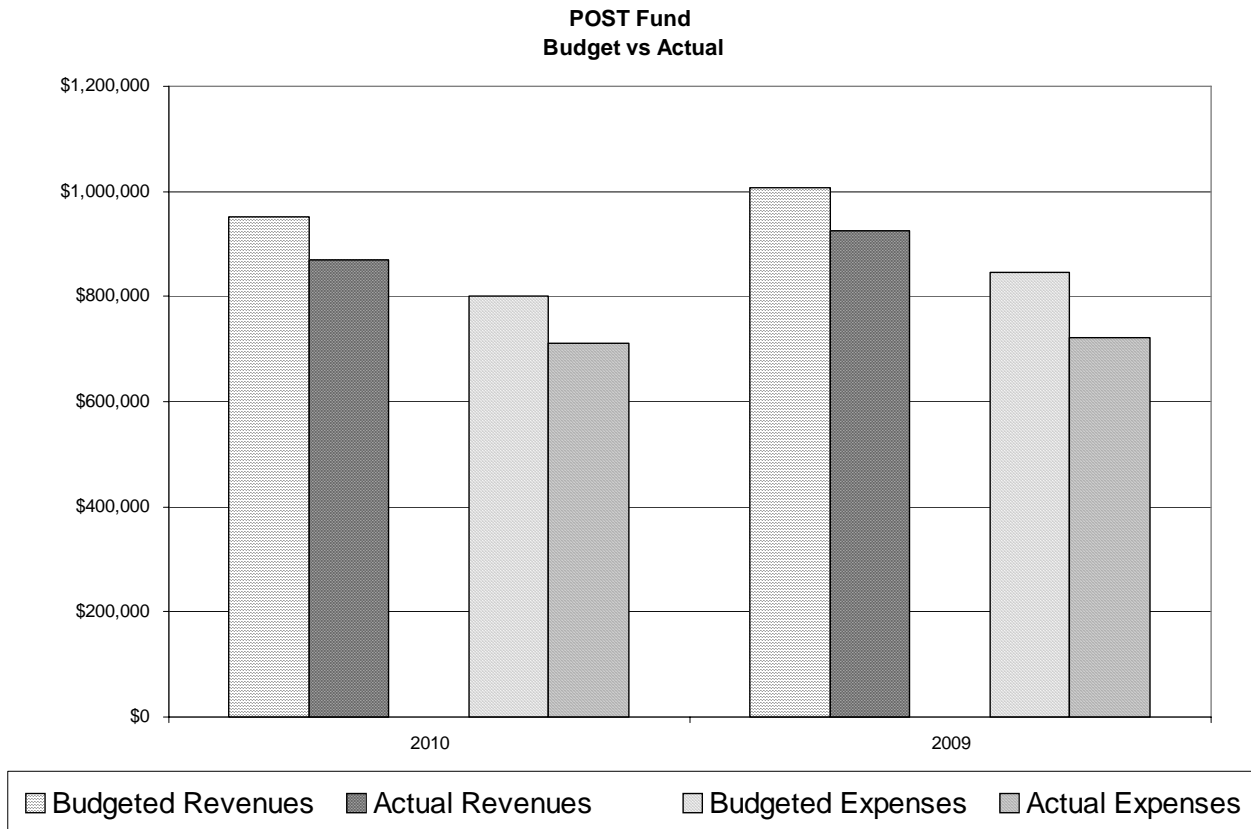
**Sales & Use Tax Fund
Budget vs Actual**



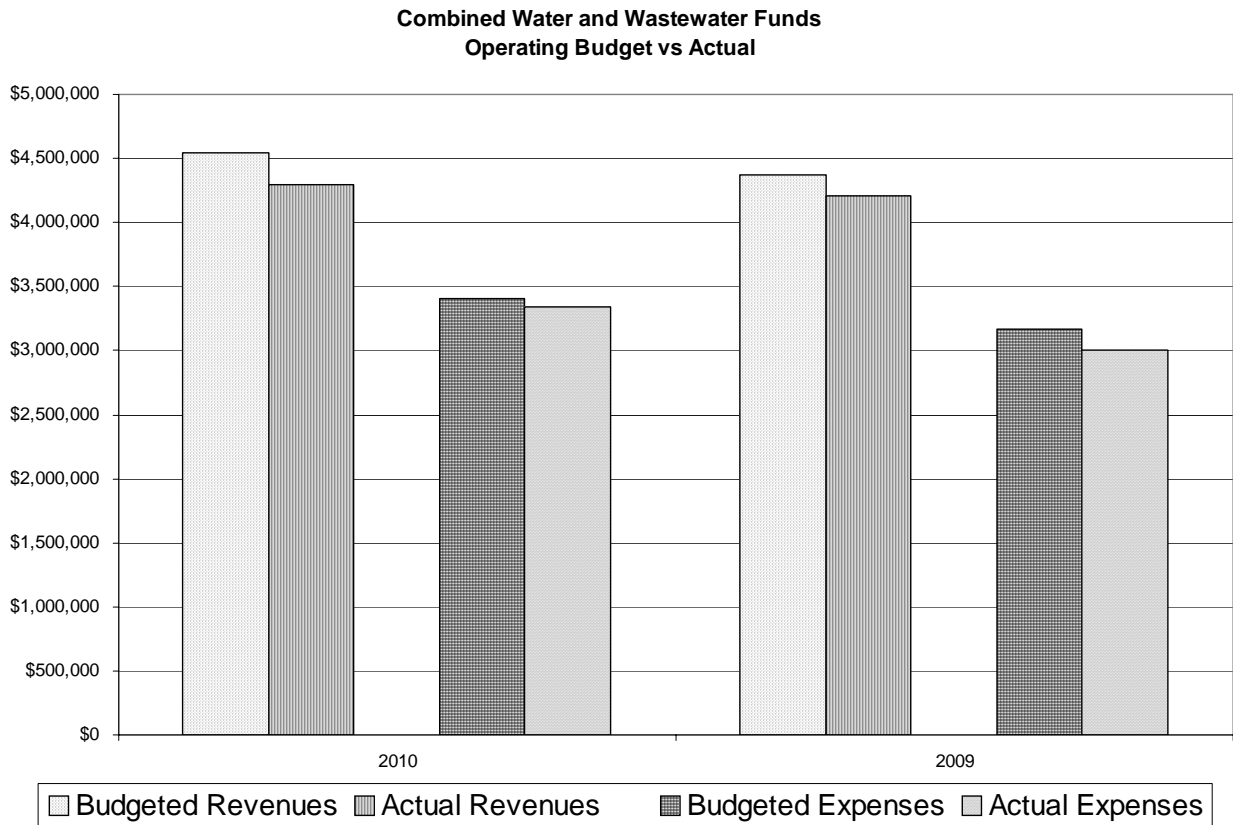
The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



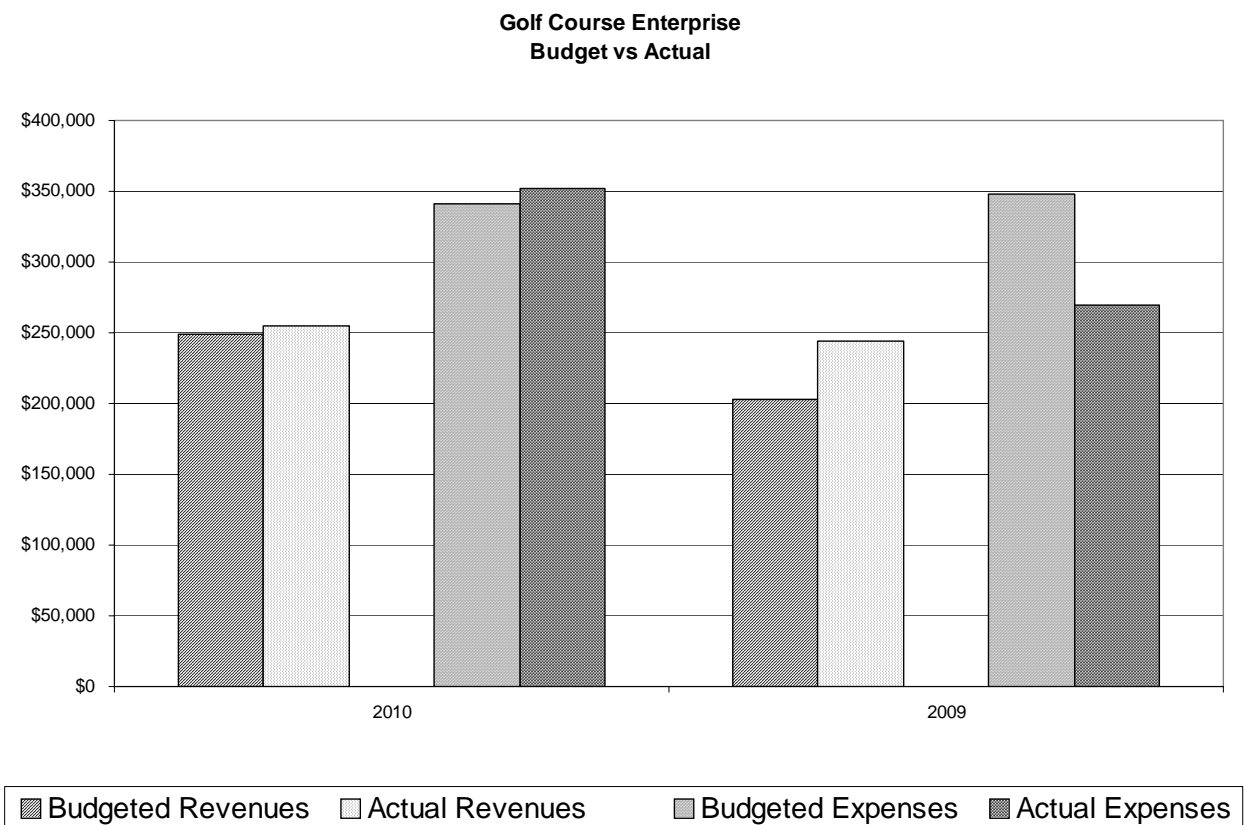
The Parks Open Space and Trails (POST) Fund revenues exceed expenditures by \$158,656.



The combined Water & Wastewater Fund revenues exceed expenses by \$1,224,912. \$38,438,000 is budgeted for capital projects and reserves.



The combined Golf Course Fund expenditures exceed revenues by \$97,735.



Policy Issue

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

Alternative

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

Background Information

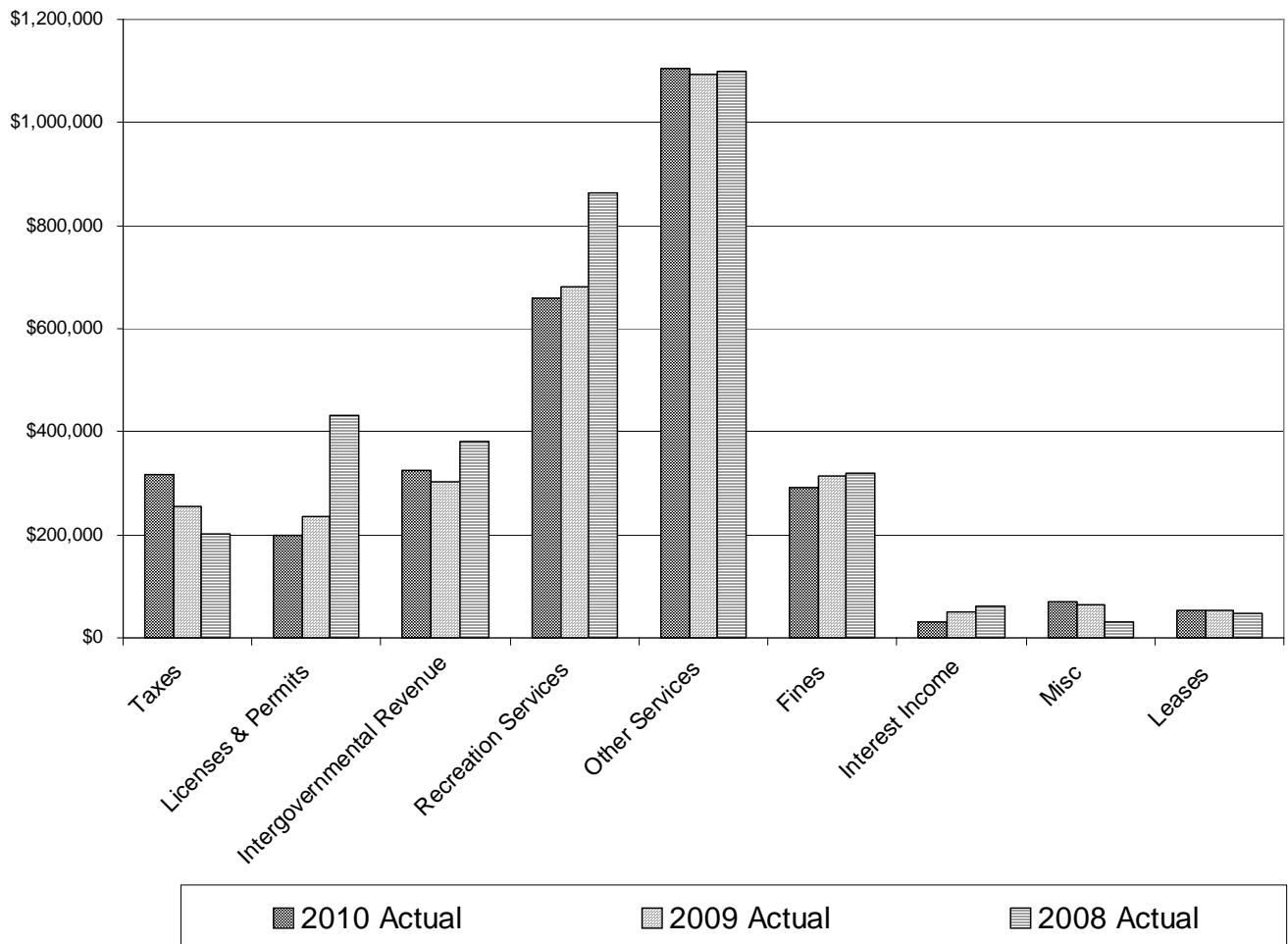
This section includes a discussion of highlights of each fund presented.

General Fund

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

The following chart represents the trend in actual revenues from 2008 – 2010 year-to-date.

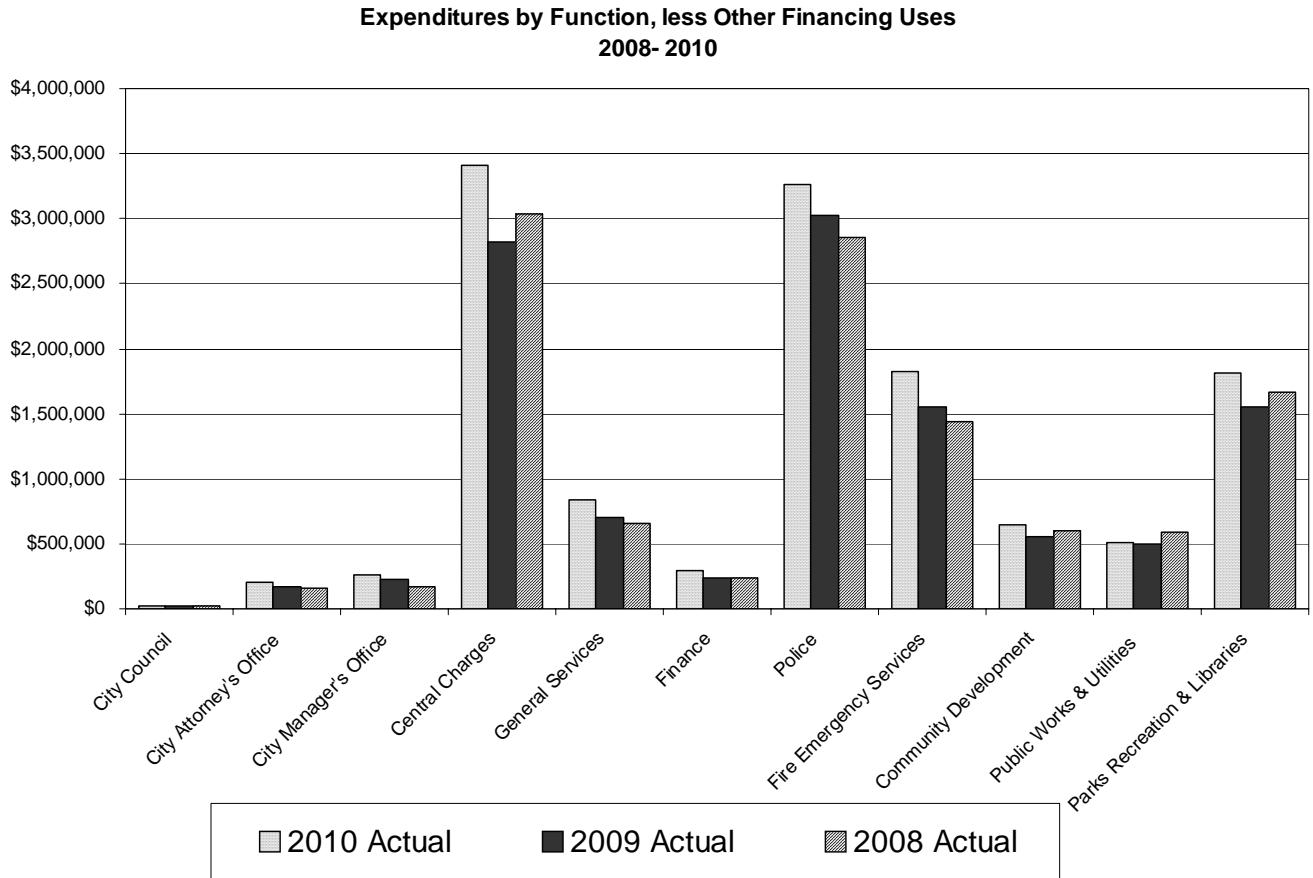
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2008- 2010**



Significant variances in General Fund revenue categories are explained as follows:

- The variance in taxes is primarily due to Admissions Tax.

The following chart identifies where the City is focusing its resources. The chart shows year-to-date General Fund spending for 2008 –2010.

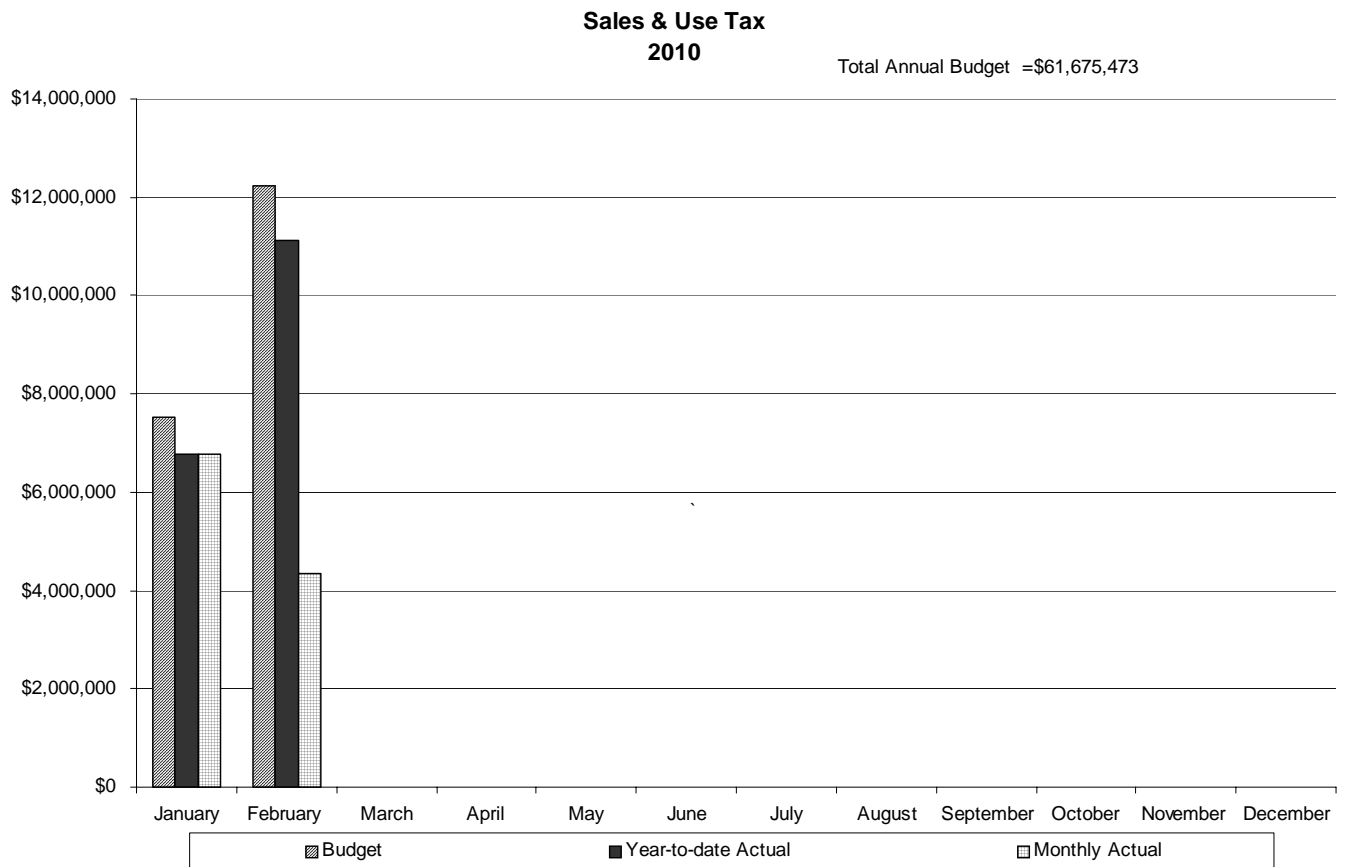


- Expenditures increased primarily due to personnel services across all departments. In 2009, expenses reflect four payrolls, which is typical; where as in 2010, expenses reflect five payrolls. This is why, year-to-date, several departments appear to be ahead of budget.

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

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

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

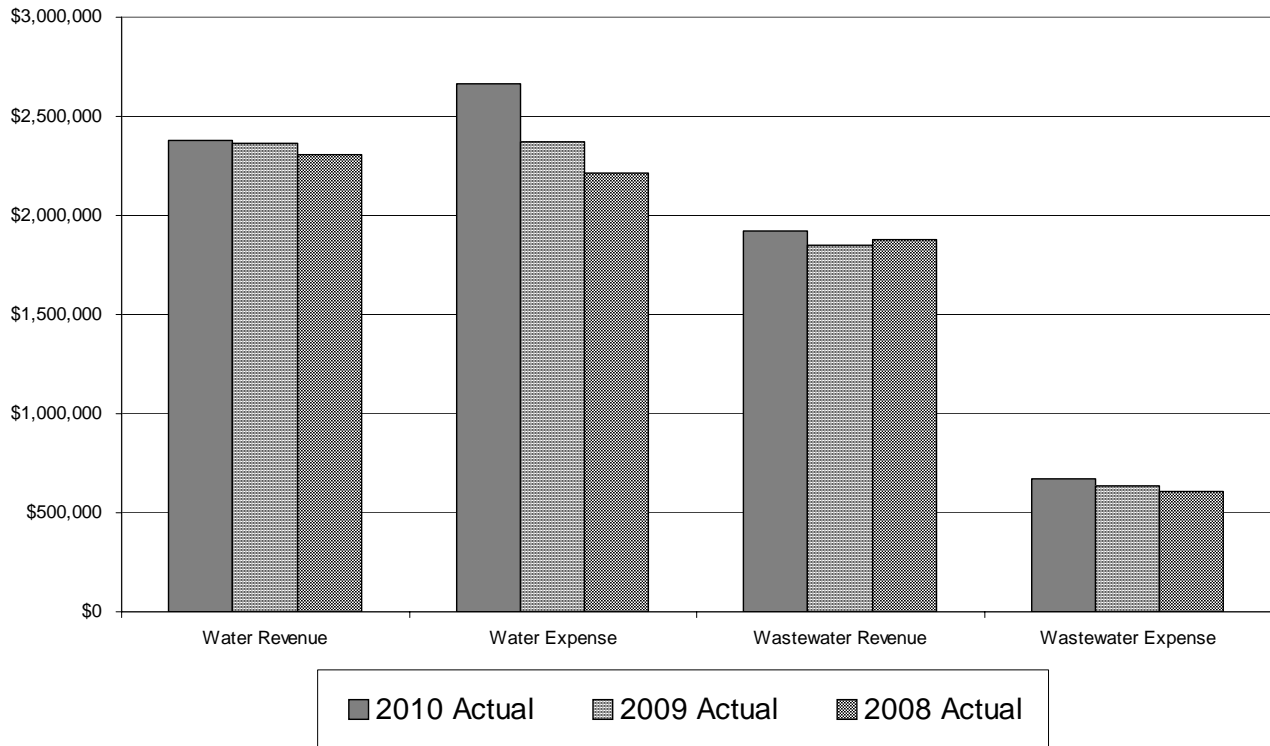


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

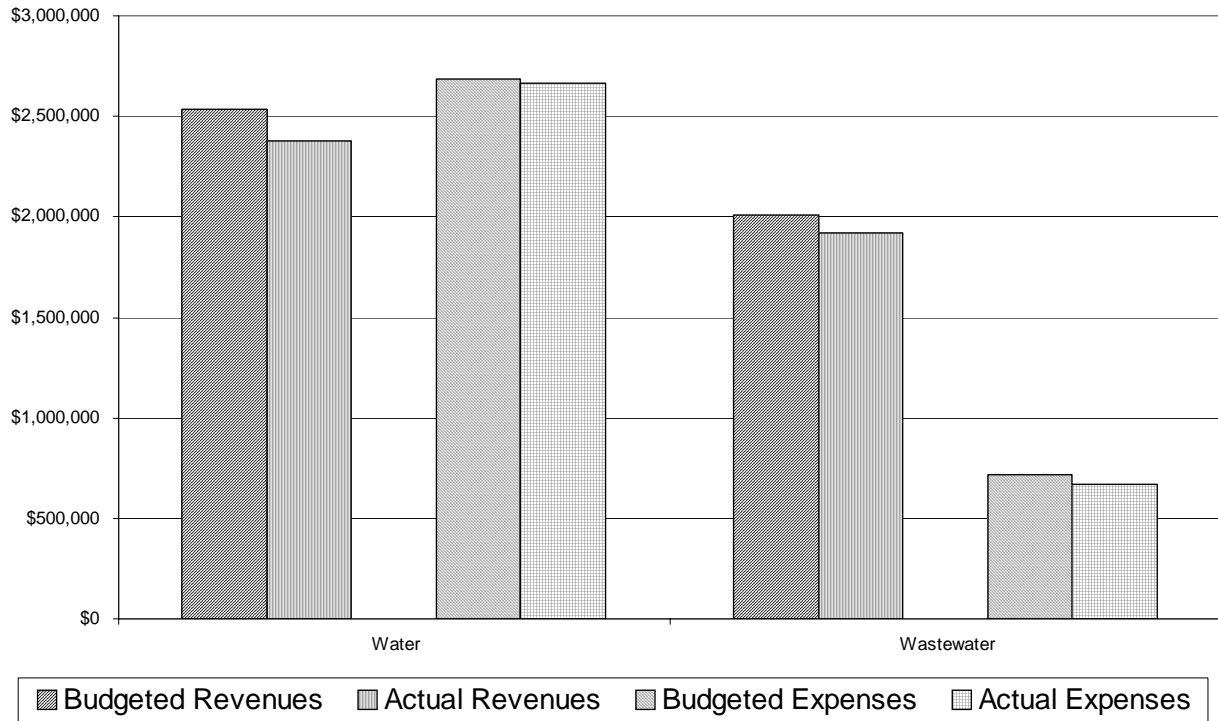
These graphs represent the segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2008-2010**



- Water Fund expenses increased primarily due to personnel services. As previously noted, 2010 expenses reflect five payrolls versus the four pay rolls that are typically included within the first two months of expenditures.

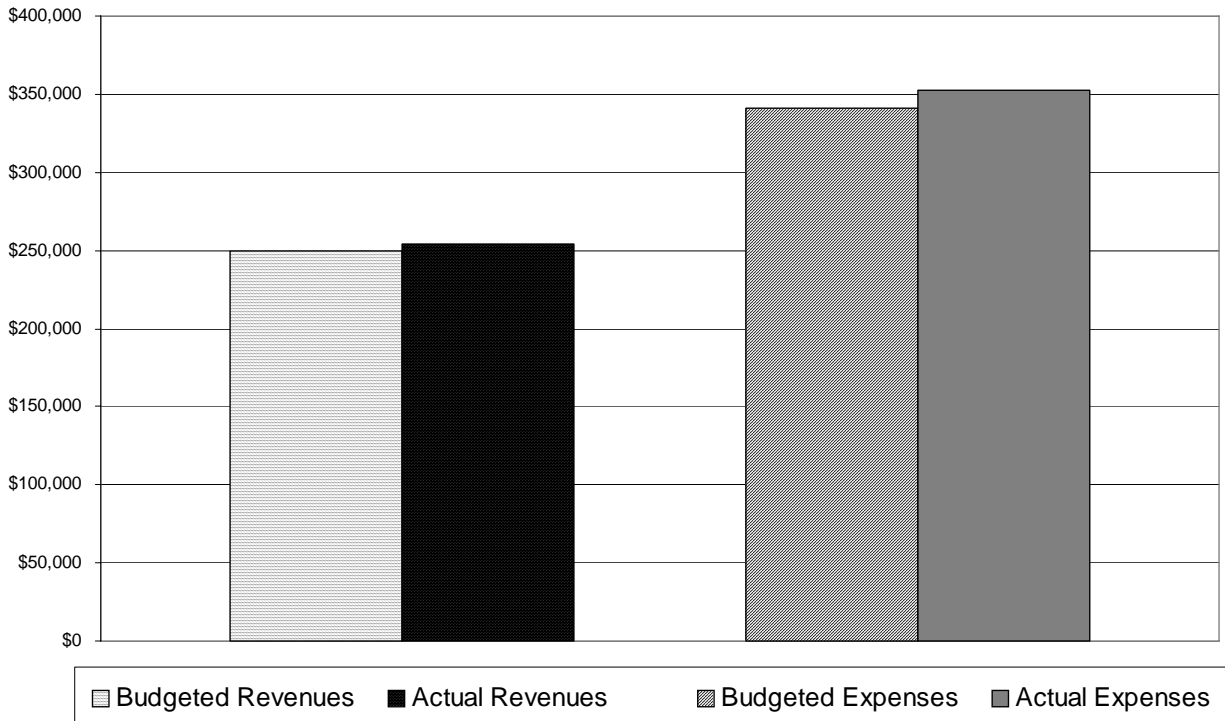
**Water and Wastewater Funds
2010 Operating Budget vs Actual**



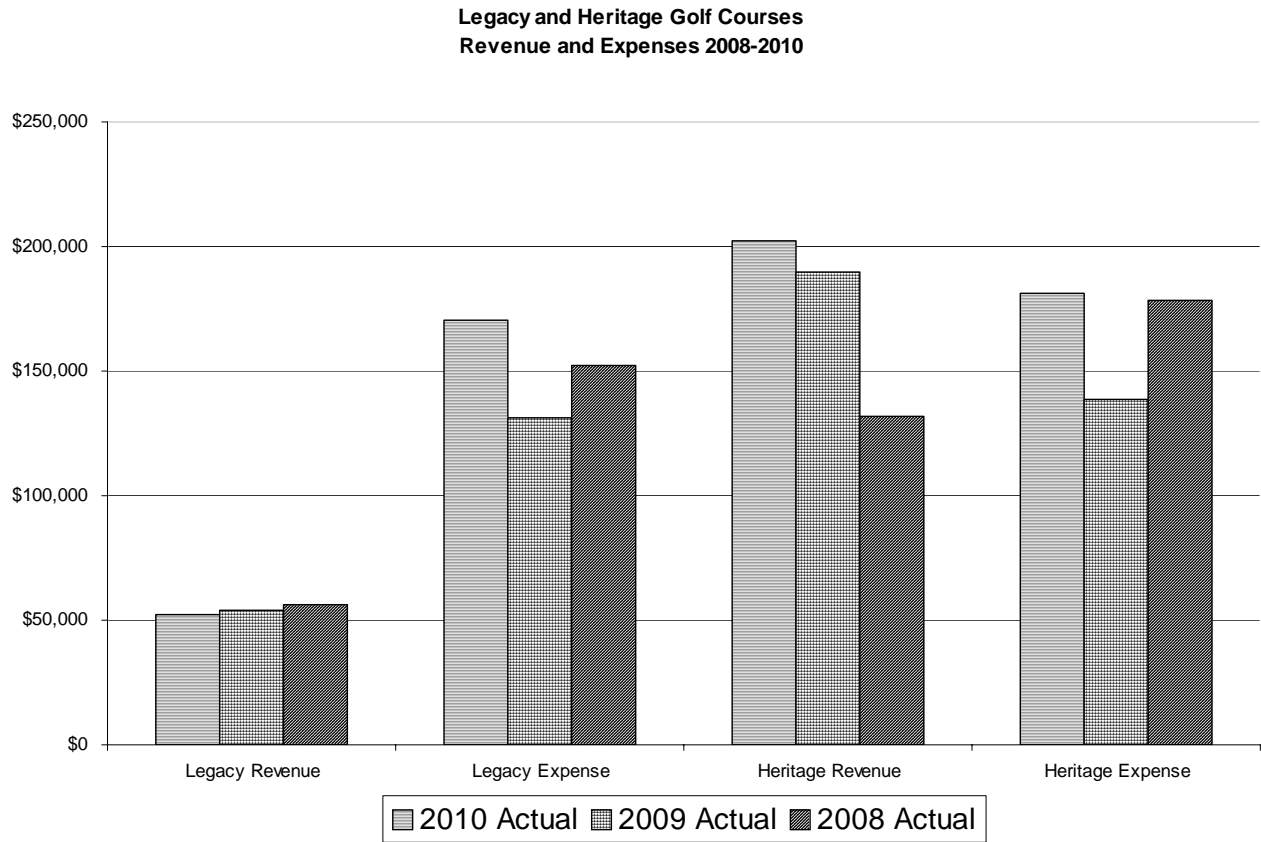
Golf Course Enterprise (Legacy and Heritage Golf Courses)

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

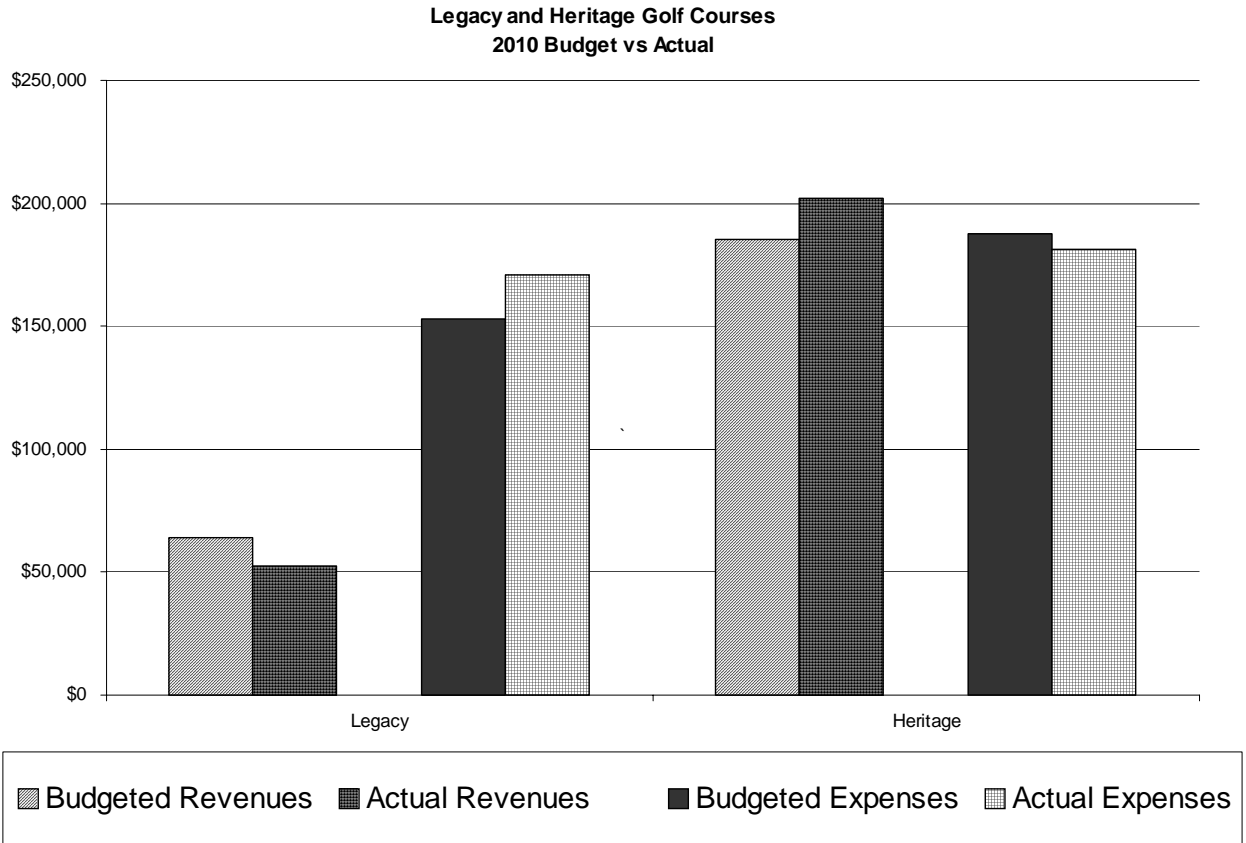
**Combined Golf Courses
2010 Budget vs Actual**



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



- Expenses increased primarily due to personnel services. Again, this reflects five payrolls versus the typical four payrolls for this point in time.
- Inter-fund transfers impact this revenue representation. Isolating Charges for Services revenue indicates a decrease in operating revenues at Legacy of \$38,175 and at Heritage of \$6,769 for the same period in 2009.



Legacy Ridge expenses exceed budget primarily due to personnel services and equipment lease payments.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
General Fund						
Revenues and Carryover						
Taxes	5,678,400	276,586		315,483	38,897	114.1%
Licenses & Permits	1,371,178	225,233		198,807	(26,426)	88.3%
Intergovernmental Revenue	5,239,602	337,010		326,507	(10,503)	96.9%
Charges for Services						
Recreation Services	6,219,206	864,755		659,531	(205,224)	76.3%
Other Services	8,757,562	1,067,872		1,104,079	36,207	103.4%
Fines	2,262,105	353,276		290,313	(62,963)	82.2%
Interest Income	425,000	34,976		29,720	(5,256)	85.0%
Misc	1,625,161	22,970		70,769	47,799	308.1%
Leases	328,023	54,671		53,412	(1,259)	97.7%
Interfund Transfers	64,517,612	10,752,935		10,752,935	0	100.0%
Revenues and Carryover	<u>96,423,849</u>	<u>13,990,284</u>		<u>13,801,556</u>	<u>(188,728)</u>	98.7%
Expenditures						
City Council	222,312	28,331		26,750	(1,581)	94.4%
City Attorney's Office	1,156,960	177,271		209,493	32,222	118.2%
City Manager's Office	1,611,334	243,868		266,259	22,391	109.2%
Central Charges	25,228,633	3,023,524		3,416,013	392,489	113.0%
General Services	5,937,816	856,296		834,739	(21,557)	97.5%
Finance	2,027,516	306,217		297,272	(8,945)	97.1%
Police	20,806,919	3,177,597		3,267,843	90,246	102.8%
Fire Emergency Services	11,847,237	1,789,161		1,823,755	34,594	101.9%
Community Development	4,273,620	643,339		647,339	4,000	100.6%
Public Works & Utilities	7,798,534	696,390		514,097	(182,293)	73.8%
Parks, Recreation & Libraries	15,512,968	2,111,337		1,817,699	(293,638)	86.1%
Total Expenditures	<u>96,423,849</u>	<u>13,053,331</u>		<u>13,121,259</u>	<u>67,928</u>	100.5%
Revenues and Carryover						
Over(Under) Expenditures	<u>0</u>	<u>936,953</u>		<u>680,297</u>	<u>(256,656)</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues and Carryover						
Sales Tax						
Sales Tax Returns	40,321,375	8,228,336		7,366,475	(861,861)	89.5%
Sales Tx Audit Revenues	711,876	166,263		67,022	(99,241)	40.3%
S-T Rev. STX	<u>41,033,251</u>	<u>8,394,599</u>		<u>7,433,497</u>	<u>(961,102)</u>	88.6%
Use Tax						
Use Tax Returns	7,010,205	903,150		873,036	(30,114)	96.7%
Use Tax Audit Revenues	785,000	0		52,454	52,454	
S-T Rev. UTX	<u>7,795,205</u>	<u>903,150</u>		<u>925,490</u>	<u>22,340</u>	102.5%
Total STX and UTX	<u><u>48,828,456</u></u>	<u><u>9,297,749</u></u>		<u><u>8,358,987</u></u>	<u><u>(938,762)</u></u>	89.9%
Public Safety Tax						
PST Tax Returns	11,616,517	2,181,862		2,033,725	(148,137)	93.2%
PST Audit Revenues	315,500	17,619		23,886	6,267	135.6%
Total Rev. PST	<u>11,932,017</u>	<u>2,199,481</u>		<u>2,057,611</u>	<u>(141,870)</u>	93.5%
Total Interest Income	235,000	39,167		18,583	(20,584)	47.4%
Carryover	680,000	680,000		680,000	0	100.0%
Total Revenues and Carryover	<u>61,675,473</u>	<u>12,216,397</u>		<u>11,115,181</u>	<u>(1,101,216)</u>	91.0%
Expenditures						
Central Charges	<u>61,675,473</u>	<u>10,279,246</u>		<u>10,279,246</u>	<u>0</u>	100.0%
Revenues and Carryover Over(Under) Expenditures	<u><u>0</u></u>	<u><u>1,937,151</u></u>		<u><u>835,935</u></u>	<u><u>(1,101,216)</u></u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues						
Sales & Use Tax	4,865,857	920,759		857,118	(63,641)	93.1%
Intergovernmental Revenue	1,635,000	0		0	0	
Interest Income	55,000	9,185		12,188	3,003	132.7%
Miscellaneous	83,977	20,994		0	(20,994)	
Interfund Transfers	209,000	0		0	0	
Total Revenues	<u>6,848,834</u>	<u>950,938</u>		<u>869,306</u>	<u>(81,632)</u>	91.4%
Expenditures						
Central Charges	6,499,646	770,291		696,015	(74,276)	90.4%
Park Services	349,188	31,746		14,635	(17,111)	46.1%
	<u>6,848,834</u>	<u>802,037</u>		<u>710,650</u>	<u>(91,387)</u>	88.6%
Over(Under) Expenditures	<u>0</u>	<u>148,901</u>		<u>158,656</u>	<u>9,755</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Fund-Combined						
Operating Revenues						
License & Permits	75,000	12,500		14,460	1,960	115.7%
Rates and Charges	41,600,438	4,459,240		4,266,951	(192,289)	95.7%
Miscellaneous	435,000	72,500		18,870	(53,630)	26.0%
Total Operating Revenues	<u>42,110,438</u>	<u>4,544,240</u>		<u>4,300,281</u>	<u>(243,959)</u>	94.6%
Operating Expenses						
Central Charges	6,051,028	1,008,505		1,076,706	68,201	106.8%
Finance	705,372	124,851		127,891	3,040	102.4%
Public Works & Utilities	20,131,933	1,815,082		1,667,847	(147,235)	91.9%
Parks, Recreation & Libraries	147,979	24,663		5,581	(19,082)	22.6%
Information Technology	2,821,595	431,704		459,244	27,540	106.4%
Total Operating Expenses	<u>29,857,907</u>	<u>3,404,805</u>		<u>3,337,269</u>	<u>(67,536)</u>	98.0%
Operating Income (Loss)	<u>12,252,531</u>	<u>1,139,435</u>		<u>963,012</u>	<u>(176,423)</u>	
Other Revenue and Expenses						
Tap Fees	3,193,061	303,287		92,435	(210,852)	30.5%
Interest Income	1,450,000	241,666		169,465	(72,201)	70.1%
Other Financing Sources	28,300,000	0		0	0	
Debt Service	(6,757,592)	0		0	0	
Total Other Revenue (Expenses)	<u>26,185,469</u>	<u>544,953</u>		<u>261,900</u>	<u>(283,053)</u>	48.1%
	<u>38,438,000</u>	<u>1,684,388</u>		<u>1,224,912</u>	<u>(459,476)</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	12,500		14,460	1,960	115.7%
Rates and Charges	29,360,461	2,449,651		2,346,328	(103,323)	95.8%
Miscellaneous	425,000	70,833		18,720	(52,113)	26.4%
Total Operating Revenues	<u>29,860,461</u>	<u>2,532,984</u>		<u>2,379,508</u>	<u>(153,476)</u>	93.9%
Operating Expenses						
Central Charges	4,258,103	709,684		768,799	59,115	108.3%
Finance	705,372	124,851		127,891	3,040	102.4%
Public Works & Utilities	13,801,624	1,394,951		1,305,752	(89,199)	93.6%
Parks, Recreation & Libraries	147,979	24,663		5,581	(19,082)	22.6%
Information Technology	2,821,595	431,704		459,244	27,540	106.4%
Total Operating Expenses	<u>21,734,673</u>	<u>2,685,853</u>		<u>2,667,267</u>	<u>(18,586)</u>	99.3%
Operating Income (Loss)	<u>8,125,788</u>	<u>(152,869)</u>		<u>(287,759)</u>	<u>(134,890)</u>	
Other Revenue and Expenses						
Tap Fees	2,600,000	205,600		74,304	(131,296)	36.1%
Interest Income	800,000	133,333		135,897	2,564	101.9%
Other Financing Sources	28,300,000	0		0	0	
Debt Service	(5,253,788)	0		0	0	
Total Other Revenues (Expenses)	<u>26,446,212</u>	<u>338,933</u>		<u>210,201</u>	<u>(128,732)</u>	62.0%
Increase (Decrease) in Net Assets	<u>34,572,000</u>	<u>186,064</u>		<u>(77,558)</u>	<u>(263,622)</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	12,239,977	2,009,589		1,920,623	(88,966)	95.6%
Miscellaneous	10,000	1,667		150	(1,517)	9.0%
Total Operating Revenues	<u>12,249,977</u>	<u>2,011,256</u>		<u>1,920,773</u>	<u>(90,483)</u>	95.5%
Operating Expenses						
Central Charges	1,792,925	298,821		307,907	9,086	103.0%
Public Works & Utilities	6,330,309	420,131		362,095	(58,036)	86.2%
Total Operating Expenses	<u>8,123,234</u>	<u>718,952</u>		<u>670,002</u>	<u>(48,950)</u>	93.2%
Operating Income (Loss)	<u>4,126,743</u>	<u>1,292,304</u>		<u>1,250,771</u>	<u>(41,533)</u>	
Other Revenue and Expenses						
Tap Fees	593,061	97,687		18,131	(79,556)	18.6%
Interest Income	650,000	108,333		33,568	(74,765)	31.0%
Debt Service	(1,503,804)	0		0	0	
Total Other Revenues (Expenses)	<u>(260,743)</u>	<u>206,020</u>		<u>51,699</u>	<u>(154,321)</u>	25.1%
Increase (Decrease) in Net Assets	<u>3,866,000</u>	<u>1,498,324</u>		<u>1,302,470</u>	<u>(195,854)</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues and Carryover						
Charges for Services	2,000,000	333,333		334,142	809	100.2%
Interest Income	80,000	13,333		13,396	63	100.5%
Miscellaneous	0	0		5	5	
Total Revenues and Carryover	<u>2,080,000</u>	<u>346,666</u>		<u>347,543</u>	<u>877</u>	100.3%
Expenses						
General Services	92,000	0		0	0	
Community Development	147,000	21,168		21,301	133	100.6%
Park Services	200,000	33,333		8,000	(25,333)	24.0%
Public Works & Utilities	291,000	16,296		16,298	2	100.0%
Total Expenses	<u>730,000</u>	<u>70,797</u>		<u>45,599</u>	<u>(25,198)</u>	64.4%
Increase (Decrease) in Net Assets	<u>1,350,000</u>	<u>275,869</u>		<u>301,944</u>	<u>26,075</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Revenues and Carryover						
Charges for Services	2,970,719	115,410		116,740	1,330	101.2%
Interest Income	0	0		3,631	3,631	
Interfund Transfers	804,591	134,099		134,099	0	100.0%
Total Revenues and Carryover	<u>3,775,310</u>	<u>249,509</u>		<u>254,470</u>	<u>4,961</u>	102.0%
Operating Expenses						
Central Charges	230,085	35,597		43,737	8,140	122.9%
Recreation Facilities	3,047,135	305,124		308,468	3,344	101.1%
Total Operating Expenses	<u>3,277,220</u>	<u>340,721</u>		<u>352,205</u>	<u>11,484</u>	103.4%
Operating Income (Loss)	498,090	(91,212)		(97,735)	(6,523)	
Other Expense						
Debt Service	498,090	0		0	0	
Increase (Decrease) in Net Assets	<u>0</u>	<u>(91,212)</u>		<u>(97,735)</u>	<u>(6,523)</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Revenues and Carryover						
Charges for Services	1,597,500	59,108		43,934	(15,174)	74.3%
Interest Income	0	0		3,631	3,631	
Interfund Transfers	29,433	4,906		4,906	0	100.0%
Total Revenues and Carryover	<u>1,626,933</u>	<u>64,014</u>		<u>52,471</u>	<u>(11,543)</u>	82.0%
Operating Expenses						
Central Charges	122,030	19,281		23,367	4,086	121.2%
Recreation Facilities	1,504,903	133,936		147,371	13,435	110.0%
Total Operating Expenses	<u>1,626,933</u>	<u>153,217</u>		<u>170,738</u>	<u>17,521</u>	111.4%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(89,203)</u>		<u>(118,267)</u>	<u>(29,064)</u>	

**City of Westminster
Financial Report
For Two Months Ending February 28, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues and Carryover						
Charges for Services	1,373,219	56,302		72,806	16,504	129.3%
Interfund Transfers	775,158	129,193		129,193	0	100.0%
Total Revenues and Carryover	<u>2,148,377</u>	<u>185,495</u>		<u>201,999</u>	<u>16,504</u>	108.9%
Operating Expenses						
Central Charges	108,055	16,316		20,370	4,054	124.8%
Recreation Facilities	1,542,232	171,188		161,097	(10,091)	94.1%
Total Operating Expenses	<u>1,650,287</u>	<u>187,504</u>		<u>181,467</u>	<u>(6,037)</u>	96.8%
Operating Income	498,090	(2,009)		20,532	22,541	
Other Expense						
Debt Service	<u>498,090</u>	<u>0</u>		<u>0</u>	<u>0</u>	
Increase (Decrease) in Net Assets	<u><u>0</u></u>	<u><u>(2,009)</u></u>		<u><u>20,532</u></u>	<u><u>22,541</u></u>	

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF FEBRUARY 2010

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	304,784	1,266	306,050	317,889	1,282	319,171	-4	-1	-4
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	231,428	20,690	252,118	203,638	8,461	212,099	14	145	19
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	209,988	477	210,465	214,941	670	215,611	-2	-29	-2
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	194,303	307	194,611	197,700	191	197,891	-2	61	-2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	184,793	1,202	185,996	181,561	1,614	183,175	2	-26	2
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	167,341	677	168,017	160,710	5	160,715	4	12315	5
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	113,866	35,372	149,238	110,681	17,160	127,841	3	106	17
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	143,343	1,178	144,521	149,566	2,681	152,246	-4	-56	-5
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	125,593	819	126,412	93,505	2,992	96,497	34	-73	31
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	107,686	1,006	108,691	184,752	878	185,631	-42	15	-41
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	99,379	412	99,792	176,692	770	177,462	-44	-46	-44
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	91,328	104	91,432	97,854	1,511	99,365	-7	-93	-8
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	63,474	79	63,553	65,365	719	66,083	-3	-89	-4
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	55,074	234	55,309	37,181	174	37,355	48	35	48
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	51,591	362	51,953	83,542	761	84,303	-38	-52	-38

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH OF FEBRUARY 2010

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	42,977	537	43,514	46,424	301	46,725	-7	78	-7
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	43,114	25	43,139	46,322	1,032	47,354	-7	-98	-9
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	42,741	111	42,852	48,217	1,068	49,285	-11	-90	-13
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	41,041	168	41,209	44,393	199	44,591	-8	-15	-8
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	38,557	0	38,557	30,587	30	30,617	26	*****	26
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	3,075	31,660	34,735	3,540	24,030	27,570	-13	32	26
WILLOW RUN 128TH & ZUNI SAFEWAY	32,232	317	32,549	43,730	91	43,821	-26	249	-26
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	31,445	284	31,729	17,834	0	17,834	76	*****	78
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	22,600	37	22,637	23,392	128	23,519	-3	-71	-4
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	21,704	22	21,726	21,424	99	21,523	1	-77	1
	2,463,459	97,346	2,560,805	2,601,437	66,845	2,668,283	-5	46	-4

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
FEBRUARY 2010 YEAR-TO-DATE

Center Location Major Tenant	YTD 2010			YTD 2009			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	844,036	2,868	846,903	854,041	9,695	863,736	-1	-70	-2
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	767,865	41,827	809,692	650,931	34,085	685,016	18	23	18
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	510,370	854	511,224	518,917	1,505	520,422	-2	-43	-2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	508,055	3,137	511,192	483,616	6,032	489,648	5	-48	4
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	438,151	812	438,963	436,057	413	436,470	0	97	1
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	408,706	1,047	409,752	390,574	4,571	395,145	5	-77	4
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	394,246	2,733	396,978	656,355	2,475	658,830	-40	10	-40
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	343,775	1,966	345,741	358,688	5,984	364,672	-4	-67	-5
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	338,650	2,020	340,669	309,765	6,223	315,988	9	-68	8
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	275,644	1,280	276,924	292,042	2,314	294,357	-6	-45	-6
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	271,557	1,582	273,139	425,813	2,124	427,936	-36	-26	-36
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	241,845	58,078	299,924	268,868	33,286	302,154	-10	74	-1
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	204,482	615	205,097	234,386	1,116	235,502	-13	-45	-13
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	191,110	258	191,368	188,878	898	189,776	1	-71	1
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	159,762	944	160,706	109,430	635	110,065	46	49	46

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 FEBRUARY 2010 YEAR-TO-DATE

Center Location Major Tenant	YTD 2010			YTD 2009			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	103,473	92	103,565	110,882	1,512	112,395	-7	-94	-8
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	92,639	11,446	104,085	106,329	529	106,858	-13	2064	-3
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	84,517	618	85,135	104,906	2,352	107,258	-19	-74	-21
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	77,154	765	77,919	84,899	657	85,556	-9	16	-9
WILLOW RUN 128TH & ZUNI SAFEWAY	68,938	566	69,504	102,319	453	102,772	-33	25	-32
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	67,710	284	67,994	18,365	0	18,365	269	*****	270
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	49,746	132	49,878	50,517	246	50,763	-2	-46	-2
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	42,910	194	43,104	43,122	721	43,842	0	-73	-2
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	40,617	896	41,512	36,550	1,017	37,566	11	-12	11
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	40,611	91	40,702	32,944	113	33,057	23	-20	23
	<u>6,566,569</u>	<u>135,101</u>	<u>6,701,670</u>	<u>6,869,194</u>	<u>118,955</u>	<u>6,988,150</u>	<u>-4</u>	<u>14</u>	<u>-4</u>



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Metzger Farm Open Space Master Plan

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Approve the Metzger Farm Open Space Master Plan.

Summary Statements

- In a joint purchase, the City of Westminster and the City and County of Broomfield acquired the Metzger Farm, a 152-acre open space property on May 1, 2006. From February 2007 to November 2008, the following work was completed: 1) an evaluation of the site’s natural resources; 2) an analysis of the condition of the buildings and repair costs; 3) an historical summary; 4) refinements of the master plan showing proposed improvements and concepts for interpretation of the property; and 5) a project budget. Agreement on a proposed master plan and budget was reached in November of 2008 by both Cities.
- On March 25, 2009, both communities hosted a joint open house for the public to view the draft master plan and provide comments. The citizens were supportive of the plan and eager to see the property opened to the public.
- In January 2010, the Broomfield and Westminster Open Space committees both unanimously recommended approval of the Metzger Farm Master Plan. On February 26, 2010, the Broomfield-Westminster Open Space Foundation passed a resolution to approve the Metzger Farm Master Plan.
- During a study session on March 1, 2010, Council provided direction to Staff to bring the draft master plan before Council for formal approval. On March 9, 2010, the City and County of Broomfield’s Council voted unanimously to approve the Metzger Farm Open Space Master Plan.
- The total estimated budget for the Metzger Farm Master Plan is \$779,670. The amount that would be funded if Adams County grant funds are awarded is \$691,800. (The difference of \$87,870 is the estimated building stabilization costs, which were excluded from the Adams County grant proposal due to the historic preservation nature of that work.)

Expenditure Required: \$691,800 including:
 \$172,950 Broomfield Cash Match
 \$172,950 Westminster Cash Match
 \$345,900 Adams County Grant

Source of Funds: POST Bond Funds and the proposed Adams County Grant

Policy Issue

Should the City approve the draft Metzger Farm Open Space Master Plan?

Alternative

Council could choose not to approve the Metzger Farm Open Space Master Plan. This is not recommended as approving this Master Plan would allow improvements to the farm to be constructed so that the site can be opened to the public.

Background Information

The Metzger Farm is located at the northeast corner of the intersection of 120th Avenue and Lowell Boulevard in the City of Westminster. In October and November of 2005, the City of Westminster and the City and County of Broomfield approved an Intergovernmental Agreement (IGA) to create a foundation for the acquisition, financing, management and maintenance of the Metzger Farm. On December 15, 2005, the foundation approved the purchase and sale agreement with the Metzger family for purchase of the 152-acre Metzger Farm. The total purchase price for the property and water rights was \$11 million, plus costs of issuance for the certificates of participation. Grants received from Adams County for \$1,502,500 and Great Outdoors Colorado (GOCO) for \$500,000 contributed toward the purchase of the property. The City of Westminster's share was approximately \$5,004,850, plus costs of issuance and due diligence investigation costs.

In September 2006, the Foundation hired Wenk Associates to assist in the development of a Master Plan for the property. On January 24, 2007, the Broomfield and Westminster Open Space committees evaluated three concept plans and through a voting process, agreed upon a plan that represents the recommended preferred level of public use and improvements for each zone of the Metzger Farm.

From February 2007 to November 2008, the following work was completed:

- an evaluation of the site's natural resources
- an analysis of the condition of the buildings and repair costs
- a historical summary, including interviews with Bill and Karen Metzger
- a project budget

During this time, the master plan was refined by both communities' Open Space Boards and Councils. Agreement on a proposed master plan and budget was reached in November of 2008.

The estimated total budget for the Metzger Farm Master Plan is \$779,670. The improvements include:

- Two miles of trails, including a bridge over Big Dry Creek to connect to the Big Dry Creek Trail
- Trailhead parking and sanollet
- Stabilization of the farmstead buildings
- Signage
- Fishing dock
- Picnic/shade structure
- Benches and trash cans
- Wildlife viewing deck
- Fencing
- Landscaping around the farmstead/trailhead
- Irrigation re-use water line

On March 25, 2009, both communities hosted a joint open house for the public to view the draft master plan and provide comments. Attachment 1 lists the comments received from meeting attendees. The open house was attended by approximately 50 citizens. The citizens were supportive of the plan and eager to see the property opened to the public.

In January 2010, the Broomfield and Westminster Open Space committees both recommended unanimous approval of the Metzger Farm Master Plan. On February 1st, Westminster submitted an Adams County Open Space grant request for \$345,900 to assist with the implementation of the master plan. Adams County Commissioners plan to make a final decision on the grant awards by the end of April. If the grant is received, Westminster and Broomfield would each provide a cash match of \$172,950. Adams County requires that the project improvements funded by the grant be completed before any grant money is released. Westminster has agreed to provide \$172,950 (cash match) and the grant award amount of \$345,900 up front to accommodate construction. Once the project is completed, Westminster will be reimbursed the amount of the grant award (\$345,900) from Adams County. If the grant is not awarded, Staff will seek Council direction on an alternative plan. Building stabilization costs (\$87,870) were not included in the grant request as Adams County has not typically funded historical projects through the open space grant process. Staff will continue to look at potential State Historical grant opportunities.

On February 26, 2010, the Broomfield-Westminster Open Space Foundation unanimously approved a resolution to approve the Metzger Farm Master Plan. During a Study Session on March 1, 2010, Council provided direction to Staff to bring the draft master plan before Council for formal approval. On March 9, 2010, the City and County of Broomfield voted unanimously to approve the Metzger Farm Open Space Master Plan.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments:

- Pubic comments from Metzger Farm master plan open house
- Metzger Farm Draft Master Plan

ATTACHMENT 1

Verbatim Comments from the Metzger Farm Open House March 25, 2009

Please note that (Broomfield) and (Westminster) indicate where the person making the comment lives.

My family would like to see some agricultural education at the farm. Now more than ever it's important to educate people, especially children, about where our food comes from. Consider working with schools to plant gardens and teach about how food gets to our refrigerators. Please include farm animals and education about them as well. If there is space, please consider holding farmers markets there. Better yet—develop it into a small working farm. Another idea is to convert one of the buildings into a farm/agriculture-centered children's museum. Thank you! I look forward to this addition to our community and hope to be able to volunteer time to this valuable project. (Unknown)

Great project! Like to know time line for project and in particular, when trail access under Federal Blvd. via the existing underpass, will happen. (Westminster)

Great project! Very excited—can't wait to enjoy the facilities. It adds so much to the quality of life for Broomfield and Westminster. It will be a charming gateway to Broomfield. My pride in my new town is going up! Hurry! Hurry! (Broomfield)

Love the trails that would allow access from Crofton Park. Any chance of incorporating the undeveloped property at the northeast corner of 124th & Lowell-- Making it part of this open space? (Broomfield)

I hope there will be ongoing efforts to mitigate prairie dogs from the farm site. The Big Dry Creek Trail is "scorched earth" because of prairie dogs. I would hate to see this beautiful site become the same. We suggest an area be established for a community vegetable garden. We commend Broomfield and Westminster for making this possible. (Broomfield)

Thank you for buying this property and saving it for open space. My ancestor moved to Broomfield in 1894. From 1905 to 1953, her family farmed 80 acres east of 120th and Sheridan. She had close ties to the Metzger family and babysat the Metzger children. I drove past the farm for years and prayed someone would save it. Now, I can hardly wait to be able to hike the trails. We have six generations that have lived in Broomfield as my daughter and her family still live there. The project is so special to me! (Broomfield)

I think the plan looks great and believe that it will be extremely well received and appreciated by the community. I very much like the trails as mapped and the interconnections with the Dry Creek and Broomfield trails. I ask that existing wildlife be permitted to coexist in this haven, including coyotes. Sign 124th Avenue as a no parking area. I strongly favor this project. (Broomfield)

Being a homeowner next to the space, I am very happy to see this project take off. The only thing at the moment that comes to mind would be a community garden area with spots available for rent. (Unknown)

Love the concept and the plan! I can hardly wait until this is up and going strong. I also appreciate that this is a joint venture between Westminster and Broomfield. Thank you. (Broomfield)

Having the Metzger family at the meeting was a nice touch. (Broomfield)

Love the concept and the plan! I can hardly wait until this is up and going strong. I also appreciate that this is a joint venture between Westminster and Broomfield. Thank you.

Following suggestions: Suggest "no parking" signs along 124th Avenue. I wonder if local Westminster and Broomfield artists would donate artwork. Proposed sidewalk along Lowell. . . would like to see it meander rather than follow the straight line of Lowell. Can shrubs or trees be planted to mask the

sidewalk from Lowell? (Broomfield) Like the idea of 4' trails near fishing dock as opposed to 3'. Might accommodate groups of children or wheelchairs better. Any plans to accommodate weddings? How about a bench or two and shade tree along Trail marked "17" for seniors? I would love to contribute to the success of Metzger Farm by acting as a docent. I'd like to relate historical stories and explain unique parts of the landscape and wildlife. How fun! (Broomfield)

This appears to be a wonderful proposal. We'll look forward to seeing it happen—hopefully sooner than later. Thank you for only the Lowell vehicle access. (Unknown)

Please, no public parking on 124th! I live at 124th & Irving Drive. With Broomfield Public Works on 124th, there is quite a lot of traffic already. The street does not seem designed for heavy traffic. Plan looks good overall! (Broomfield)

We are delighted with your plans! We are excited to see it go forward! (Broomfield)

Looks great—sounds like a great addition. (Unknown)

I would suggest a strong effort to eliminate parking on 124th Avenue. If parking is necessary, have it inside the Metzger Farm, unless you plan/establish a parking lot, I'm afraid there will be safety problems encountered. Let us know when future meetings are held so we can support you and the Plan. (Broomfield)

Now that the City of Broomfield has voted to delay the expansion of Lowell Blvd., I am concerned that there will be no sidewalk installed along the west side of the property. This will make access to the farm dangerous since Lowell is narrow and traffic runs fast there. (Unknown)

I wanted to let the Open Space Advisory Board know about an organization that may be able to provide support to the Master Plan should the option to host special events such as "an autumn harvest celebration,...temporary demonstrations of farm life activities such as...farm animals" (from the Metzger Farm Open House Brochure) occur in the future. The Colorado Draft Horse Association (CDA) has many members that would be an excellent source for informational support as well as possibly bringing animals to special events. The Colorado Draft Horse Association's purpose is to: (A) To promote appreciation and interest in draft horses by participation in civic affairs, and demonstrating use of draft horses. (B) To encourage wholesome individual and group activities relating to draft horses. (C) To increase knowledge of the use of, and the care for draft horses.

I spoke with the organization's president, Dennis Kuehl, about this possibility and will provide the organization with a copy of the brochure handed out at the recent open house along with a copy of this letter. I explained that such activities are on the long-range option list, however the CDA will be meeting in May to discuss the direction the organization wants to go and this possibility will be included in their discussion. (Westminster)

It would be great to include some sort of community vegetable garden near the farm house in remembrance of the historical Metzger family vegetable garden. This could be available to local residents or adopted by local schools (or charter/private schools) to teach the whole idea of growing healthy vegetables and eating food grown locally which seem to be a popular trend today. If the budget doesn't allow this in the short term a space near the farm house should be reserved in the master plan for it in the future. Is the windmill operational? Can it be used to generate power, again another opportunity to teach the community about harnessing wind power, and possibly help offset the cost of electrical expenses associated with the farm. Again this may be out of the budget for now but something to consider for the future. I don't believe the sidewalk along 120th Avenue is included in this master plan but it would sure be nice to see it meander a little. (Westminster)

The idea of using stimulus money to retrofit the windmill to show how wind energy can be harnessed would be an interesting idea to investigate. (Denver)



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METZGER FARM MASTER PLAN

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ACKNOWLEDGEMENTS

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 Mary Lindsey, Treasurer, City of Westminster
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 J. Brent McFall, City of Westminster
 George DiCiero, City and County of Broomfield

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Patrick Quinn, Mayor

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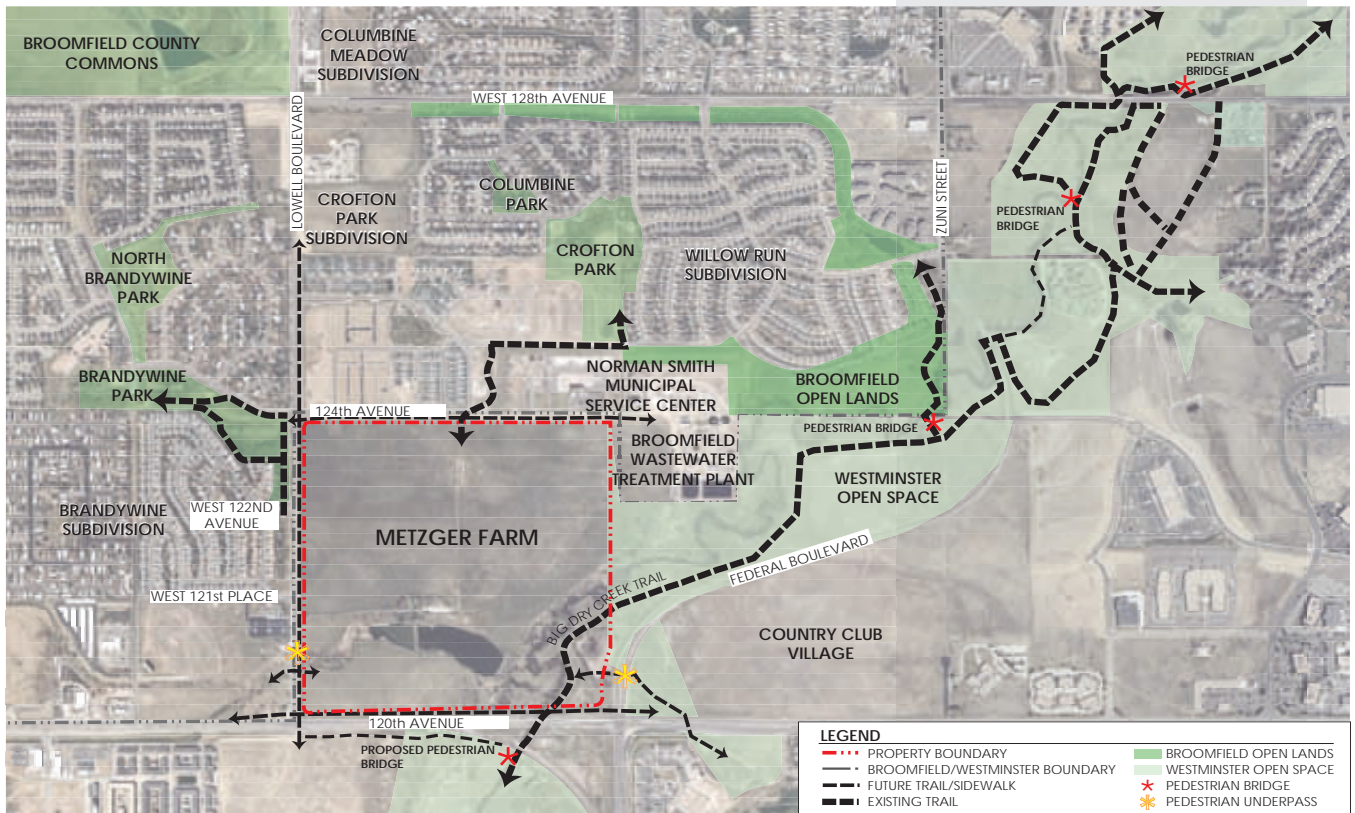
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Metzger Farm is located at the northeast corner of the intersection of 120th Avenue and Lowell Boulevard in the City of Westminster, and contiguous to the City and County of Broomfield. The farm preserves an important piece of local history, and a unique open space that adds intrinsic value to both communities.

This 152-acre property encompasses two parcels that were originally settled in the late 1800s by members of the Gay family. John Metzger, a former Colorado Attorney General, purchased the property in 1943 and it functioned as a working farm through the 1950s.

The farmstead includes the family home and nine outbuildings, oriented in two east-west lines. The buildings and their spatial arrangement are significantly intact and represent what has been characterized as a “model farm” of the mid-twentieth century. The two man-made ponds, which were originally used for irrigation, stock-watering and firefighting, have matured into a nature preserve and are among the property’s most distinctive natural features.



Metzger Farm is an important addition to the regional open space system

A COLLABORATIVE OPEN SPACE INITIATIVE

In 2005, the City of Westminster and the City and County of Broomfield approved an Intergovernmental Agreement to create a foundation for the acquisition, financing, management and maintenance of Metzger Farm. On December 15, 2005, the Broomfield-Westminster Open Space Foundation (hereafter, the Foundation) approved the agreement with the Metzger family for purchase of Metzger Farm as community open space. The total purchase price for the property and water rights was \$11 million. Grants received from Adams County and Great Outdoors Colorado funded approximately \$2 million, with the cities sharing in funding the balance.



An urban oasis: the farmstead complex, looking north across the lower pond

Metzger Farm offers the opportunity to significantly enhance open space, wildlife habitat, and regional trail connections through Broomfield and Westminster. The unique farmstead complex provides additional recreational and educational opportunities.

The master plan was crafted in 2007-09 through a highly collaborative process between Broomfield and Westminster, and involving both communities' Open Space Advisory Boards and City Councils, City staff, the Metzger family, and members of the general public, who participated actively in a well-attended community meeting in March 2009.

The purpose of the Metzger Master Plan is:

- 1:** to provide for an overall vision that emphasizes compatible public use and preservation of the property's special natural and historical features so that visitors' enjoyment and appreciation of the open space is maximized;
- 2:** to provide visitors, particularly school children with fun educational opportunities such as self-guided tours of the farm, nature/wildlife programs, demonstrations of daily "activities of farm life," and seasonal events like a community harvest celebration;
- 3:** to provide open space amenities that increase visitors' opportunities to enjoy passive recreation such as hiking, fishing, and wildlife viewing to increase their health and refresh their spirits;

- 4:** to coordinate proposed amenities with future Urban Drainage and Flood Control District projects in partnership with Broomfield and Westminster so that funding and implementation are completed efficiently to minimize any site impacts; and
- 5:** to provide recommendations for restoration and management of natural and historic features that will result in high quality stewardship that will protect Metzger Farm for generations to come.

Additional work completed as part of the planning effort included an assessment of the site's vegetation, wildlife, and habitat; an evaluation of the structural integrity of buildings on the site, including prioritization of repair and restoration efforts; and research and documentation of the site's history, through a review of background documents and interviews with the Metzger family.

The planning process also involved coordination with Urban Drainage and Flood Control District projects, in partnership with Broomfield and Westminster. One project involves the installation of an underpass beneath Lowell Boulevard to convey a drainage channel as well as provide a future trail connection to Broomfield's Southeast Community Loop Trail and Westminster's Big Dry Creek Trail.

A second Urban Drainage and Flood Control District project creates the pedestrian connection in the Lowell underpass, and includes repairs to the dam embankment at the east side of the lower pond, and reconstruction of the dam's spillway, which conveys water to Big Dry Creek during a major storm. Plan proposals were carefully coordinated with both projects to ensure compatibility and potential synergy in funding.

KEY MASTER PLAN FEATURES

The total estimated capital cost of master plan improvements is estimated at \$779,670, in 2009 dollars, excluding costs to fully restore the historic structures. Highlights of the plan include:

- Stabilization of the historic structures
- Construction of a new entry drive, parking, school bus drop-off area for field trips, portable restroom, and trailhead north of the farmhouse
- A regional trail connection to the Big Dry Creek Trail, which will eventually connect to Broomfield's Southeast Community Loop Trail under Lowell Boulevard

DESIGN PRINCIPLES

Eight core principles guide the development of the master plan.

- Preserve the historical integrity of the farmstead, including buildings and site organization.
- Preserve and protect existing wildlife habitat areas along Big Dry Creek and the ponds.
- Preserve agricultural use of pastures for grazing or dry land crops.
- Develop a public use program that is compatible with site character, regarding proposed activities and intensity of uses.
- Provide a system of long and short trail loops and make connections to the Big Dry Creek and the Southeast Community Corridor Trails.
- Coordinate Urban Drainage and Flood Control District improvements in adjacent areas to complement Foundation funding for elements of the Master Plan.
- Phase proposed uses and improvements to facilitate implementation in a timely manner.
- Create a plan that is fiscally sustainable, from the standpoint of capital construction as well as ongoing maintenance costs.

- Two miles of trails through the site
- An overlook/fishing pier and picnic area at the edge of the lower pond
- Interpretive signage at the farmstead, barns, and sheds, for self-guided tours
- An overlook providing views into the Big Dry Creek riparian area for wildlife watching
- Opportunities to experience “activities of daily farm life” or seasonal community events
- Recommendations for future management of the historic buildings and landscape, to ensure that they are preserved as unique amenities for future generations of area residents
- Public art, if joint funding can be obtained to enhance the historic and natural features of the site

SECTION 2: EXISTING CONDITIONS AND ORGANIZING FRAMEWORK

This section describes the farm's natural resources, summarizes the history of the farmstead and salient features of the Metzger family's life on the farm, assesses the current condition of the farm structures, and concludes with the definition of five character zones and public use and restoration activities compatible with each zone.

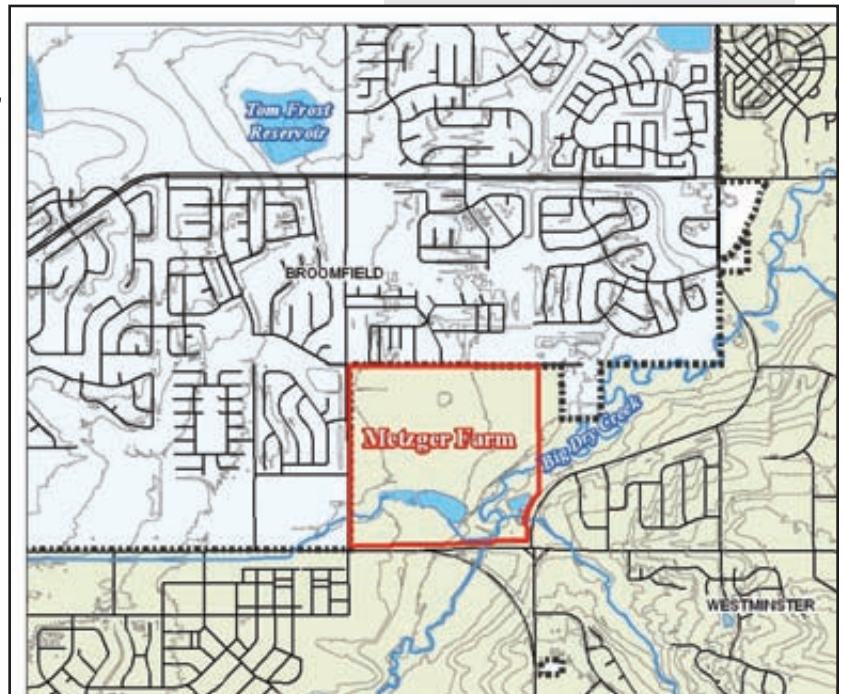
NATURAL FEATURES AND RESOURCES

Metzger Farm is located in western Adams County in the City of Westminster, and contiguous to the City and County of Broomfield, at the northeast corner of the intersection of 120th Avenue and Lowell Boulevard. The property generally comprises the SW¹/₄ of Section 32 in Township 1 South, Range 68 West of the 6th P.M. Metzger Farm encompasses approximately 152 acres, about one-third of which is comprised of riparian vegetation and two-thirds of which are grasslands. Figure 1 illustrates significant natural features on the property.

Waterways, Riparian Corridors And Ponds

As shown in the USGS 7.5 minute quadrangle map to the right, Big Dry Creek, the most significant surface drainage in the area (USGS 1965, photo revised 1994), flows through the southeast quadrant of the property, in a northeasterly direction to its confluence with the South Platte River. The Nissen Reservoir Channel, an intermittent drainage to Big Dry Creek, traverses the lower portion of the parcel and connects the two man-made ponds that are on the site.

Riparian vegetation is the most established along Big Dry Creek and Nissen Reservoir Channel, and primarily includes mixed shrubs and non-native grasses. Native shrubs and trees include snowberry, Wood's Rose, cottonwood, and peachleaf willow. The riparian corridor also includes stands of non-native trees and shrubs, including Russian Olive and crack willow. Wetlands along Big Dry Creek are limited because of severe channel incision and actively eroding banks. Where present, wetlands occur in narrow margins along the creek banks and are dominated by dense reed canarygrass (*Phalaroides arundinacea*), a non-native species, and sandbar willow.



Metzger Farm location and context



The riparian corridor along Big Dry Creek provides rich habitat for a variety of species

Wetlands on the Nissen Reservoir Channel and around the east and west ponds, especially those at the upstream end of the west pond, are dominated by cattail, a native species. Other native species present include softstem bulrush (*Scirpus validus*), sandbar willow, and Baltic rush (*Juncus balticus*).

A large wetland is also present east of Big Dry Creek near Federal Boulevard. This wetland is dominated by cattails and is likely supported by ground water and surface flows in Ranch Creek,

a small tributary flowing northwest under Federal Boulevard toward Big Dry Creek.



The north pasture, once a shortgrass prairie, has been grazed for many years

As indicated above, two man-made ponds are located on the property. Measurements taken during water quality sampling by the City and County of Broomfield indicate that the upper pond is shallow (maximum depth about 9 inches) and has gently sloping banks that support wetlands, especially at the upstream end; cattails are encroaching into the open water areas. The lower pond is larger and deeper (maximum depth about 6 feet) and has a steep shoreline that limits wetlands to narrow margins in most places.

Both ponds likely support a variety of aquatic species such as crawfish, minnows, and insects. Common carp (*Cyprinus carpio*) were observed in both ponds. Because it is larger and deeper, in addition to carp, the lower pond likely supports other larger fish, such as longnose sucker (*Catostomus Catostomus*) and green sunfish (*Lepomis cyanellus*). Water quality data indicate that sport fish (fish large enough and with appropriate behaviors for angling) such as bluegill and bass, could be supported in the lower pond with appropriate management efforts.

Upland Vegetation

Most of the vegetation on Metzger Farm is grassland habitat, the predominant habitat type in the Broomfield/Westminster area. Originally a shortgrass prairie, the site was characterized by native species such as yucca, buffalograss, sideoats grama, and little bluestem. Remnant species of this vegetation community persist in the south pasture and in other pockets.

**INSERT FIGURE I
NATURAL RESOURCES MAP
11x17**

METZGER FARM MASTER PLAN

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The former crop fields to the north of buildings and ponds were heavily grazed, and now include a mix of native and non-native vegetation. Native species found in these areas include western wheatgrass, blue grama, and sideoats grama. Non-native species include crested wheatgrass, smooth brome, and downy brome. Opportunities exist to remove these non-natives and restore the prairie ecosystem.

Wildlife

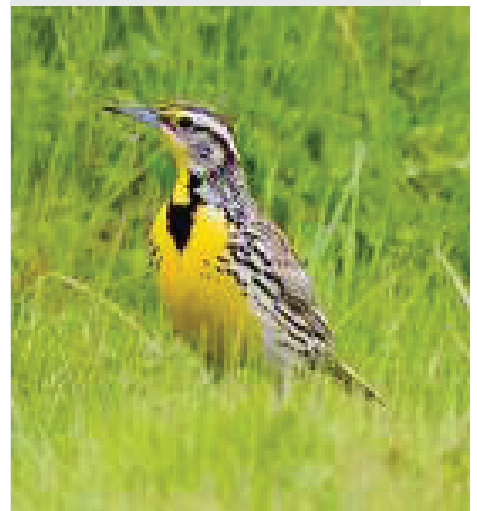
During pre-settlement times, shortgrass prairie dominated the open space and probably supported bison during some seasons of the year. As the urban area along the Front Range has grown, wildlife habitat and many wildlife species have been displaced. This makes the remnant habitat found on Metzger Farm an important component of the larger Big Dry Creek riparian corridor.

Species most likely found on Metzger Farm, such as striped skunk (*Mephitis mephitis*), spotted skunk (*Spilogale putorius*), raccoon (*Procyon lotor*), red fox (*Vulpes vulpes*), and coyote (*Canis latrans*), have adapted well and actually thrive in and near urban areas. These species are often referred to as human “commensal” species or those species that derive some benefit directly from humans and human-altered habitats. A number of potential coyote or red fox trails were observed during the site visits and a fox den is located along the east side of Caulkins Ditch near Big Dry Creek (see Figure 1, natural resources inventory map).

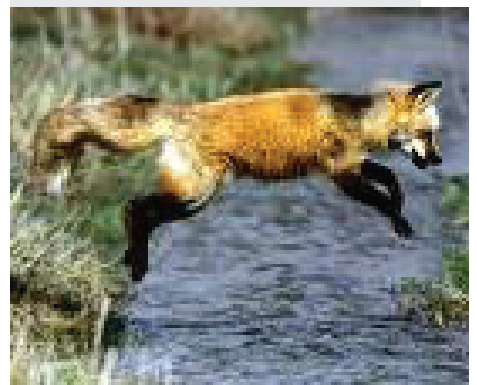
Small rodents that most likely occur along Big Dry Creek and the tributary include deer mouse (*Peromyscus maniculatus*), prairie vole (*Microtus ochrogaster*), meadow vole (*Microtus pennsylvanicus*), house mouse (*Mus musculus*), and western harvest mouse (*Reithrodontomys megalotis*).



Snowy Egret



Western Meadowlark



Red Fox



Two Great Blue Herons perch on their nest (center of photo)

Bird species observed during fieldwork included western meadowlark (*Sturnella neglecta*), European starling (*Sturnus vulgaris*), redwing blackbird (*Agelaius phoeniceus*), American robin (*Turdus migratorius*), black-billed magpie (*Pica pica*), mourning dove (*Zenaida macroura*), great blue heron (*Ardea herodias*), double-crested cormorant (*Phalacrocorax auritus*), red-tailed hawk (*Buteo jamaicensis*), and American kestrel (*Falco sparverius*). The western meadowlark, American robin, and black-billed magpie may nest on Metzger Farm. The European starling is commonly associated with urban or suburban areas and likely nests in adjacent residential areas.

A large stick nest is present along Big Dry Creek. Based on its characteristics, it is likely a red-tailed hawk or other raptor nest. During a June 12, 2007 site visit, a red-tail hawk was observed flying in the vicinity of the nest. A second large stick nest is present in the windmill in the north half of the farm.

At various times, Black-tailed prairie dogs have established scattered burrows on the property. Black-tailed prairie dogs have a significant effect on the pastures because they influence plant and animal communities. Black-tailed prairie dogs are social animals that occur in colonies or "towns" formed by a series of burrows. Species such as black-footed ferret (*Mustela nigripes*), burrowing owl (*Athene cunicularia*), prairie rattlesnake (*Crotalus viridis*), and mountain plover (*Charadrius montanus*) are closely linked to prairie dog burrow systems for food and/or cover. Prairie dogs provide a prey resource for numerous predators including badger, coyote, fox, golden eagle, ferruginous hawk, and other raptors.

The agricultural areas on the north and south sides of the Metzger Farm have been used for farming or grazing for many years. Prairie dogs have encroached in the agricultural areas at times and have been periodically removed over the years when required: 1) to preserve the farming use and grasses 2) to preserve the agricultural character of the land and 3) to prevent conflicts with adjacent property use. Metzger Farm will be managed as an agricultural site and is not intended for prairie dog colonization.

FARMSTEAD HISTORY AND ORGANIZATION

An in-depth historical report covering the Metzger family and development of the farm was an important step in the master planning process because this history helped to shape the master plan. The historical information is summarized below and focuses primarily on the development of the farm for the purposes of the physical master plan.

Metzger Farm once consisted of two side-by-side parcels, owned by relatives Albert and Susan Gay, who homesteaded in the 1880s. One of these, formerly Albert Gay's parcel, included a home that was constructed originally in the late 1800s and modified and expanded in the middle of the next century as the Metzger farmhouse. The other, formerly Susan Gay's parcel, was located along what is now the southeast edge of the farm, at a spot marked by a grove of mature trees just north of 120th Avenue. The Susan Gay house was removed in the 1940s. No foundations or other remnants of her former home were found in this area. In 1935, the Gay family sold the property to James Burke. Burke served as Denver's District Attorney throughout the 1940s. In 1943, Burke sold the farm to John Metzger, who renovated the main farmhouse in the 1950s.

The property is entered by a driveway leading from Lowell Boulevard, which was originally an unpaved county road. From the entry gate along the road, an eastbound driveway leads to the farmstead. The section of driveway running from Lowell Boulevard to the farmstead was finished with crushed red flagstone in the 1940s by John Metzger. In the early 1960s, he had this length of driveway paved. The remainder of the road from the house to the barn, which essentially forms the wider farmyard, was covered with gravel and has never been paved.

Figure 2 illustrates the organization of the farmstead. Its buildings were mostly oriented toward the south and east to take advantage of the winter sun and to face away from the prevailing northern and western winter winds and weather. For the same reason, few windows, doors or other openings face toward the north and west. The primary exception to this is the main house, which faces toward the west and the property's entrance along Lowell Boulevard.



The farmstead entry drive, viewed from Lowell Blvd., was originally finished with crushed red flagstone



The farm buildings are arranged in two east-west lines, according to use



The main entry of Metzger farmhouse, where a circular drive was once located



The large room along the south elevation of the farmhouse was used as John Metzger's study



A portrait of John Metzger, circa 1948.

The farm buildings were arranged in two east-west lines that run along the northern and southern edges of the farm yard. The north line holds the main house, caretakers' house, garage/shop, vegetable garden, a root cellar no longer present on the site, granary, and milk house. All of these are residential, tool storage/repair, and food-related uses. The south line holds the machine shed, fuel pumps, chicken house, brooder house, barn, loafing shed, and corrals. These are all animal and equipment uses.

The distinction of these building types and their placement within the farmstead show evidence of planning, even if informal, that likely was related to the idea of how a model farm of the middle decades of the 1900s should be constructed. These concepts would have been accessible to John Metzger through agricultural literature of the period that advised rural residents on the many scientific and engineering aspects of operating a modern farm.

The Metzger farmhouse is a rectangular wood frame building with an overall footprint that measures approximately 32' x 60'. When John Metzger purchased the property in 1943, the house was much smaller than it is today. During the mid-1950s, the family expanded the house to the north and south with additions designed to provide extra living, office, and bedroom space. This expansion was completed by 1957.

Color schemes are not usually associated with farm operations, although many farmers painted their buildings white, a sign of cleanliness, efficiency, and conservative values. However, John Metzger's favorite color was green. He used the color in his home, farm buildings, equipment, and even used green ink in his law practice. This color was offset through the addition of white and red; the buildings were predominantly white with green trim work and roofs, and the main entry road, as noted earlier, was finished with crushed red sandstone.

**INSERT FIGURE 2
FARMSTEAD ENLARGEMENT PLAN
11x17**

METZGER FARM MASTER PLAN

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Farmstead Landscape And Gardens

Landscaped grounds surround the farmstead.

The western, front yard of the main house was originally occupied by a circular drive of crushed red flagstone that entered from a gate near the yard's southwest corner. Flagstone pavers ran from the front porch and circular drive to a gate in the fence along the south edge of the yard at the main road. Eventually, the circular drive was replaced with the sod found there today.

All of the trees on the Metzger Farm were planted by John Metzger. The row of deciduous trees along the west and north edges of the house's front yard are crabapples that produce alternating white and red blossoms. Several years later, John decided to make a windbreak; behind the crabapple trees, he planted a row of 6 foot tall pine trees that have now matured. The landscaping around the house was watered by a pump and piping system from the ponds. The grove of piñon pine trees south of the house and north of the upper pond was also planted by John Metzger, who fancied the idea of selling pine nuts. However, these plans were never realized because wild animals ate too many of them.

The large open fenced rectangular area that runs from east of the caretakers' house to the fence line beyond the granary on the east held the Metzger family's vegetable garden. The western area contained row vegetables, and the central portion was planted with corn. The eastern area of the garden held vine plants growing produce such as pumpkins and squashes. The entire garden was planted for family consumption.

The garden was irrigated with water from the ponds. The piping system was buried underground for watering the grounds around the houses, but emerged above ground for the garden. Before the irrigation piping was installed, they would flood irrigate the garden when the adjacent alfalfa field to the north was flooded.



The piñon pine grove, planted by John Metzger, produced nuts that were intended to be sold as a crop



The former site of the Metzger family's vegetable garden, located on the north side of the shop and garage



The upper pond, looking south, is shallow and includes a large wetland

Ranching, Grazing, And Irrigation

John Metzger kept his herd of prized Scottish Shorthorn cattle in the barn and corrals and the adjacent loafing shed until he sold them in the early 1950s. His veterinarian for these very expensive animals was from Brighton and was affiliated with Colorado Agricultural College (later renamed Colorado State University) and later became head of the state veterinary board.

The open fields have been planted with a variety of crops since the late 1800s. During the late 1800s and early 1900s, the property included water rights to Tom Frost Reservoir, located at the intersection of Midway and Lowell Boulevards in Broomfield, along with rights to water from the Golden Ralston Church Ditch Company, Equity Ditch Company, and the Farmers Reservoir and Irrigation Company. These rights were transferred every time the property was sold. In addition, an 1899 map of the site shows that the eastern acreage on the farm was bisected from southwest to northeast by the Wilbur Ditch, which ran along the west side of Big Dry Creek.

While these various surface water rights were developed and exercised as an early source of irrigation for crops and livestock, the availability of adequate water for the farm became increasingly problematic during the post-WWII years of suburban development. It was becoming increasingly difficult by the 1950s to bring irrigation water to the northern alfalfa and corn fields from the Tom Frost Reservoir.



The lower pond, looking west, is deeper; a dam and land bridge with many large cottonwoods, separates the two ponds

In the 1940s and 50s, two man-made ponds were created for irrigation purposes as well as fire-fighting and stock-watering. The west, or upper, pond is shallower than the east and used to freeze so solidly that the Metzger children ice skated on it in the winter months.

In the 1940s and early 1950s, the east, or lower, pond was just a small pond located in what is now the eastern portion of the current body of water. The area between the west pond's dam and the pond was occupied by a low swale, or marsh, filled with cattails. John Metzger launched a project to enlarge the east pond. He brought in earth-moving equipment to build up the dam wall for the east pond and made it sturdy enough to hold a sizable amount of water. The swale, or marsh, was excavated to bring the pond to its current size. The spillway from this pond transports its water to the east into Big Dry Creek.

A well was dug in the north crop field to provide livestock with a source of drinking water. A Dempster No. 12 windmill, manufactured in Beatrice, Nebraska, marks this location. Water was pumped from the ground by the windmill into the adjacent stock tank.

John Metzger worked with the Colorado Agricultural College to plant test crops on the property and staff from the school would periodically visit the farm. This may be what led to the property being described as, or possibly designated, as a "model farm" in the late 1940s. President Eisenhower visited the farm in the 1950s and walked through the corn field where test varieties were being grown. The southern 16 acres south of the ponds were used to grow wheat. This area was supplied with water from a well in the southwest corner of the property.

The crop fields were plowed under in 1955 and planted with several types of grass so they could be used for grazing horses and cattle. Since then, the fields were good for one or two cuttings of dryland (non-irrigated) grass hay each growing season and the family leased the land to a cow-calf operation.

One of the most beloved caretakers for the Metzger Farm was Gip Wilson. Gip and Betty Wilson lived in the caretaker's house just east of the main farmhouse for several years in the early 1950's. Gip also was the first Broomfield Public Works Department employee and was very knowledgeable about the complex system of irrigation ditches and water rights throughout the area. Gip along with the Metzger children, Karen and Bill were instrumental in teaching the two city staffs about the farm's maintenance needs. One of Gip's dreams was to see the preservation of Metzger Farm. And sure enough, Gip was able to attend the community celebration held to commemorate the purchase of the farm on May 19, 2006. Gip passed away on June 18th, 2006.



The windmill in the north pasture was used to pump water from a well into the adjacent stock tank



Gip Wilson on the International Harvester tractor



Betty Metzger, Karen Metzger Keithley, Bill Metzger and his daughter Julia, with Broomfield Open Space and Trails Advisory Committee and Council at a presentation at the Metzger Farm House Lawn



Images top to bottom: the caretaker's house, shop and garage, pump house, granary, and storage shed

Every task John Metzger took on for the remainder of his life was pursued with vigor, enthusiasm, and a passion for self-education. John Metzger's esteemed legal career is an example of his robust energy and work ethic in action. John Metzger became a "people's attorney" who based his general legal practice upon the varied needs of his clients, many of whom were common people. His attitudes about the law and politics were clearly shaped by his experience as an orphaned child, his struggle to survive as a young adult, and his coming of age during the difficult years of the Depression. A very notable accomplishment was his service as Colorado's Attorney General from 1948 to 1958.

The Metzger family continued to live at the farm, John Metzger until he died in 1984 and his wife Betty until 2005; she passed away in 2008. John Metzger was energetically involved in numerous pursuits throughout his adult life. Their father's and mother's varied interests encouraged Bill and Karen to involve themselves in many activities during their school years. Betty made sure that throughout John's pursuits in law, politics, cattle raising, dairy farming, mining, and other activities, the domestic life of the family ran smoothly. In addition to caring for her husband and two children, Betty was an accomplished pianist and organist, acting as church organist at St. Catherine's parish in Denver and St. Mark's parish in Westminster. She also owned and ran the Trianon Museum & Art Gallery in downtown Denver for many years. John was a powerful force and he brought the family into every one of his adventures.

The Metzger children mirror their parents' devotion to family, work, and community service. Karen Metzger pursued a career in law and served a total of 25 years as a judge on the Denver County and District Courts and the Colorado Court of Appeals. Bill Metzger works in the film and education industries. During the 1970's Karen married and moved to Denver and Bill moved to New York, then Los Angeles and now Florida, but both children have continued to be involved with the Metzger Farm throughout their lives and they maintain the pioneer spirit learned on the Metzger Farm with their own families. Karen and Bill attended the public open house on the project in March 2009 so that citizens could learn more about the farm's history directly from them, which added a personal touch to the presentation. In the coming years, Karen and Bill plan to continue their involvement through their much-appreciated participation in the Metzger Farm Preservation Committee.

HISTORIC BUILDING SURVEY

As part of this planning effort, an Historic Building Survey was completed for the ten buildings on the Metzger Farm. An architectural and structural engineering

team visited the site three times to survey, measure and photograph the buildings between February and April 2007. The attached survey provides brief descriptions, conditions, and stabilization recommendations for the ten buildings. It does not cover the interiors of the buildings, nor does it address costs associated with building renovations that might be necessary to support interpretation.

Needed improvements are commonly categorized into three levels — high, medium, and low priority — as described by the Colorado State Historical Fund. Additional guidelines in the restoration and stabilization of buildings and structures are delineated in the Secretary of Interior's Standards for Historic Buildings. These guidelines can be found at <http://www.coloradohistory-oahp.org/publications/guide.htm>. These guidelines and standards were adhered to in completing these preliminary assessments.

Building code evaluations for this property were preliminary in nature and did not include evaluation of the structures for wind and snow loads. The probable cost of construction is based on year 2007 costs and should be updated for subsequent years to reflect changes in prices of materials and the changing condition of the buildings.

Highest Priority Improvement

These improvements are imperative in the sustainability of the buildings. They are of the highest priority because the item has either caused or will quickly cause deterioration of the historic fabric, cause structural damage or weakness, or create life safety issues. Most of these items are identified as serious or critical deficiencies. These items should be completed as soon as is practicable to prevent further damage to the building.

Examples of work items classified under this category are the following:

- Repair of structural elements, including foundation stabilization, roof structure stabilization, and wall framing stabilization.
- Roof replacement necessitated by deteriorated roofing materials.
- Life safety issues. Normally these do not include accessibility issues, as in most cases the owner may choose to provide an alternate method for visitors to experience the site and any associated interpretive programming.

The buildings that are in the most threatened state and should be of the highest priority are the brooder house, implement shed, and the pump house. These work items should be completed as soon as is practicable and financially feasible, to prevent further deterioration or possible collapse. As an alternative, the Foundation may choose to complete temporary stabilization until funding for more permanent stabilization measures is available.



Images top to bottom: the implement shed, brooder house with barn beyond, chicken house, barn and corral, stock standing shed,

2 DESIGN PRINCIPLES

Eight core principles guide the development of the master plan.

- Preserve the historical integrity of the farmstead, including buildings and site organization.
- Preserve and protect existing wildlife habitat areas along Big Dry Creek and the ponds.
- Preserve agricultural use of pastures for grazing or dry land crops.
- Develop a public use program that is compatible with site character, in activities and intensity of uses.
- Provide a system of long and short trail loops and make connections to the Big Dry Creek and the Southeast Community Corridor Trails.
- Coordinate Urban Drainage and Flood Control District improvements in adjacent areas to complement Foundation funding for elements of the Master Plan.
- Phase proposed uses and improvements to facilitate implementation in a timely manner.
- Create a plan that is fiscally sustainable, from the standpoint of capital construction as well as ongoing maintenance costs.

Medium Priority Improvements

Although these repairs are important, they may not result in damage to the structural elements of the building or the associated building features are not in as poor a condition as those of the highest priority. Most of these items are identified by poor condition with minor deficiencies. Examples of work items classified under this category are the following:

- Door restoration
- Window restoration
- Concrete refinishing
- Painting of exterior of buildings
- Minor structural stabilization
- Assessment of potential lead paint and asbestos hazards, and implementation of appropriate mitigation measures

The priority items in this section include the structural stabilization of the implement shed, brooder house and dairy barn. It is difficult to place a time table on this type of work because deterioration will continue to occur until the deficiency is reversed.

Lowest Priority Improvements

These improvements are not required to prevent damage to the structure. They are listed to provide improvements to return the building to its original appearance or are minor repair items. Most of these items are identified by fair condition descriptions. These items may be completed at the convenience of the Foundation or could be included in the controlled maintenance budget or as existing materials or finishes wear out or become damaged.

When a more detailed interpretive plan is prepared and associated building uses are identified, cost estimates should be further refined to incorporate any associated rehabilitation, restoration and adaptive reuse costs. It is recommended that an architectural and structural consultant experienced in the restoration and rehabilitation of historic farm structures be utilized to complete the next phase of work, which might include an interpretive master plan, a full-scale State Historical Fund Historic Structures Assessment, and restoration/rehabilitation drawings.

USE ZONES, POTENTIAL OPPORTUNITIES AND CONSIDERATIONS

Based on the historic organization and function of the farmstead and the natural resources present on the property, Metzger Farm can be organized into five “use zones” that can help guide development of a program for compatible public use as

**INSERT FIGURE 3
ISSUES AND OPPORTUNITIES
MAP
11x17**

METZGER FARM MASTER PLAN

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well as a plan for managing the farm's resources. These are described below and illustrated in Figure 3. Eight design principles, described earlier in this section, were also formulated to guide the plan.

The Farmstead Core (Buildings, Gardens and Entry Drive)

This area includes the farmhouse and nine outbuildings, as well as the associated entry drive, landscapes, and gardens, representing approximately two acres. The landscapes and buildings create wonderful spaces that are anticipated to be one of the most visited parts of the farm, due to its interpretive and educational potential and the relatively easy accessibility of buildings and gardens.

One of these spaces, at the front of the home where the circular entry drive once was, now functions as an intimate scale "outdoor room." Conceivably, the lawn area could serve as a focal area for interpretive presentations and docent talks.

A second "outdoor room" is located at the rear of the farmhouse, where Betty Metzger's circular rose garden once flourished. The garden had a birdbath in the middle surrounded by rose bushes, with irises around the perimeter. The roses are gone, but some of the irises still remain. This area could also function as a gathering space for interpretive activities.

A row of mature Siberian Elms frames the northern edge of this zone, providing long views of the pastures beyond. The driveway between the two rows of outbuildings provides long, expansive views across the pasture and to the Big Dry Creek valley to the east.

Activities potentially compatible with the character of this area include:

- Self- or docent-guided interpretive tours
- Seasonal displays of livestock near the dairy barn or loafing shed
- Demonstration activities (spinning, soapmaking, etc.)
- Small community events
- Reintroduction of garden areas

The Upper Pond

The upper (west) pond is shallow and sheltered by mature trees and a vigorous shrub understory on the north, west, and south sides. The shallowness of the pond and its gently sloping banks have supported the establishment of a significant cattail marsh. The pond provides valuable habitat that should be preserved and protected. As budget allows, Russian Olive trees



The upper pond



The lower pond, looking northwest toward farmstead



Bill and Karen Metzger's dock on the upper pond



Looking east, toward the Big Dry Creek Open Space



The north pasture in summer

in this zone should be removed and replaced with native trees such as cottonwoods and willows.

Accordingly, physical access to this area should be limited; trails should be routed around this area with a significant buffer, and “cues” provided to the public, such as boulders or other fencing, that will minimize the incidence of “social” trails. Opportunities for wildlife and bird watching may be provided along the trails at selected vantage points.

Incompatible activities that should be avoided at the upper pond include fishing, as the pond is too shallow to support most species, and any form of access at the water’s edge, given the sensitive nature of the habitat.

The Lower Pond

By contrast, the lower (east) pond has a more open, expansive quality and in some areas, farm uses have extended to the water’s edge. Because this pond is significantly deeper, uses such as small-scale warm water fishing could be compatible. Overlooks and a small picnic area would also be appropriate. Because this edge is already accessible, trails might be routed closer to the water’s edge, providing that natural barriers or signs are placed to prevent people and dogs from getting into the water, thus avoiding safety and water quality impacts.

As budget allows, Russian Olive trees in this zone should be removed and replaced with native trees such as cottonwoods and willows. Incompatible activities might include boating or other recreational uses of the water surface, or large scale events held close to the water’s edge.

The Big Dry Creek Corridor

Activities compatible with existing landscape character include a trail connection from Lowell Boulevard to the existing Big Dry Creek regional trail, preferably through the already-disturbed area near the existing spillway. Trails, overlooks, and wildlife-watching areas could also be provided along the embankment, on the west side of the creek, along with suitable interpretive displays.

As budget allows, Russian Olive trees in this zone should be removed and replaced with native trees such as cottonwoods and willows. In addition, the existing spillway, which is in poor condition, should be replaced for safety reasons.

Incompatible uses would include:

- Extensive public access to the Creek, given its relative isolation and high quality wildlife habitat, and the presence of the existing Big Dry Creek trail on the east side.
- Gathering spaces near the creek, which could raise maintenance and security concerns as well as disrupt habitat.

The North and South Pastures

The north and south pastures constitute the fifth character and use zone. The south pasture contains fairly high quality native grassland, and provides a nice visual buffer/separator from 120th Avenue. This area should remain undeveloped to preserve the long views into the farmstead from 120th Avenue. Selective restoration and landscape management efforts might be undertaken to enhance the quality of the grassland.



Bill Metzger walking with a Broomfield citizens' group through the south pasture

The north pasture is more expansive and provides long views to the east. A farm road extends north through the pasture to the windmill. Near views are of residential development to the north and west, and to Broomfield's wastewater treatment plant. The open character of this zone should be preserved, but compatible activities such as grazing or dryland farming could be undertaken. A small number of cows — to provide for sustainable grazing — or horses might be kept in the north pasture. A loop trail around this zone, with a connection to the historic windmill and the Crofton Park neighborhood to the north, could be provided. More extensive development, and new uses and structures that would affect the visual quality of this zone, are discouraged.



Mature cottonwoods along the lower pond dam edge; plans for reconstruction of the dam should be sensitive to their preservation

Additional Considerations

An evaluation of the structural stability of the pond embankments, and the capacity of the existing spillway, was completed by GEI Consultants in 2006. Their report indicated that the embankments had suffered damage from wave action, overtopping, and rodent activity. The emergency spillway channel for the lower pond also displayed significant vegetation and debris, which hinders outflow and may contribute to dam overtopping. The report recommended the reconstruction of the dam embankment and spillway to address these issues, and provided a schematic concept for each area.

As part of the planning effort for Metzger Farm, the team evaluated a variety of options with the participating cities' engineering departments, the Urban Drainage and Flood Control District, and State Engineers' Office. Options exist

for constructing a new, improved spillway that would provide the needed capacity and conveyance, while causing fewer impacts to the site. Options also exist for reconstructing the dam embankment so as to preserve the large cottonwoods at the east edge of the lower pond; one such option would entail constructing a new embankment within the footprint of the pond, outside the drip line of the existing trees. Similar approaches were implemented successfully at the McKay Lake dam in Westminster and at Broomfield's Plaster Reservoir.

In implementing future improvements to the dam and spillway, this plan encourages solutions that minimize impacts to the site and landscape, while providing necessary levels of protection from flood events.

SECTION 3: MASTER PLAN AND ESTIMATED CAPITAL AND MAINTENANCE COSTS

The Metzger Farm master plan was crafted in 2007-09 through a highly collaborative effort between Broomfield and Westminster, and involved both communities' Open Space Advisory Boards, City Councils, City staff, the Metzger family, and the public. Major elements of the master plan are described below and illustrated graphically in Figure 4. The total estimated capital cost of master plan improvements is estimated at \$779,670, in 2009 dollars, excluding costs to fully restore the historic structures.

MASTER PLAN AND ESTIMATED CAPITAL CONSTRUCTION COSTS

Farmstead Core Improvements

The farmstead core will serve as an important venue for education and interpretation of Metzger Farm's cultural and historic significance. Improvements have been planned to facilitate use of the site for school groups, demonstrations of farm life, small-scale events, and self- or docent-guided tours. Improvements within the farmstead core, and associated costs in 2009 dollars, include the following elements.



View of farmstead across lower pond

- Creation of a 40-space gravel parking lot and trailhead west of the existing farmstead, with the potential for a future 40-space expansion. The parking area includes a bus drop-off to accommodate visiting student groups, a san-o-let enclosure and landscaping. A new vehicular entry drive serving the parking area would be created and aligned with 121st Place. The existing entry drive would be converted to pedestrian use, with emergency and service access retained. *[Item #1, estimated capital cost \$97,492]*
- A connection to an existing reuse water line running along Lowell Boulevard, to irrigate and preserve the historic landscapes within the farmstead. This will allow for restoration of the turf areas and Betty Metzger's gardens, as well as provide supplemental irrigation for the trees. *[Item #2, estimated capital cost \$45,188]*
- Site amenities, including benches and trash receptacles. *[Item #5, estimated capital cost \$5,843]*
- First level (high priority) building stabilization on all structures except the pumphouse. This would address structural or life safety issues including foundations, building framing, and roofing, and would allow the structures to be viewed from a short distance, though not occupied at this time. Interpretive displays and demonstrations would be provided at the entrances to the structures. *[Item #6, estimated capital cost \$143,315]*



Winter view of pond and fence

- Entry, regulatory, and some interpretive signage. Entry markers would be placed at the entrance to the farmstead, and interpretive signage placed along the trails. [Item #7, estimated capital cost \$5,194]
- Interpretive displays at the farmstead (plaques on structures) to facilitate self-guided tours. [Item #8, estimated capital cost \$3,246]
- Perimeter decorative fencing, such as wrought iron fencing, around the farmstead. The farmstead is envisioned as being open to the public from dawn to dusk, with a lockable gate that can prevent unauthorized access during hours of closure. [Item #16, estimated capital cost \$42,851]

Subtotal: \$343,129

Lower Pond Improvements

The lower (east) pond area is deep enough to support a warm water fishery that would be targeted toward families with young children. Improvements could be supported by a “Fishing is Fun” grant from the Division of Wildlife. In conjunction with fishing, a small picnic area could be provided. Motorized uses at the pond (such as remote controlled boats), as well as nonmotorized boating (canoes, kayaks, paddle boats) would be prohibited. Improvements proposed at the lower pond include the following elements.



Geese on the lower pond

- A fishing dock that also serves as a small overlook structure at the lower pond, with benches and trash receptacles. [Item #13, estimated capital cost \$40,124]
- A small picnic structure, picnic tables, benches, and trash receptacles. [Item #15, estimated capital cost \$26,100]

Subtotal: \$66,224

**INSERT MASTER PLAN MAP
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METZGER FARM MASTER PLAN

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Trail Improvements

Over two miles of trails will be constructed at Metzger Farm. Improvements will include a regional trail connection to the Big Dry Creek Trail, which will eventually connect to Broomfield's Southeast Community Loop Trail under Lowell Boulevard, and two miles of walking trails throughout the farmstead. Key segments of the trail system include the following.

- A crusher fines trail from Lowell Boulevard and the main trailhead parking lot to Big Dry Creek. Improvements include a bridge at Big Dry Creek and wetland restoration at Lowell Boulevard and along the Big Dry Creek Trail. *[Item #3, estimated capital cost \$185,206]*
- A crusher fines trail connection from Lowell Boulevard to the east side of the lower pond. A future underpass at Lowell Boulevard, provided through a separate Urban Drainage and Flood Control District project, will provide a link to Broomfield's Southeast Community Loop. *[Item #4, estimated capital cost \$27,242, trail only]*
- A crusher fines trail connection from the farmstead to Crofton Park on the existing historic farm access road to the windmill. *[Item #10, estimated capital cost \$2,118]*
- A crusher fines trail from the farmstead to Caulkins Ditch Overlook. Improvements include an overlook, benches, and trash receptacles. *[Item #11, estimated capital cost \$67,878]*
- A crusher fines trail from Big Dry Creek to the existing Federal Boulevard underpass. *[Item #12, estimated capital cost \$2,370]*
- Fencing along the north pasture. This will be installed to prevent unauthorized access and to contain animals in the event that grazing is reintroduced to the site. *[Item #14, estimated capital cost \$30,155]*
- A "North Loop Trail" along the perimeter of the site. *[Item #17, estimated capital cost \$55,348]*

Subtotal: \$370,317

As noted earlier, the master planning process has also coordinated its design with two future Urban Drainage and Flood Control District projects that will carry water through the proposed underpass beneath Lowell Boulevard and through the two ponds to Big Dry Creek. Both projects are sponsored and partially funded by Broomfield and Westminster. A part of the Urban Drainage project will be to analyze how to minimize as much as possible any potential impacts to the wetlands adjacent to the upper or west pond.



A regional trail connection will be made to the Big Dry Creek Regional Trail

SUMMARY OF IMPROVEMENTS

Farmstead core: \$343,129
Lower pond: \$66,224
Trails: \$370,317
TOTAL: \$779,670

A trail connection from the corner of Lowell Boulevard and 120th Avenue that extends north to the Metzger Farm trailhead entry is incorporated into the Lowell underpass construction project and budget. In addition, sidewalks along the east side of Lowell Boulevard and the north side of 120th Avenue will be incorporated into street improvement projects for both corridors.

PUBLIC ART

If joint funding can be obtained by both Westminster and Broomfield, a public art project may also be incorporated into the site that will respect and enhance the open space and historic qualities of the property.

ESTIMATED ANNUAL MAINTENANCE COSTS

Annual maintenance costs were also estimated in support of the planning effort. Maintenance costs will be shared by Broomfield and Westminster. The types of maintenance activities that are anticipated on an as needed basis include:

- Annual grading of the parking lot to remove ruts
- Weekly san-o-let servicing
- Annual flushing of the irrigation system
- Pruning and trimming of all plantings, as needed to maintain health
- Trail maintenance and grooming, replacement of crusher fines
- Mowing at the edge of the trail and within the farmstead core
- Trash removal, assumed at twice per week
- Snow removal at the entry drive and steps
- Opening and closing of the entrance gate to the farmstead
- Miscellaneous repairs (distinct from stabilization) to the structures
- Minor repairs to signage, graffiti removal
- Prairie dog management
- Noxious weed control
- Minor repairs to the gates and fencing
- Minor repairs to the fishing dock

Estimated annual maintenance costs	\$26,900
Estimated annual operating costs, including water usage and utilities	\$ 7,323
TOTAL	\$34,223

SUMMARY OF PRIORITIES AND PHASING

If the timing of the preliminary design for the two proposed Urban Drainage and Flood Control projects will be completed before the project is constructed, the entire Metzger Farm project may be possible to complete in one construction phase. The preliminary design work may show that the entire trail system can be built in such a way that it will not be impacted by the construction of the future drainage improvements. However, if the flood control projects are not designed before the Metzger Farm improvements, the project could still proceed by phasing the construction in the following manner:

Phase 1 Improvements:

Farmstead Core \$343,129

Trail Improvements* \$117,234

Lower Pond \$66,224

TOTAL: \$526,587

*Excludes the trail on the dam embankment and trail on the south side of the ponds from Lowell Boulevard to Big Dry Creek/Federal Boulevard

Phase 2 Improvements:

Phase 2 improvements could occur once the preliminary design work for the Urban Drainage and Flood Control District improvements has been completed so that Phase 2 trail alignments can be finalized to avoid the proposed flood control project construction. However, the Phase 2 Trail construction may need to occur at the same time that the Urban Drainage and Flood Control District improvements are constructed to minimize disturbance to the site and to make sure that significant portions of the Phase 2 trails will not be impacted. For example, until the spillway is designed and constructed, it may not be feasible to construct the trail from the lower pond to Big Dry Creek and Federal Boulevard.

Trail on the dam embankment: \$67,878

Trail from Lowell Boulevard to Big Dry Creek/Federal Boulevard: \$185,205

TOTAL: \$253,083

METZGER FARM MASTER PLAN

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In addition to the physical plan for public use improvements, management goals and action steps were also developed for interpretation and education, building stabilization and preservation of the site's historic fabric, and management of the site's landscape, with an emphasis on noxious weed control.

CREATING A MORE DETAILED INTERPRETIVE PLAN

The Metzger Farm planning process has identified a number of themes and strategies that could form the foundation for a more detailed interpretive and educational program, that could be further developed with participation of project partners that might manage or supply program content. Examples of such partners might include area historical societies, 4-H or agricultural organizations, area nature/naturalist programs, Colorado State University, local government historical committees, and/or the Colorado Division of Wildlife.

This section summarizes preliminary interpretive themes and strategies, and identifies next steps.

Potential Themes

Five core themes were identified as potentially suitable for interpretation.

- The physical organization of the farm, including the unique color pattern for the buildings and entry drive; the spatial organization of buildings according to use and function; experimental and scientific research undertaken by John Metzger, in conjunction with CSU (for example, his test crops); the "model farm" concept; the reuse of materials to be thrifty and creative.
- The importance of water in sustaining farm and ranch activities; the numerous agricultural uses on the site; the irrigation features, including the pump house, lakes, wells, and Caulkins Ditch; and the cessation of farming as water was needed to support other uses.
- Elements of daily farm and ranch life, including the garden, care and feeding of the animals, seasonal activities, weed management, and unique stories.
- John Metzger as a farmer and entrepreneur: his experiments with test crops; the Scottish Shorthorn cattle; his efforts to establish a hunting club on the farm; milk and egg production; piñon nut production; and mining.
- John Metzger's legal and political career: this is not as central a theme as aspects of life on the farm, but might be explored in relation to Broomfield/



Farm tractor and brooder house



Long view of stock standing shed and barn in summer



The weed burner (top photo) along with other farm equipment (lower photo) could be featured in a self-guided interpretive tour

Westminster history and Colorado history.

Potential Interpretive Strategies

Potential strategies for interpretive displays and other media were also identified.

- Interpretive panels or plaques might be placed near the exterior of farmstead buildings, describing their function, orientation, and possibly illustrating activities undertaken within.
- A brochure could be developed that numbered and described activities around a perimeter trail in the farmyard for a self guided tour. This brochure could also point out other significant locations on the property outside of the immediate farmstead.
- Another strategy might include allowing visitors to view the interiors of selected buildings from a Plexiglas-covered window, or through an open Dutch door, but visitors would not be allowed to enter the structures until required building restoration has been completed and public health and safety issues have been addressed. Corral gates would remain locked around structures like the loafing shed or equipment shed, until public health/safety issues have been addressed.
- Once public health and life safety issues have been addressed, selected buildings could be opened for self-guided or guided tours. The best opportunities include the loafing shed and dairy barn, which are both spacious enough to accommodate a tour. The brooder house, chicken house and granary may not need to be opened, as they could be viewed/experienced from a window, and in some cases (e.g. brooder house) are too small to accommodate groups of visitors.

Potential Interpretive Program

Structures and features suitable for interpretation include the following.

- Loafing shed – this large, open area would be suitable for demonstrations, and could house picnic tables. It would likely need an accessible path and pad to accommodate a wheelchair.
- Barn – visitors could pass through the central corridor, allowing viewing of unique barn features without having to open all areas to the public.
- Chicken house and brooder house – these are best viewed from outside as they are too small to accommodate groups of visitors.
- Granary – this could also be viewed from outside.
- Site of milk house, the root cellar – while it would be cost prohibitive to reconstruct these features, their location and function could be noted through a display
- Pump house – this feature would be very expensive to stabilize, but its

function and significance could be noted through a display.

- Kitchen garden – this feature could be reconstructed subject to available funding and someone to maintain the garden.
- Main farmhouse – exterior displays could describe the architectural evolution of the house, the function and significance of key rooms. Subject to the two City Councils' approval, funding availability and staffing, the first floor of the house could be made accessible for guided or self-guided tours. ADA access could be provided by wrapping a ramp around the north side of the house and entering on the east side.
- Foundations for the original Gay family homes – these elements could be indicated with displays.
- Caulkins Ditch, the windmill, wells, and other irrigation features could be interpreted.

Next Steps in Refining the Interpretive Strategy

Action steps necessary to realize this interpretive vision include the following:

- Reaching agreement on specific themes and the uses and facilities needed to support these themes. These could include formal programs developed in conjunction with partners, like Colorado State University Extension, 4H, and cultural heritage organizations.
- Formal identification of programming partners. Because it is not envisioned at this time that the Foundation would hire dedicated staff to operate programs, providers should be identified as part of the interpretive plan, and potential financial and/or in kind arrangements structured.
- Prototypical exhibit design, identity elements (including logos and graphic design), and communications tools (such as a website) should also be covered in the interpretive master plan.

Potential Operating Partnerships

The principal assumption is that interpretive activities will likely need to be operated by a partner agency – like an agricultural organization, or a to-be-formed “Friends of...” group, or local historic groups. Boulder County is a good model as it operates a very solid docent program. Opportunities also exist for partnering with other historic preservation organizations, or to involve student interns, perhaps from CSU or neighboring schools such as Front Range Community College, CU-Boulder or Denver, or local high schools.



The site of former kitchen garden could be restored as part of the interpretive program



Wells on the property could also be featured in a self-guided tour



Priority stabilization measures would address structural integrity of the farm buildings, like the brooder house, above



Stabilization measures would also address necessary roof repairs to structures, such as the implement shed, above

An on-site caretaker is recommended for the property. It would be advisable to look for a caretaker that has background in agriculture, environmental issues, historic preservation, and/or educational/interpretive skills. For example, Boulder County was able to find a caretaker with interpretive skills that now works at one of their historic farm sites, MacIntosh Farm in Longmont.

IMPLEMENTATION OF BUILDING STABILIZATION MEASURES

The recommendations below provide some action steps that can facilitate implementation of building stabilization measures, including funding of preservation and rehabilitation projects.

Implement Historic Structures Assessment

It is recommended that a full Historic Structures Assessment be completed because it will allow for more detailed investigation of some of the structural and preservation issues at the farm buildings, as well as allow the Foundation to subsequently apply for larger grants. There are several options in completing this task.

- Apply for a State Historical Fund (SHF) Historic Structures Assessment. These grants have no cash match requirement and can be applied for at anytime during the year. It takes approximately thirty days to get approval and another thirty days to get a contract in place with SHF. The maximum amount of the grant is \$10,000, is non-competitive and the building does not need to be landmarked or designated. The scope of work for historic structure assessments is at: <http://www.coloradohistory-oahp.org/publications/pubs/1424Scope.pdf>.
- Since there are multiple buildings that require assessment, it is likely that a \$10,000 grant would be insufficient to assess all of the buildings. These assessments could be phased over time or a larger competitive grant could be requested as described below.
- Apply for State Historical Fund Acquisition and Development grants to assist with critical preservation and rehabilitation projects. This type of grant is only offered twice a year in April and October and requires a 25% cash match. It takes approximately four months for approval and two months for contracting. This grant is a competitive grant and the property/building must be landmarked or designated. Designation can be through Westminster, state, or national procedures. Grants can pay for construction plans and preservation planning as well as improvements to the structures. A

recommended approach is to prepare construction plans before applying for construction funding for a particular project.

- In order to obtain competitive grants, the Foundation should consider either local landmarking through the City of Westminster or an application to the State Register of Historic Properties. Either designation would make the property eligible for grant funding and both procedures are faster and less costly than seeking a listing on the National Register of Historic Places.



Second-level repairs would include restoring or replacing windows and doors

It is recommended that the partner cities obtain a consultant estimate and apply for a non-competitive Historic Structures Assessment grant for the highest priority buildings, including the main house and the caretaker's house, as well as the pump house.

Reconstruction and Alteration of Historic Buildings and Site Features

In order to protect the historical integrity of the Metzger Farm site and grant eligibility to plan for and preserve the site and structures, professional advice should be sought prior to making decisions such as exterior alterations, demolition, reproduction of structures, moving existing structures and adding new structures to the site. Examples of actions that could potentially have an adverse effect on the historical integrity of the site and should not be undertaken without a full understanding of the potential financial consequences. Examples of this type of action might include:

- Building a new building on-site to look like an old building.
- Moving a building into the historic farm configuration. However, building a new modern building or bringing a building in from another site may be acceptable if the new or relocated building is placed at some distance away from the existing farm structures so as to not imply that it was part of the historic farm configuration. This could be a visitors' center or interpretive pavilion. Denver's Four Mile House is an example of how this was handled successfully.



Repair and replacement of corral and property fencing would also be completed

Preservation decisions should be guided by the federal Secretary of Interior Standards (<http://www.nps.gov/history/hps/tps/tax/rhb/stand.htm>), which include concepts that have been well-developed and applied across the country for fifty years. A historic preservation architect should be engaged to assist with planning, so that major decisions are made in a manner that preserves the Foundation's future options concerning historical designation and grant funding.

LANDSCAPE, HABITAT AND WEED MANAGEMENT

Landscape, habitat and weed management considerations at Metzger Farm include:

- Restoring degraded plant communities (e.g., south pasture grasslands).
- Active and consistent management of noxious weeds
- Maintaining habitat for populations of targeted animal species (e.g., waterfowl and sport fish).

The sections below summarize strategies and action steps. A more detailed series of recommendations is presented in a companion document, titled *Natural Resource Assessment — Metzger Farm Open Space* (September 2007), prepared by ERO Resources Corporation as part of this planning effort.

Landscape Restoration

Because at least some desirable species are present in both the north and south pastures, the best approach to restoration would be to control noxious weeds, mow remaining vegetation, and then seed into bare areas and areas of mowed vegetation. It is not necessary to completely remove existing vegetation. Although it would have to be carefully planned and executed by experienced staff, using a controlled burn in the south pasture would be a very effective method to control weeds, encourage native species, and clear litter prior to interseeding.

Active And Consistent Management Of Noxious Weeds and Invasive Trees and Shrubs

An Integrated Weed Management (IWM) plan should be developed and implemented for Metzger Farm by the open space maintenance staffs of Broomfield and Westminster. IWM plans include specified annual activities such as mapping weed and invasive tree/shrub infestations, choosing control methods, and documenting the success for control methods. Having a plan will allow resource managers to prioritize control activities, document success, and track costs. Typically, the first several years of implementing an IWM plan require the most effort. It takes time to map, prioritize, and effectively control infestations. Once effective site-specific control methods are identified, activities become more routine.

The following goal and objectives are recommended to address noxious weeds and invasive species at Metzger Farm.

Goal: Protect and enhance native vegetative communities and habitat for wildlife through noxious weed management.

Management Action Recommendations

Objective 1: Control noxious weeds and invasive tree/shrub species on Metzger Farm.

Action: Implement a weed and invasive tree/shrub management plan for Metzger Farm.

Action: Ensure weed management plan complies with State Weed Management Act, as well as County weed management objectives.

Action: Ensure chemical control is undertaken by state-licensed applicators and is done in strict accordance to product labels.

Objective 2: Plan trails to minimize the risk of weed introduction and spread.

Action: Control weeds prior to constructing new trails in the north and south pastures.

Action: Avoid creating a trail corridor that travels from a weed-infested area into an area with little or no weed infestation, if possible.

Action: Keep trails out of wet areas and away from wetlands on Metzger Farm.

Objective 3: Implement trail construction and maintenance with weed strategy in mind.

Action: Use weed-free materials in trail construction and maintenance.

Action: Clean all equipment used in trail construction and maintenance before it is used on a new project.

Action: Minimize ground disturbance and soil compaction resulting from construction and maintenance activities by limiting trips by equipment across an area and turnaround sites for equipment.

Action: Reclaim disturbed areas as soon as possible to reduce the chance of weed infestation.

Action: Control noxious weeds in a mowed buffer along roads and trails to reduce spreading during mowing operations.

Objective 4: Educate staff and visitors about noxious weed control, so that weeds are not spread throughout the site.

Action: Require the use of weed-free forage or pelletized feed for livestock before and during visits to Metzger Farm.



Removal of invasives, such as Russian Olive, shown at the upper pond, is a priority



A snag on the south side of the upper pond provides habitat for raptors.

Objective 5: Implement noxious weed management with a regional perspective.

Action: Apply for a grant through the Colorado Noxious Weed Management Fund (if available) for control efforts on Metzger Farm.

Action: Explore additional funding options through the Colorado Division of Wildlife (CDOW) and the Natural Resources Conservation Service for weed management.

Habitat Management

The following goal and objectives focus on wildlife habitat in and near riparian and wetland areas and the ponds.

Goal: Protect and enhance native vegetation communities and wildlife habitat.

Management Action Recommendation

Objective 1: Protect and/or enhance important specified wildlife habitat in the wetlands, riparian areas, and the ponds.

Action: Implement habitat enhancement programs such as removal of invasive species such as Russian Olive trees, restoring native plant communities, improving wetlands, or enhancing cottonwood regeneration.

Action: Maintain standing dead (snags) and down cottonwood trees on Metzger Farm.

Action: Identify and project aesthetically valuable trees from beaver.

Objective 2: Consider the protection or enhancement of wildlife habitat in all management actions on Metzger Farm.

Action: Identify how management actions could negatively impact wildlife habitat. Avoid or mitigate these impacts whenever possible.

Action: Identify management actions that can provide opportunities to support or improve wildlife habitat or the migration corridor, such as developing a native vegetation planting program in areas of the site that have adequate water.

Objective 3: Integrate wildlife population and habitat protection into other resource management objectives and actions.

Action: Conduct prairie dog management to protect agricultural use and character of the farm and to prevent conflicts with adjacent properties. Management will be carried out in accordance with applicable state and local regulations and guidelines.

Action: Locate trails at the edges of plant communities where possible to minimize habitat fragmentation.

Action: Locate trail 30-50 feet away from the south edge of the lower pond and 225-250 feet way from the south edge of the upper pond.

Action: Limit access to the land bridge between the ponds.

Action: Locate the western crossing of the Nissen Reservoir Channel as far to the west as possible to avoid fragmenting wetlands and to reduce visibility of the trail to waterfowl in the west pond. If possible, incorporate trail into new Lowell Boulevard crossing of Nissen Reservoir Channel.

Action: Continue Broomfield Open Space Foundation and Westminster Open Space Volunteer Program quarterly trash pickup volunteer work days; identify other needs that could be met by volunteer groups.



*Broomfield Open Space Foundation
Clean-Up Day at Metzger Farm,
January 31, 2009*

METZGER FARM MASTER PLAN

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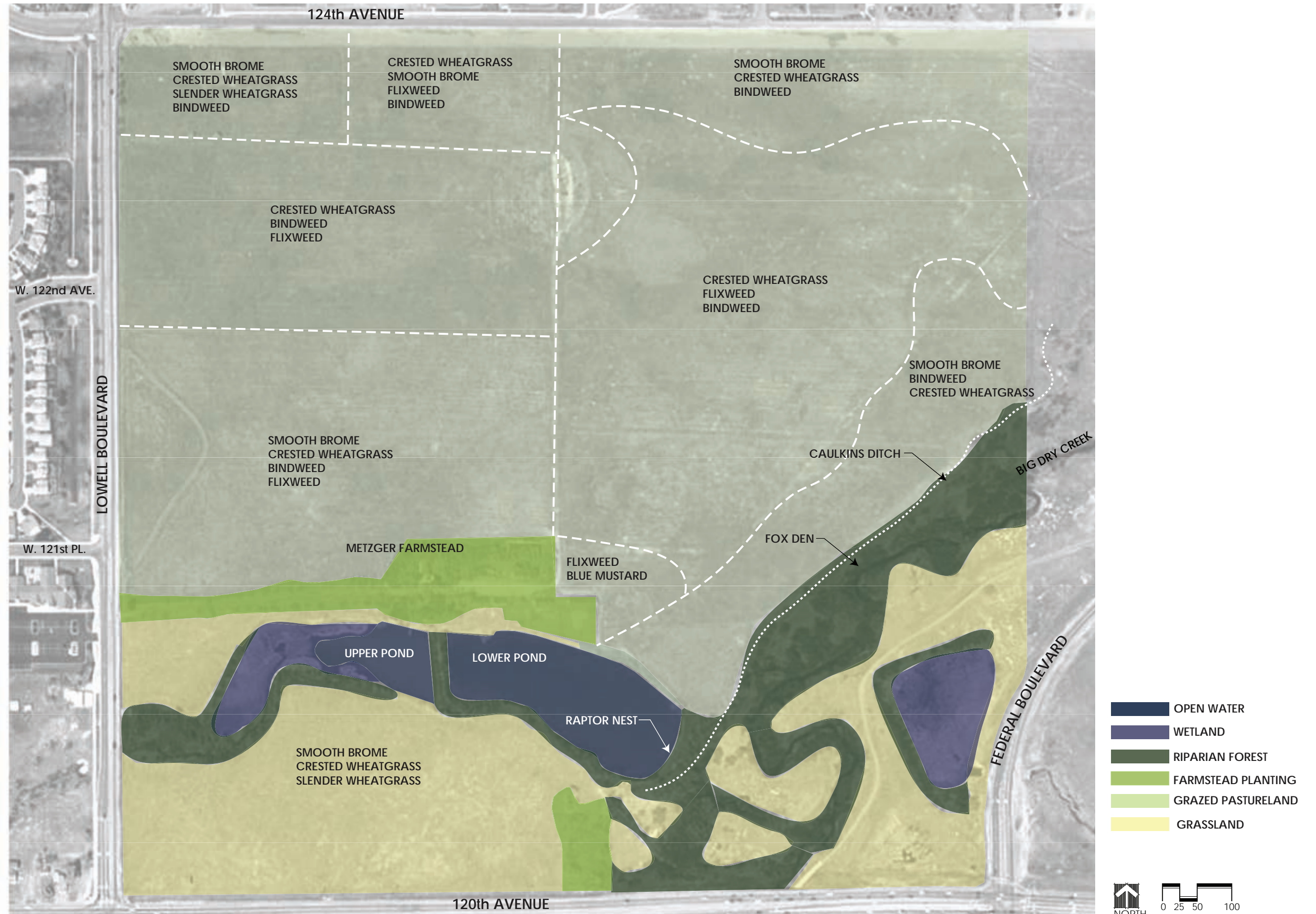
Below are a number of key next steps that are intended to facilitate public enjoyment of Metzger Farm:

- 1) Investigate and submit the following grant proposals:
 - a. Adams County Open Space grant for construction of improvements
 - b. A "Fishing is Fun" grant for construction of the dock/overlook
 - c. State Historical Society grant for Historic Building Assessment and rehabilitation of the structures
 - d. Grants for weed management
- 2) Complete design drawings for the proposed improvements and incorporate phasing in the construction plan if required by the timing of preliminary design for the Urban Drainage and Flood Control District improvements.
- 3) Select a caretaker prior to the opening of the site to the public, ideally as soon as the appropriate individual can be identified.
- 4) Develop an interpretive plan for self-guided tours of the property, and create an accompanying website that can provide background information, as well as information on tours and activities.
- 5) Develop the Integrated Weed Management Plan, establish maintenance responsibilities between Broomfield and Westminster Open Space maintenance staff, and initiate maintenance activities.
- 6) Once the property is open to the public, host at least one community event/celebration per year to showcase the history and natural resources of the site.
- 7) Continue working in a coordinated manner with the Broomfield Open Space and Trails Advisory Committee and Westminster Open Space Advisory Board to discuss the on-going use and other issues related to Metzger Farm that may arise over time.
- 8) Continue to support the Broomfield Open Space Foundation and Westminster Open Space Volunteer Program quarterly clean-up at Metzger Farm, and identify new opportunities for volunteers to support Metzger Farm.



Full moon over Metzger Farm

FIGURE 1: NATURAL RESOURCES





- ① METZGER HOUSE
- ② CARETAKER HOUSE
- ③ SHOP AND GARAGE
- ④ STORAGE BUILDING
- ⑤ GRANARY
- ⑥ APPROXIMATE LOCATION OF FORMER MILK HOUSE, ROOT CELLAR, AND PUMP HOUSE
- ⑦ IMPLEMENT SHED
- ⑧ CHICKEN HOUSE
- ⑨ BROODER HOUSE
- ⑩ BARN AND HORSE STALLS
- ⑪ STOCK STANDING SHED
- ⑫ UPPER POND
- ⑬ LOWER POND

FIGURE 3: OPPORTUNITIES AND CONSIDERATIONS



FIGURE 4: MASTER PLAN



- 1 GRAVEL PARKING LOT AND TRAILHEAD**
Forty space gravel parking lot with potential for future 40 space expansion. Includes bus drop-off, san-o-let enclosure and landscaping \$97,492
- 2 IRRIGATION REUSE LINE**
Irrigation tap/meter at reuse line, irrigation mainline to farmstead entry, and drip irrigation at farmhouse planting \$45,188
- 3 TRAIL - TRAILHEAD TO BIG DRY CREEK**
Crusher fines trail from trailhead at parking lot to Big Dry Creek. Includes bridge at Big Dry Creek and wetland work at Lowell Blvd. and along Big Dry Creek Trail; wetland permitting \$185,206
- 4 TRAIL - LOWELL BOULEVARD TO LOWER POND (SOUTH SIDE)**
Connection to Lowell Blvd. by underpass and trail along south side of ponds \$27,242
- 5 SITE AMENITIES**
Benches and trash receptacles \$5,843
- 6 FARMSTEAD CORE**
First level building stabilization on all structures except pump house. Includes decorative fencing and pedestrian and maintenance gates \$143,315
- 7 SITE SIGNAGE**
Entry, regulatory, and some interpretive signage \$5,194
- 8 INTERPRETIVE SIGNAGE AT FARMSTEAD**
Signs at farmstead (plaques on structures) for self-guided tours \$3,246
- 9 DRYLAND FARMING AT NORTH PASTURE**
The north pasture may remain as grassland or could be converted to dryland farming with some grazing on the eastern portion of the site *No cost*
- 10 TRAIL TO CROFTON PARK**
Crusher fines trail on the existing historic farm access road to the windmill \$2,118
- 11 TRAIL AND OVERLOOK AT CAULKINS DITCH**
Crusher fines trail from farmstead to Caulkins Ditch Overlook. Includes structure at overlook, benches, and trash receptacles \$67,878
- 12 TRAIL TO FEDERAL BOULEVARD UNDERPASS**
Crusher fines trail from Big Dry Creek to existing Federal Blvd underpass \$2,370
- 13 FISHING DOCK AND OVERLOOK**
Fishing dock/small overlook structure at lower pond. Includes trash receptacles \$40,124
- 14 NORTH PASTURE FENCING**
Includes interior site fencing at the north pasture and livestock gate \$30,155
- 15 PICNIC AREA**
Small picnic structure, picnic tables, benches, and trash receptacles \$26,100
- 16 PERIMETER FENCING AT FARMSTEAD** \$42,851
- 17 NORTH LOOP TRAIL**
Trail along the perimeter of the site \$55,348
- 18 PUBLIC ART IF JOINT FUNDING CAN BE OBTAINED IN THE FUTURE**

ESTIMATED COST (AUGUST 2009) - \$779,670

* DENOTES IMPROVEMENTS TO BE COMPLETED IN THE FUTURE WITH SEPARATE FUNDING





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Special Legal Services for Retirement Plan

Prepared By: Kim McDaniel, Retirement Administrator

Recommended City Council Action

Authorize the Finance Director to sign a contract for legal services with Brownstein Hyatt Farber Schreck, LLP, in a form acceptable to the City Attorney's Office, for special legal services including advice pertaining to Qualified Domestic Relations Orders (QDRO) relating to the Retirement Medical Savings Account (RMSA) and other pension related legal issues that may arise.

Summary Statement

- The RMSA established under the City's pension plan is known as a 401(h) under the IRS code. A QDRO is a legal order to split assets, usually as a result of a divorce settlement. Retirement Administration receives QDRO's for participants' accounts in the City's pension plan.
- Pension staff requests the services of an attorney that specializes in pension procedures to assist in reviewing the laws under section 401(h) and how it relates to Qualified Domestic Relations Orders and other legal issues that may arise.
- Staff recommends the City hire the firm of Brownstein Hyatt Farber Schreck, LLP as special legal counsel to provide legal consultation. This firm has served as special legal counsel previously to the City when plan documents needed to be amended and submitted to the IRS for determination letters.
- City Charter Section 4.13(f) requires Council approval of all special legal counsel.

Expenditure Required: Not to exceed \$5,000

Source of Funds: Pension Budget and/or General Fund Central Charges Pension Account, if it is determined that plan documents need to be amended

Policy Issue

Should the City retain special legal counsel to assist with the treatment of the Retirement Medical Savings Account (RMSA) pertaining to Qualified Domestic Relations Orders and other pension related legal issues that may arise?

Alternative

Not hire special legal counsel. This alternative is not recommended given the need for specialized legal services to fully analyze and advise the City regarding the Retirement Medical Savings Accounts and other pension related issues.

Background information

In order to keep the pension plans in compliance under the Internal Revenue Code, Pension Staff requests the services of an attorney that specializes in pension plans not subject to the Employee Retirement Income Security Act of 1974 (ERISA) and public pension law to assist with providing legal consultation regarding various legal issues that may arise for the retirement plans.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: 2010 Water Meter and Meter Parts Purchases

Prepared By: Richard A. Clark, P.E., Utilities Operations Manager

Recommended City Council Action

Upon recommendation of the City Manager, City Council finds that the public interest will best be served by authorizing a negotiated purchase from the sole source provider, National Meter & Automation, Inc. for new water meter replacement transponders, and chambers and disc assembly purchases, in the amount of \$93,780 and cumulative purchases from National Meter & Automation, Inc. in an amount not to exceed \$125,000 for calendar year 2010.

Summary Statement

- The Utilities Division anticipates purchasing meter bodies, transponders, and repair/replacement parts to continue the small meter portion of the meter retrofit program, along with purchasing repair and replacement parts for large water meters.
- Staff is requesting approval to negotiate these purchases from National Meter & Automation, Inc., due to the Badger Orion meter system being a proprietary item and only available from Badger Meter Company through the authorized local distributor, National Meter & Automation, Inc.
- Authorize the purchase of the listed materials for a cost \$93,780.
- Throughout the year, additional ancillary purchases for meter parts, etc., beyond the \$93,780 may be necessary. Staff is requesting authorization for the base purchase of \$93,780 as outlined plus authorization to make purchases as needed throughout 2010 from National Meter & Automation, Inc. not to exceed a total of \$125,000.

Expenditure Required: Not to exceed \$125,000

Source of Funds: Utility Fund – 2010 Utilities Operations Division Budget

Policy Issue

Should the Utilities Division utilize budgeted 2010 operating budget account funds to purchase new meter bodies, transponders, and repair/replacement parts for large meters?

Alternative

An alternative would be to only purchase a portion of the meters, transponders and repair parts and delay the purchase of most of the replacement transponders and parts to next year. This is not recommended as this would delay installing new meter parts, which could lead to problems with the accuracy of the meters.

Background Information

In 2005, the City of Westminster began a series of water meter retrofit programs for the entire City. All existing Badger TRACE water meters were replaced or retrofitted with the new ORION transponder as it is more effective and reliable than the TRACE transponder. Badger water meters have long been established as the City’s standard water meter. National Meter and Automation, Inc. is the western regional Badger Water Meter sole supplier. The meters and transponders furnished by National Meter & Automation, Inc. meet all required specifications set by the City.

Following the installation of all the material in this purchase, only a handful of larger, special purpose meters will continue to use the TRACE system, along with about 800 residential accounts, which will be replaced over the next 2 years.

Cost information is listed below:

Quantity	Item	Unit Cost	Extended Cost
150	Model 25 5/8 x 3/4 x 9 Meter Bodies	\$ 44.76	\$ 6,714
600	Model 25 Orion Transponder Unit	\$126.53	\$ 75,918
	Less Data Profiling		
24	Model 70 Orion Transponder Unit w/ Data Profiling	\$152.01	\$ 3,648
--	Various Large Meter Replacement Parts	--	\$ 7,500
	Total		\$93,780

Staff anticipates purchasing materials throughout 2010 for the base amount of \$93,780, but may have additional needs beyond the base amount. Staff is requesting authority to purchase material up to \$125,000 on an as-needed basis. Material will be ordered and used as required to provide accurate water meter readings. Staff is confident that the pricing provided by National Meter & Automation, Inc. is reasonable and competitive.

The Utilities Operations Division utilizes a variety of waterworks material vendors in providing the needed materials for the water and wastewater operations and programs provided by Division personnel. These on-going purchases include routine, competitively bid items, along with emergency purchases needed to address water or wastewater system critical events. Also, some are sole-source purchases since the needed item(s) are only stocked by limited or sole vendors in our area. All purchases will be made in accordance with the City’s established purchasing procedures, with appropriate approvals at different levels.

The City's approach to these types of collective purchases from a single vendor is to assure that purchases in excess of \$50,000 are identified in advance and brought to City Council for approval. Additional purchases for the year 2010 from National Meter and Automation, Inc. are anticipated to total less than an aggregate \$125,000 for the entire year. Any additional purchase up to this amount will be made in accordance with the City's established purchasing procedures. Any purchase that would exceed this amount will be returned to the City Council for appropriate action.

This purchase helps achieve the City Council's Strategic Plan Goal of "Financially Sustainable City Government" by contributing to the objective of well-maintained City Infrastructure and Facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Purchase of Excess Workers' Compensation Insurance

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will be best served by authorizing the purchase of Workers' Compensation Excess insurance for \$77,034 from the sole responsive bidder, Midwest Employers Casualty Company.

Summary Statement

- City Council action is requested to authorize the expenditure for the 2010/2011 annual premium for excess workers' compensation insurance effective April 1, 2010.
- The City annually purchases specific stop loss insurance to cover the cost of catastrophic on-the-job employee injuries that would exceed the City's self insured amount. This insurance is purchased through a broker, IMA of Colorado, Inc., who will purchase the coverage for the City through Midwest Employers Casualty Company. The recommended quote from IMA for excess workers' compensation coverage through March 31, 2011 is \$77,034.
- The cost of coverage in 2009 was \$76,845. The quote for 2010/2011 of \$77,034 represents an increase in premium of \$189 (less than 0.25%) from 2009. This quote reflects no change from 2009 in the City's excess policy coverage. Although there was no increase to the premium rate, there was a slight increase in exposures causing an increase to the total annual premium.

Expenditure Required: \$77,034

Source of Funds: Workers' Compensation Self Insurance Fund

Policy Issue

Should the City continue to self-insure its workers' compensation coverage, purchasing excess insurance to cover any catastrophic claims?

Alternatives

1. Take on a higher self-insured retention (SIR) per claim of \$375,000 or \$400,000 and maintain the same corridor deductible of \$100,000 for a premium of \$71,763 or \$67,044 respectively. These alternatives are not recommended due to a Workers' Compensation law enacted in 2007 that created an increased risk to the City of experiencing a claim that could exceed the City's current retention.
2. Consider fully insuring the City's Workers' Compensation Insurance Program. This alternative is not recommended due to the almost certain increase in expense and the reduction in the City's ability to manage claims.

Background Information

The Risk Management Staff completed and submitted the application for excess workers' compensation coverage to IMA of Colorado, Inc. in mid February 2010. IMA, acting as insurance broker on behalf of the City, then sought proposals on the open insurance market for this coverage. They received responses from only two carriers and submitted their renewal proposal to the City's Risk Management Officer on March 9.

The City currently self-insures the first \$350,000 of each workers' compensation claim with an additional corridor deductible of \$100,000. This high retention type of program allows for more control over claims handling and payment and reaps immediate rewards from the City's loss control and safety programs. By self-insuring, the City also avoids some of the increases in premiums that continue to affect the government entity insurance market.

The City's broker received two responses on behalf of the City, but reported only one quote. Midwest Employers Casualty Company quoted a flat rate from last year's quote with a bid of \$77,034. Safety National Casualty Company responded that they would not quote anything below a \$400,000 self-insured retention program. Staff is comfortable remaining with the incumbent carrier, Midwest Employers, based on the reasons provided below:

- Continuing a relationship with one carrier can benefit the City on future years' quotes. The City has been with Midwest Employers for five years, and they know our safety programs and loss history well.
- The Midwest policy includes a blanket waiver of subrogation. This means that they permit the City to relinquish any rights the City might have to collect from another party for damages when it is required by contract.
- The Midwest policy does not include a commutation clause that many policies have. Commutation is the right of a carrier to value an open claim after the policy expires and pay that amount to the insured, thereby releasing the carrier from any further liability for the claim.
- The Midwest policy includes a Cash Flow Endorsement which, in the case of a catastrophic claim, would allow the City to spread its payments out over time with the excess carrier assisting with cash advances.
- Midwest Employers also offers the City several loss control resources such as on-line training and Best Practice seminars, as well as benchmarking reports, that Staff has found very helpful over the last five years.

In 2006, the City added a corridor deductible of \$100,000 to the self-insured program. This deductible would be payable by the City if any claims exceed the City's current retention limit but would be aggregate on all claims. Once the first \$100,000 over \$350,000 was paid it would be satisfied for the year and the excess carrier would pick up dollar one over \$350,000. Although Midwest Employers has offered two other options for decreasing the 2010/2011 premium by increasing the self-insured retention limit per claim, Staff believes the City should maintain its current retention and deductible. With the passage of HB07-1008 that created a presumption that cancer in a fire fighter with a career of five or more years is work related and covered under the Workers' Compensation program, the City's risk of having a claim that goes over the City's self-insured retention limit is greater.

Given that the quote was based on the same rate the City received in 2009 and that the slight increase is in direct relation to the estimated increase in payroll exposure for the City in 2010/2011, Risk Management Staff is pleased with the renewal terms.

The Risk Management program addresses Council's Strategic Plan goals of "Financially Sustainable City Government" by working to mitigate the cost of insurance to the City by maintaining a loss control program to continually improve the City's loss history.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: City Park Playground Construction Contract

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Authorize the City Manager to execute a contract with Goodland Construction Inc., in the amount of \$66,307 for construction of the City Park Playground site work and authorize a contingency amount of 10% or \$6,600; authorize Staff to purchase playground equipment from Columbia Cascade in the amount of \$100,550; authorize Staff to purchase two shelters from ICON in the amount of \$62,311; and authorize Staff to purchase site amenities (benches, trash receptacles, tables, surfacing) in the amount not to exceed \$114,232 with various vendors for a total project cost of \$350,000.

Summary Statement

- City Park Playground is to be located at 14075 Sheridan Boulevard (see attached location map).
- In October 2010, City Council authorized Staff to apply for a Jefferson County Joint Venture grant in the amount of \$150,000. The full amount was awarded by the Jefferson County Open Space Board in January 2010.
- Bids were solicited from three reputable construction companies, with Goodland Construction Inc. submitting the lowest bid of \$66,307 for the playground site work.
- Goodland Construction, Inc., has successfully completed construction projects for the City in the past including the Armed Forces Tribute Garden.
- Bids were also solicited from four playground equipment vendors. While not the low bid, Columbia Cascade’s design best met the barn design theme and accommodated a variety of age groups within the play area. Heavier gauge posts will also help withstand the activity use the play equipment is expected to receive at the City Park location.
- Although not the lowest bidder for shelters, ICON Shelter Systems, Inc., was able to provide a unique column design that will complement the overall playground design. No other company solicited provided this type of column design. The general contractor will install the shelters as part of their contract.
- As part of phase two, Staff will be soliciting bids for various amenities (trash cans, benches, tables, play surfacing and miscellaneous play pieces) that will complement the major elements of the park’s farm theme with the remaining project funds. This phase will be in conjunction with the site construction and appear seamless to the public. It is anticipated that these amenities will cost less than the \$50,000 threshold requiring City Council authorization.
- Construction of this project, weather permitting, is anticipated to be substantially completed by the 4th of July, 2010. If not, the area will be secured so as to not disrupt the July 4th fireworks celebration

Expenditure Required: \$350,000

Source of Funds: General Capital Improvement Fund
– City Park Playground Project, including Jefferson County Joint Venture Grant

Policy Issue

Should the City proceed with construction of the City Park Playground?

Alternatives

City Council could choose to not authorize the construction of the City Park Playground and decide to utilize the funds to develop another project. Staff does not recommend this option, as this project is identified as a priority in the Parks and Recreation Master Plan and a Jefferson County Joint Venture grant has been awarded to the City for this project.

Background Information

The City Park Playground site is approximately one acre in size. The site will include a farm theme playground for a variety of ages, along with poured-in-place safety surfacing, benches, and picnic tables. (See attached “City Park Playground Site Plan”) The site would be utilized year round by children and also be a welcomed addition to the City’s summer playground program.

Bids were solicited for the site work phase of this project from three construction companies. The bids include demolition, survey, concrete work, shelter construction, irrigation and planting. The site construction bid breakdown is as follows:

Goodland Construction	\$66,307.00
Arrow J Landscape-Design, Inc.	\$69,706.69
T2 Construction	Did not bid

Staff also solicited bids for play equipment from four companies. Each company was asked to provide a custom farm-themed design for the area along with installation costs. Because each company has components unique only to their equipment, Staff evaluated the submittals on overall design, playability, use by age groups, and durability of play equipment materials. While not the low bid, Staff recommends purchasing the play equipment from Columbia Cascade as it best meets the criteria noted. The play equipment will meet all necessary American with Disabilities Act (ADA) requirements.

Play Equipment Bids:

Little Tykes	\$65,568
Landscape Structures Inc.	\$95,212
Columbia Cascade	\$100,550
Gametime	\$112,071

The shelters for this project will be two 24’ x 24’ structures with a metal standing seam type roofs. Three companies were solicited to submit a bid. Similar to the play equipment, shelter manufactures do not have the same type of components. While not the low bid, Staff recommends the ICON Shelter Systems as the preferred shelter for this site because of their unique quad columns, fascia details and roof ornamentation that will be both compatible and compliment the farm theme for the playground.

Poligon	\$57,854
RCP	\$61,078
ICON	\$62,311

SUBJECT:

City Park Playground Construction Contract

Page 3

As a cost-saving measure, with the remaining funds of \$114,232, Staff will purchase miscellaneous amenities for the site including: individual play pieces, benches, tables, trash cans, and poured in place safety surfacing. Many of these items will be installed by City crews, saving the City a significant amount in contracted labor costs and contractor mark ups. Bids for these pieces will be solicited, where applicable, from a variety of companies to ensure that the pricing is competitive and will follow the City's purchasing policy. Staff does not anticipate that any individual purchase will exceed the \$50,000 threshold requiring City Council authorization. Therefore, with this requested City Council action, Staff is requesting authorization to spend the full project budget totaling \$350,000, which includes the three solicited bid items outlined in the agenda memorandum.

This project meets City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services," "Vibrant Neighborhoods and Commercial Areas," and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

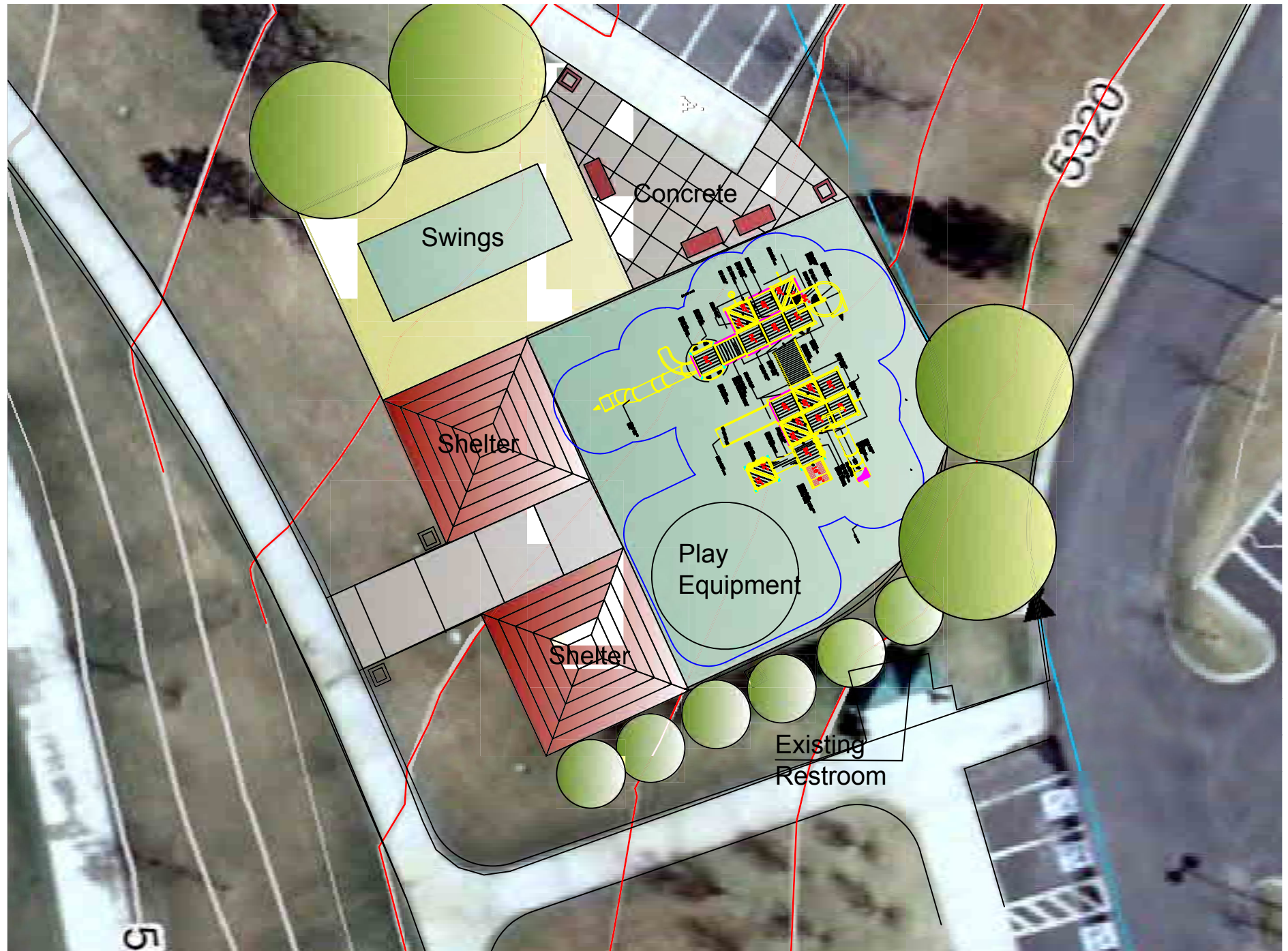
J. Brent McFall
City Manager

Attachments

City Park Playground Location Map



City Park Playground Site Plan-Play equipment is for representation only





Agenda Item 8 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Wolff Run Park Renovations Construction Contract

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

Recommended City Council Action

Authorize the City Manager to execute a contract with Goodland Construction Inc., in the amount of \$47,080 for the renovation of the basketball court and repairs to the retaining walls at Wolff Run Park, and authorize a 10% contingency fund, for a total amount of \$51,788, and charge the expense to the capital improvement project account designated for Park Renovations in Adams County.

Summary Statement

- Wolff Run Park, located at 4705 W. 76th Avenue (see attached location map), was constructed in 1980. Over the past 30 years, the basketball court within the park has been resurfaced with asphalt on two different occasions. The surface of the court is in poor condition and a third layer of asphalt resurfacing is neither practical nor long-lasting.
- Bids for the basketball court replacement were solicited from three construction companies and two of these companies chose to submit bids, with Goodland Construction Inc. offering the lowest bid for the work.
- The project scope also includes repairs to the concrete-block retaining walls and a small amount of concrete replacement in the picnic area due to cracking in aged slabs.

Expenditure Required: \$51,788

Source of Funds: General Capital Improvement Fund
- Park Renovation Account for Adams County

Policy Issue

Should the City continue with the renovations of the basketball court, repair the retaining walls, and replace cracked concrete in the picnic area at Wolff Run Park?

Alternatives

1. City Council could choose to not authorize the renovations at Wolff Run Park. Staff does not recommend this, as the quality of the court area is very poor in unsafe condition because renovation has been delayed in previous years. Award of this contract will provide opportunities for vandalism prevention by securing existing concrete block more permanently. There are also hazards that need to be addressed with regard to retaining wall integrity and concrete cracking to ensure the safety of the playground users.
2. City Council could direct Staff to reduce the scope of the project with decreased funding. Staff does not recommend this option as the lowest bid received for the work is very competitive and the City has the opportunity to repair a number of features at the park for a very reasonable price.

Background Information

Wolff Run Park, located at 4705 W. 76th Avenue (see attached location map), was constructed in 1980. Over the past 30 years, the concrete basketball court within the park has been resurfaced with asphalt twice. The surface of the court is in poor condition and a third layer of asphalt resurfacing is neither practical nor long-lasting.

The Department of Parks, Recreation and Libraries identified the need for complete replacement of the basketball court at the park in 2008. Due to other project priorities, work at Wolff Run Park had been set aside until 2010 when funding earmarked specifically for Adams County-based park renovation projects became available.

The scope of this project includes demolition of the existing court and complete replacement with a post-tension slab court of the same size, with a two-foot shoulder. The court will be painted and striped, and new basketball goals will be installed as well. In accordance with the City's environmental goals, demolition debris from the court will be recycled by the contractor with a local recycling company. In the event the two layers of asphalt do not easily separate from the concrete slab underneath, the contract includes a \$1,885 allowance for milling of the surface to separate the two materials and allow for proper recycling.

Other necessary work to be performed by the contractor includes repairs to the concrete block retaining walls located throughout the northern and southern ends of the park. The retaining wall caps are subject to heavy abuse from park users, who kick them free and either break them or use them to break other elements in the park. The cap stones will be more permanently secured to help deter vandalism. Other portions of wall require rebuilding due to deflections in the wall. These sections will be reset with a flush face and geotextile fabric behind to reduce the possibility of further wall movement in the future. The cost for this work by the contractor is \$35 per face foot (f.f.), and the estimated cost for the work at the time of contract award is \$4,200.

Finally, a small amount of concrete replacement in the picnic area due to cracking in aged slabs is included in the project scope. This cracking is likely due to settlement throughout the past 30 years and poses a tripping hazard within the barbecue area. The concrete area is approximately 200 square feet, and the cost for this work included in the contract is estimated at \$980. At a later date, miscellaneous painting of site amenities will be performed by another contractor to address some of the blemishes to features that are in otherwise good structural condition.

Bids for the construction work were solicited on February 5, 2010, from three construction companies. The bids were requested simultaneously with the City Park Playground Construction Project in the event that combining the work together could save overall cost. Two companies chose to submit bids, which were received on February 26, 2010, and are as follows:

Goodland Construction Inc.	\$47,080.00
AJI	\$65,667.99
T2 Construction	No Bid

This project meets City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Map

WOLFF RUN PARK
4705 W. 76th Ave, Westminster, CO





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Osceola Street and Perry Street Sewer Replacement Construction Contract and Design Contract Amendment

Prepared By: Michael Wong, Senior Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder, New Design Construction Company, in the amount of \$380,875 for construction services related to the Osceola Street and Perry Street Sewer Replacement, and authorize a 15% contingency of \$57,131 for a total project cost of \$438,006. Authorize an amendment to URS Corporation for the design and construction management contract in an amount not to exceed \$25,000 for additional construction management services.

Summary Statement

- City Council is requested to approve a contract with the lowest bidder, New Design Construction Company, for the construction of the Osceola Street and Perry Street Sewer Replacement.
- The project includes installation of 2,300 feet of 10-inch PVC sewer pipe, manholes and appurtenances.
- The existing sewer needs to be replaced because it has poor hydraulic grade that causes sewage backups in the pipeline and manholes.
- Sewer replacement will improve the sewer capacity, minimize operation and maintenance costs and eliminate the risk to public health and safety due to sewage backup.
- Duration of project construction increased from 90 days to 120 days resulting in the need for additional construction management services from URS Corporation.
- An amendment to the existing contract with URS Corporation has been negotiated to cover the cost for additional construction management services.
- Construction is scheduled to be completed this summer.
- Adequate funds are available in the project budget to cover the construction costs.

Expenditure Required: \$463,006

Source of Funds: Utility Fund Capital Improvement – Open Cut Sewer Replacement

Policy Issues

Should City Council authorize a contract with New Design Construction Company?

Should City Council authorize an amendment to the URS Corporation contract for additional construction management services?

Alternatives

The City could choose from the following alternatives:

1. Reject all bids and rebid the project. The City received bids from twelve construction companies, and it is unlikely that new bids would be lower or the City would receive additional qualified bids. The low bid is well below the engineer's estimate for construction.
2. Reject Staff recommendation to enter into a contract with New Design Construction and leave the sewer as is. The existing sewer has poor hydraulic grade that occasionally causes sewage backup in the pipeline and manholes. Continued operation of the Osceola Street and Perry Street sewer under current conditions will risk public health and safety.
3. Reject the URS Corporation contract amendment and bid the additional construction management services. Staff does not recommend this alternative as URS Corporation completed the design of the project, is familiar with construction site requirements and is qualified to perform construction management services.

Staff does not recommend any of these alternatives since the bids are competitive, the work is needed to address a public health and safety risk, and there is adequate funding to complete the construction project.

Background Information

The area served by the existing Osceola Street and Perry Street sewer is located in a fully developed residential area (see attached map). The service area is relatively flat. Constructed in the late 1970s, the existing sewer has poor hydraulic grade and requires cleaning and flushing on a weekly basis. The 2006 Infrastructure Study Report identified and recommended certain improvements to the existing sewer within the service area to eliminate the risk to public health and safety due to sewage backup.

In 2009, URS Corporation was retained for the engineering design and construction phase services. The project will replace the existing sewer from 95th Avenue and Osceola Street to 94th Avenue and Perry Street with 2,300 feet of 10-inch PVC pipe to improve the hydraulic grade and capacity to better serve this part of the residential area. The Osceola and Perry Sewer Replacement was made possible when Staff eliminated the 94th and Quitman Lift Station in 2009.

A pre-bid conference was held on January 27, 2010, with interested construction contractors to clarify scope of work, project schedule, and jobsite safety. Bids were publicly opened and read on February 9, 2010. Twelve (12) bids from local construction companies were received by the City of Westminster.

The following is a tabulation of the bids and the Engineer’s estimate:

<i>Contractor’s Base Bid with Alternate A</i>	
Brannan Companies	\$304,698 <i>(withdrawn due to bid error)</i>
New Design Construction	\$380,875
BT Construction	\$389,735
JBS Pipeline Contractors	\$397,707
KR Swerdfeger Construction	\$399,383
Arapahoe Utilities & Infrastructure	\$410,277
T. Lowell Construction	\$419,400
Duran Excavating	\$421,535
Farmer Enterprises	\$435,780
Nelson Pipeline Constructors	\$478,265
Diamond Contracting	\$519,778
R&D Pipeline Construction	\$573,164
<i>Engineer’s Estimate</i>	<i>\$717,904</i>

On February 10, 2010, Brannan Companies notified the City in writing that their bid submitted on the bid opening date of February 9, 2010, had substantial errors in it due to a computer software crash. Brannan Companies was allowed to withdraw its bid, and Staff is recommending awarding the contract to the lowest responsive bidder, New Design Construction Company.

Normally a ten (10) percent contingency would be requested for this type of CIP construction projects; however, Staff is recommending a fifteen (15) percent contingency for the Osceola and Perry Sewer Replacement because part of the pipe trench is in excess of 20 feet deep on tight residential streets. The additional contingency allows for extra backfill material, trench dewatering, utility relocation and traffic control if necessary.

After a thorough review of the statement of qualifications and other references provided by New Design Construction, URS Corporation and Staff are confident that the contractor is qualified to perform the Osceola Street and Perry Street Sewer Replacement project. New Design Construction is currently working on the City’s Lowell Boulevard Streetscape. The project is scheduled to be completed in May 2010.

URS Corporation (URS) was retained for the design and construction of the Osceola Street and Perry Street Sewer Replacement as the second phase of the completed 94th Avenue and Quitman Street Lift Station Elimination project. The award of URS Corporation’s contract in the amount of \$74,612 was approved by City Council on July 13, 2009. In its 2009 proposal, URS estimated the construction duration to be 90 days. During design, it was found necessary to further lower the replacement sewer to improve the hydraulic grade, resulting in pipe trench depth in excess of twenty feet in some areas. As a result, construction was delayed until this spring and construction duration increased to 120 days to allow the contractor adequate construction time for the deep trench excavation. The proposed number of hours for office administration and field inspection in URS Corporation’s 2009 contract increased accordingly in the contract amendment to provide adequate coverage during construction. In addition, the hourly labor rates for URS employees working on this project have been increased by 2 percent from 2009 to 2010. A not to exceed \$25,000 amendment to the engineering contract with URS Corporation has been negotiated and is recommended by Staff.

SUBJECT: Osceola and Perry Sewer Replacement Construction Contract

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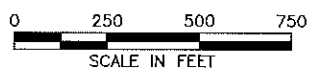
The Osceola Street and Perry Street Sewer Replacement project helps achieve the City Council's Strategic Plan goals of "Safe and Secure Community" by improving public health and Staff safety and "Financially Sustainable City Government" by contributing to the objective of well-maintained City facilities.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Location Map of Osceola and Perry Sewer Project Site

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Job No. : 22241053
Prepared by : MCR
Date : 3/3/2010

CITY OF WESTMINSTER
OSCEOLA AND PERRY
SEWER REPLACEMENT
PROJECT LOCATION MAP



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Big Dry Creek Wastewater Treatment Facility Renovation and Expansion Project
Construction Contract Change Order

Prepared By: Mike Happe, Utilities Planning and Engineering Manager
Kent W. Brugler, Senior Engineer

Recommended City Council Action

1. Authorize the City Manager to execute a final change order with Lillard & Clark Construction Company, Inc. in the amount of \$2,100,000 for the construction of the renovation and expansion of the Big Dry Creek Wastewater Treatment Facility, representing a final Guaranteed Maximum Price contract amount of \$40,975,000.
2. Authorize the transfer of \$800,000 from three existing utility fund capital improvement accounts where savings from completed projects remain, to the Big Dry Creek Wastewater Treatment Facility Upgrade and Expansion capital account.

Summary Statement

- City Council authorized the Construction Manager/General Contractor (CM/GC) contract with Lillard & Clark Construction Company, Inc. (Lillard & Clark) on July 25, 2005 in the amount of \$38,875,000 for the upgrade and expansion of the Big Dry Creek Wastewater Treatment Facility (BDCWWTF), along with a net construction contingency of \$577,750 (1.5%).
- Construction of the improvements at the BDCWWTF has reached final completion and Staff is preparing to close out the project with Lillard & Clark.
- During construction, Staff approved a number of additions to the project which increased the cost by the amount of \$2,100,000. Staff recommends that a final change order in the amount of \$2,100,000 be approved in order to adjust the final CM/GC Guaranteed Maximum Price contract value to \$40,975,000.
- The CM/GC contract includes a provision that any savings that are realized during the construction of the project be shared equally between the City and Lillard & Clark. The total shared savings amounted to \$1,989,252, and Lillard & Clark's share is \$994,626, which serves as an offset to the changes approved by Staff. The final payment due to Lillard & Clark, including the shared savings and the remaining contract work, is \$1,100,000.
- Considering the City's share of the savings in the amount of \$994,626, the actual construction cost is reduced to \$39,980,375, representing a construction cost increase of 2.8%.
- Staff is requesting that additional funding in the amount of \$800,000 be transferred to the project in order to fund all of the final project expenses. This funding is available from surplus appropriated funds that remain from other completed Utility Fund Capital Projects and have not been used.

Expenditure Required: \$800,000

Source of Funds: Utility Fund Capital Improvement Projects:
- 94th & Quitman Lift Station Elimination
- Hyland Village Sewer Upsizing
- Big Dry Creek Inflow & Infiltration Improvements

Policy Issue

Should the City approve a final change order with Lillard & Clark Construction Co., Inc. in the amount of \$2,100,000 and authorize additional funding in the amount of \$800,000 for the project?

Alternative

The City could choose to not approve this final change order with Lillard & Clark. Staff does not recommend this alternative as this change order represents costs that were necessary for the completion of the project.

Background Information

In 2001, it was determined that the Big Dry Creek Wastewater Treatment Facility (BDCWWTF) was in need of renovation and expansion to accommodate increasing sewer flows due to population growth. The expansion would need to accommodate the City's build-out conditions, improve the efficiency and reliability of the treatment process, meet current and future regulatory discharge standards, and replace aging equipment that had reached its useful life. The upgrade effort began with preplanning in 2002, and construction was completed in 2009. The expansion project was very complicated because every treatment process needed to be overhauled while the plant operated continuously and met all regulatory requirements. Staff recognized the potential for encountering significant challenges during construction, and recommended that the City hire a general contractor during the design phase to provide design assistance, identify ways to reduce costs, provide input on constructability, establish the sequence of work and participate in value engineering. Lillard & Clark Construction Company, Inc. was chosen through a competitive process to provide all these services and to establish a cost basis to determine the construction value of the project. Lillard & Clark did an excellent job during the design phase and identified several areas where the City could save money and avoid constructability and sequencing problems during construction.

Camp Dresser and McKee, Inc. was competitively selected to complete the design of the project and Lillard & Clark provided construction manager/general contractor (CM/GC) services during the design phase. At the completion of the design phase, Lillard & Clark and the City then negotiated the Guaranteed Maximum Price for the construction of the project, based on the actual cost of the work and construction phase expenses and overhead and profit mark-ups that Lillard & Clark provided during the competitive selection process. As an incentive to continue to identify cost savings during the construction process, it was agreed that any cost savings realized at the completion of the project would be shared equally between the City and Lillard & Clark.

City Council awarded the CM/GC contract to Lillard & Clark on July 25, 2005 in the amount of \$38,875,000 and authorized a construction contingency in the amount of \$577,750 (1.5%). The construction phase of the project reached final completion on October 22, 2009, and the project is now in the warranty phase. Staff and Lillard & Clark have finalized the total construction costs and determined the value of the final change order for the contract. The CM/GC contract includes a provision that allows for any cost savings that were realized during the course of the contract, due to labor or material cost savings, to be shared equally between the City and Lillard & Clark. During the project, initial indications identified some significant cost savings that would balance out any additional costs later added to the project. Therefore, additions to the project were authorized, and the final project cost accounting shows that there were additions to the scope of work that totaled \$2,100,000, bringing the new contract amount to \$40,975,000. These additions included work such as the remodeling of the Water Quality building, additional potable water line replacement, additional asphalt paving and curb and gutter replacement, and other improvements to the infrastructure that were found to be in worse shape than originally anticipated.

During construction, the entire project team worked diligently to find ways to generate cost savings to offset some of the added costs, which resulted in a total savings amount of \$1,989,252. In accordance with the terms of the contract, the City and Lillard & Clark share these savings equally, with each share amounting to \$994,626. Therefore, the net construction cost to be paid by the City to Lillard & Clark is reduced from \$40,975,000 to \$39,980,375. This represents an increase of \$1,105,375 (2.8%) over the original contract amount of \$38,875,000. Staff recommends that City Council approve a final change order to Lillard & Clark’s contract in the amount of \$2,100,000, resulting in a final payment due to Lillard & Clark of \$1,100,000, which includes their share of the savings and the remaining value of contract work completed.

Currently, \$300,000 remains in the construction contingency account for this project. In order to fund the final construction costs and shared savings payment to Lillard & Clark, an additional \$800,000 must be appropriated to the project account. Over the last year, the City has realized significant savings on several completed Utilities projects that exceed the \$800,000 needed to close out the BDCWWTF project. As a result, the additional costs for the BDCWWTF project can be covered by savings from other projects, and it will not be necessary to draw from the Utility Capital Project Reserve Fund. Therefore, Staff also recommends that City Council authorize the transfer of \$800,000 from the following existing capital project accounts where savings from completed projects remain:

94 th & Quitman Lift Station Elimination:	\$583,730
Hyland Village Sewer Upsizing:	\$140,000
<u>BDC Inflow and Infiltration Improvements:</u>	<u>\$ 76,270</u>
Total:	\$800,000

Considering the complexity and scope of the expansion and upgrade project and the fact that the project went forward with a 1.5% contingency, Staff believes this is a good outcome. The Big Dry Creek Wastewater Treatment Facility Upgrade and Expansion Project has been a great success, creating a state of the art facility that will serve the City through build out and meet regulatory requirements for years to come.

This project achieves City Council’s Strategic Plan Goal of “Financially Sustainable City Government” by contributing to the objective of a well-maintained City infrastructure and facilities.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 J

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Governor's Energy Office Contract to Manage and Administer the EECBG Residential Energy Rebate Program on behalf of the City of Westminster

Prepared By: Tom Ochterski, Energy & Facilities Project Coordinator
Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Authorize the City Manager to sign a contract in substantially the same form as attached with the Governor's Energy Office to manage and administer the Energy Efficiency and Conservation Block Grant (EECBG) funded Residential Energy Rebate program on behalf of the City of Westminster.

Summary Statement:

- Per the City's Energy Efficiency Conservation Strategy (EECS) adopted by Council in June 2009, a partnership with the State of Colorado's Governor's Energy Office (GEO) was formed to administer the residential energy efficiency program.
- This program uses funds awarded through the EECBG grant to offer financial incentives to Westminster homeowners for making insulation and equipment improvements to their homes.
- The contract under consideration formalizes the processes and procedures relating to the execution of the residential rebate program between the City and GEO.
- City Staff is proposing that the City to enter into an agreement with the GEO for the administration and distribution of funds associated with the Residential Energy Rebate portion of City-awarded EECBG funds. Staff requests approval of the contract in substantially the same form as attached by March 23 in order to remain on schedule for GEO's Residential Energy Rebate Program launch at the end of March and be included in this year's program administered by the GEO.

Expenditure Required: \$100,800

Source of Funds: EECBG funds in the General Capital Improvement Fund

Policy Issue

Does City Council concur with the proposed contract with the Governor's Energy Office in substantially the same form as attached?

Alternative

Do not proceed enter into a contract with GEO to administer the Residential Energy Rebate program on behalf of the City of Westminster. This is not recommended as administering the Residential Energy Rebate programs internally would consume a significant amount of City Staff time and likely result in reduced rebates to residents. By streamlining the processing of rebates, the City affords more opportunity for the funds to be allocated directly to participating Westminster residents as well as allows more residents the opportunity to receive rebates due to the GEO matching funds and increasing the number of rebates available to Westminster residents.

Background Information

On September 30, 2009 the City was officially awarded funds by the US Department of Energy (DOE) under the Energy Efficiency and Conservation Block Grants program funded by the American Recovery and Reinvestment Act of 2009. DOE awarded the grant funds based on the City's proposed Energy Efficiency and Conservation Strategy (EECS) approved by Council on June 8, 2009. Within the proposed EECS approved by DOE, a portion of funds were designated for six Residential Energy Rebate programs in partnership with the Governor's Energy Office and Xcel Energy Corporation.

On February 9, 2010, City Staff proposed a project activities amendment to DOE combining the six residential project activities into one project activity for Residential Energy Rebate Program. The combination of these programs was sought in order to streamline the DOE quarterly reporting requirements as well as allow for increased flexibility in financing the more popular residential rebate programs. This amendment did not change the City Council approved EECS but rather simplified the reporting required by DOE (i.e., the six residential rebates proposed are included within the combined amendment). This amendment was approved by DOE on March 3, 2010.

The Residential Energy Rebate program taps three programs proposed by the GEO for energy efficiency improvements for residential structures. The three programs, which were separated further between Xcel Energy and non-Xcel Energy territory in the City's original EECS (thus making a total of six project activities to be reported on versus three), roll up into the one project activity reported to DOE in the recently approved amendment noted above. The three GEO programs are residential home audits, Insulate Colorado, and furnace rebates. These programs listed below are open to all homeowners residing within the City of Westminster's jurisdictional boundaries, regardless of their energy provider. [For more specifics on the basic criteria and rebate calculations proposed with this contract, please see Exhibit B of the proposed contract attached.]

- Home Audit: These auditors will provide a full home energy audit (including blower door and infrared camera). The cost will be subsidized by the City, GEO, utility provider, and the utility customer, or any combination of these. This project will be ongoing throughout the 3-year term until the funding is exhausted. In the GEO proposed program, the rebates range from \$25 to \$100. (In the City's original EECS, this program was separated into two projects, one in Xcel Energy territory and one in non-Xcel Energy territory.)
- Insulate Colorado: The program provides a rebate of 40% of the total job cost up to \$600 to homeowners that insulate and air-seal their attics and exterior walls to the recommended R-Values presented in the 2009 International Energy Conservation Code. Do-it-yourself projects are not eligible for this rebate. (In the City's original EECS, this program was separated into two projects, one in Xcel Energy territory and one in non-Xcel Energy territory.)

- **Furnace Rebate:** The City is partnering with the GEO to provide an incentive for customers in the City to purchase and install a new, high efficiency furnace, boiler, or heat pump. The purchased and installed equipment must meet the Gas Appliance Manufacturer's Association (GAMA) certification. Direct to consumer rebates are for the installation of a furnace with an Annual Fuel Utilization Efficiency (AFUE) of 92% or greater, Energy Star certified, and that also include variable speed fan motor to reduce the amount of electricity used to power the motor. Do-it-yourself projects and out-of-state and on-line purchases are not eligible for this rebate. (In the City's original EECS, this program was separated into two projects, one in Xcel Energy territory and one in non-Xcel Energy territory.)

The attached proposed contract provides for the administration by the Governor's Energy Office of these residential programs, including the processing of applications, issuance of payment, verification, and some promotion through a third party administrator contracted by the GEO. A coordinated effort through the GEO is important to minimize confusion in the public about what rebates are available and maximize these resources encouraging energy efficiency within the residential sector. In addition, by having a third party administrator through the GEO manage the program, it reduces the amount of City Staff time required in administering this program. The City will assist by providing further informational promotions within Westminster and provide verification that applicants for rebates reside within the City boundaries. The GEO is utilizing a portion of their EECSBG allocation to cover the costs of a third party administrator, so all of the City's funds proposed for this rebate program will be utilized for actual rebates to residents. In Exhibit B, references are made to renewable energy rebates; the City of Westminster did not include these types of rebates in the EECS approved by DOE and are not applicable for the City's allocation of EECSBG funds. Westminster residents may still be eligible for the State program; Staff is working on these details with the GEO and will make that information available on the City's website when the City's program is posted.

Staff believes that the achievements made possible by this rebate program and the corresponding recommendations will reduce energy consumption and demand, whereby creating sustainable, ongoing energy savings. In addition, Staff believes that contracting with GEO for the administration of the residential rebate program will reduce redundancy of administrative tasks on the City and State levels and provide a one stop resource for residents to maximize their rebates. The duration of the contract under consideration is for the remaining three years of the EECSBG funding schedule or until all EECSBG funds appropriated to the Residential Energy Rebate program have been exhausted, whichever comes first. The amount appropriated to the Residential Energy Rebate program through the City's EECS totals \$100,800 of EECSBG funds. No additional City funds are required or proposed.

The GEO is working to launch the Residential Energy Rebate Program statewide by the end of March. In order to remain on schedule and for the City of Westminster to be included within this year's GEO administered program, the proposed contract needs to be approved by March 23.

The administration of the Residential Energy Rebate Program with the use of EECSBG funds directly relates to the City Council's Strategic goal of a "Financially Sustainable City Government Providing Exceptional Services" by providing residents with help in funding energy efficiency measures within their homes that will result in significant long-term energy savings. In addition, these efforts coincide with global efforts to reduce dependence on fossil fuels, which is in line with Council's goal of "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

**STATE OF COLORADO
GOVERNOR'S ENERGY OFFICE
CONTRACT
with the
City of Westminster**

1. PARTIES

THIS Contract is entered into by and between City of Westminster (hereinafter called "Contractor"), and the STATE OF COLORADO acting by and through the Governor's Energy Office (hereinafter called the "State").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Contract shall be effective and enforceable when approved and signed by both the State and Contractor (hereinafter called the "Effective Date").

3. RECITALS

A. Authority, Appropriation, And Approval

Authority for the agency entering into this Contract arises from CRS §24-38.5-101, et seq. and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

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

4. DEFINITIONS

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

A. Compensation

"Compensation" means the funds payable to the State by Contractor for performance of its obligations hereunder.

B. Contract

"Contract" means this contract for Goods and Services, its provisions, attached exhibits, documents incorporated by reference under the terms of this Contract and any future modifying Contracts, exhibits, attachments or references incorporated pursuant to State Fiscal Rules and Policies.

C. Customer

"Customer" means the recipient of any rebate offered by the GEO.

D. EECBG

"Energy Efficiency and Community Block Grant (EECBG)" means "entitled" Colorado cities, counties, and Indian Tribes that received a direct allocation of EECBG funds from the Department of Energy.

E. Exhibits

The following exhibits are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work) and **Exhibit B** (Pricing).

F. Goods

“Goods” means any physical item used, produced, or manufactured either separately or in conjunction with the Work performed and Services rendered hereunder.

G. Parties

“Party” means the State or Contractor and “Parties” means both the State and Contractor.

H. Project

“Project” means the activities described in the Recitals and/or Statement of Work sections hereof.

I. Services

“Services” means services performed or tangible material produced or either separately or in conjunction with the performance of Work obligations hereunder.

J. Subcontractor

“Subcontractors” means third-party vendors, if any that provide goods and/or services.

K. Work

“Work” means the tasks the State is perform in order to fulfill its obligations under this Contract.

5. TERM and EARLY TERMINATION

A. Intial Term-Work Commencement

The Parties’ respective performance under this Contract shall commence on the Effective Date. This Contract shall terminate on December 31, 2010 or Project completion, except as sooner terminated or further extended as specified elsewhere herein.

B. Early Termination

This Contract may be subject to early termination in accordance with the provisions of this Contract. Notwithstanding anything to the contrary herein, the parties reserve the right to terminate this Contract at any time after 30 days’ prior written notice.

6. STATEMENT OF WORK

On or before December 31, 2010 the State shall complete the Work described in **Exhibit A**, Scope of Work.

7. PAYMENTS TO THE STATE

The State shall be compensated as follows:

A. Basis and Maximum Amount

Contractor shall pay the State for its Services and its costs in accordance with **Exhibit A** and **Exhibit B**. The total cost for the Work shall be based upon the total and aggregate cost for all programs (materials and supplies). The maximum amount payable under this Contract to the State by the Contractor shall not exceed \$100,800

B. Payment

i. Method and Time

The State shall periodically submit invoices to Contractor in the form and manner approved by Contractor. The State shall submit invoices within 60 days after the end of the period for which payment is requested, and final billings on this Contract must be received by Contractor within 60 days after termination hereof. Contractor shall make payment in full with respect to each invoice acceptable to it within 20 days of receipt, after which uncontested unpaid amounts shall bear interest at a rate of one percent per month. Interest shall not arise if a good faith dispute exists as to the Contractor’s obligation

to pay all or a portion of an invoice. The State shall invoice the Contractor separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate.

C. Contingency

The Contractor's payment obligations under this Section 7 are limited by and to the EECBG funds actually received by Contractor from the federal EECBG program. State shall have no other recourse against the City or any other City revenues or funds.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Acknowledgement

The parties acknowledge that either party may become privy to confidential information in connection with this Contract, including, but not limited to records, personnel records, and information concerning individuals, which is obtained by either party in furtherance of this Contract after the Effective Date ("Confidential Information").

B. Confidentiality

It shall be the parties' responsibility to keep each other's records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information to the same extent applicable to either party. Any request or demand for information in the possession of either party made by any third party shall be immediately forwarded to the principal representative of the party whose information is being requested for a resolution of the request.

C. Notification

The Parties shall notify any of its agents, employees, sub-contractors and assigns who may come into contact with Confidential Information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access information.

D. Use, Security, and Retention

No Confidential Information shall be distributed or sold to any third party or used by either party or its agents in any way, except as authorized by the Contract. The parties shall provide and maintain a secure environment that ensures confidentiality of all records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by either party or its agents, except as set forth in this Contract.

E. Disclosure-Liability

Disclosure of records or other Confidential Information for any reason may be cause for legal action against the disclosing party or its agents by third parties, and defense of any such action shall be the sole responsibility of the disclosing party.

F. State Limitation

The State's and the Contractor's obligation to comply with the requirements of this Section 7 are subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and any other laws, regulations, and policies relating to the disclosure and confidentiality of public records.

9. REPRESENTATIONS

A. Legal Authority

Each party hereto 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 laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind such party to its terms.

The person signing and executing this Contract on behalf of their respective party hereby represents, warrants, and, guarantees that they have full authorization to do so.

B. Tax Exempt Status

The State represents that it is not liable for any sales, use, excise, property or other taxes imposed by any federal, state or local governmental authority, nor for any Contractor franchise or income related tax. No taxes of any kind shall be charged to the State. The State’s FEIN # is 84-0644739 and its tax exempt # is 98-02565.

10. DEFAULT-BREACH

In addition to any breaches or defaults specified in other sections of this Contract, including, the failure of either Party to perform any of its obligations hereunder entirely or partially, including, but not limited to, performing them in a timely manner, constitutes a default or breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar legislation, by or against either party, or the appointment of a receiver or similar officer for either party or any of its property, and such proceedings or appointments are not vacated or fully stayed within 20 days after the institution or occurrence thereof; shall also constitute a default.

11. TERMINATION IN THE PUBLIC INTEREST

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not be deemed a breach of the State’s obligations hereunder.

12. NOTICE and REPRESENTATIVES

A. Notice

All notices required to be given hereunder shall be sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to 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.

B. Representatives

The individuals listed below are the principal representatives of the respective Parties. For the purposes of this Contract, the official representative(s) and addresses of the Parties are:

i. State:

Danielle Vaughan
Renewable Energy Program Associate
Governor’s Energy Office
1580 Logan Street, Suite 100
Denver, CO 80203

ii. Contractor:

Thomas Ochterski
Energy & Facilities Project Coordinator
City of Westminster
6575 West 88 th Ave
Westminster, CO 80031

13. GOVERNMENTAL IMMUNITY

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

14. MISCELLANEOUS

A. Assignment

Except as otherwise specifically provided in **Exhibit A**, the Parties' rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted, without the prior, written consent of the other Party. Any attempt at assignment, transfer, subcontracting without such consent shall be void. Any assignments, subcontracts/subcontractors shall be subject to the provisions hereof.

B. Binding Effect

Unless otherwise provided herein, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Jurisdiction and Venue

All suits, actions, or proceedings related to this Contract shall be held in the State of Colorado and the Parties hereby agree that venue shall be in the City and County of Denver.

G. Modification

i. By the Parties

Except as specifically provided in this Contract, no modification of this Contract shall be effective unless agreed to in writing by both parties in an amendment to this Contract, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

ii. By Operation of Law

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

H. Order of Precedence

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

- i. The provisions of the main body of this Contract;
- ii. **Exhibit A: Scope of Work – Governor’s Energy Office Rebate Program**
- iii. **Exhibit B: Pricing**

I. Severability

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

J. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Parties.

K. Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties and not to any third party. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

L. Waiver

Waiver of any breach of a term, provision, or requirement of this Contract or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

M. FUND AVAILABILITY.

Financial obligations of the State and Contractor payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

N. 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.

O. COMPLIANCE WITH LAW.

Each party hereto 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.

P. 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.

Q. 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.

R. EMPLOYEE FINANCIAL INTEREST. CRS §24-18-201 and §24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

15. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

<p>City of Westminster</p> <p>_____</p> <p>By: J. Brent McFall, City Manager</p> <p>Date: _____</p>	<p>STATE OF COLORADO Bill Ritter, Jr., GOVERNOR Governor's Energy Office</p> <p>_____</p> <p>By: Tom Plant, Director</p> <p>Date: _____</p>
<p>APPROVED AS TO LEGAL FORM</p> <p>By: _____</p> <p>City Attorney</p>	

16. EXHIBIT A – Scope of Work: Governor’s Energy Office (GEO) Rebate Program

A. GEO Rebate Program

The State will provide energy efficiency rebates to any resident of the City of Westminster . The rebates will be offered at rates described in Exhibit B. . *The GEO Rebate Program component follows current state and federal guidelines for American Recovery and Reinvestment Act.* Energy efficiency rebates will be offered to all home owners that present rebate applications that meet all system requirements and eligibility, and are Contractor residents.

i. Designation of GEO Rebate Funds for Contractor Territory

EECBG Contractors: The State will reserve rebate funds to secure a certain number of rebates for home owners in the Contractor Territory. The total fund amount will include the amount allocated by the Contractor and a a \$0.50 for dollar match by the State. The match amount provided by the state (listed on the final page of this contract, under “Contract Amount”) will extend the total rebate pool available in the Contractor territory and will not expand the individual rebate amount. The total contribution by the Contractor must be at least \$25,000. The Contractor may designate the rebate funds to one rebate type or multiple rebate types, but must indicate the selection in this contract.

Changing Designation of Rebate Funds

The Contractor may, with 30 day written notice to the State, move Contractor funds from one rebate type to another. The match offered by the State may not be available when the Contractor chooses to move funds and are not guaranteed after the initial signature of the contract. If matching funds are available, the State will provide the match as defined above within 4-6 weeks of receipt of the written request.

Timing of EECBG Contractor Rebates

1. EECBG funds will be applied before the State’s SEP funds. The State will issue EECBG funds to all rebate customers until the funds expire. If State SEP funds remain, the funds will be available to the Contractor customers.

ii. Rebate Application Processing

The State will administer the rebate application processing, verification, and check distribution on behalf of the Contractor. The State has completed a competitive solicitation process and has established a contract with a 3rd party rebate processing firm. There will be no additional cost for this 3d party rebate processing firm to the Contractor. All checks issued on behalf of the Contractor will include the Contractor’s approved official logo.

Education and Outreach

The State’s public outreach program will be working to communicate all layers of financial incentives to constituents throughout the state regardless of what offerings exist in each Contractor territory. In short, when a resident visits the Web site or calls the call center, he or she will be asked where he or she is located and told about ALL incentive programs available to him or her, whether it’s a State program, an utility program, a local government program, a non-profit program or a combination thereof.

iii. Reporting/Invoicing

The State shall provide the following information on the monthly invoice document (if Contractor selects monthly invoice option) or in monthly reports to the Contractor.

- a) An itemized list of total rebates issued including the system type, size and installation address
- b) The Contractor portion of rebates amount issued (half of the rebate total, specified in xx)
- c) Customer's name
- d) Customer's address

Along with the monthly report, a Program Participation List will include the following customer information by the rebates reserved and rebates issued:

- a) Customer name
- b) Customer address
- c) Customer phone number, if available.
- d) Contractor debtor (customer) number, if available
- e) System installation address
- f) System size
- g) Date of installation
- h) Square Footage retrofitted
- i) Number of Buildings retrofitted
- j) Jobs created/retained through this retrofit

iv. Timeline

The State shall perform the work outlined in the GEO Rebate Program through December 31, 2010, renewable annually through July 31, 2012, subject to available funding.

Contractor Scope of Work

In order to ensure that the rebate program is successful, and to allow for optimized collaboration, the Contractor agrees to the following minimum rebate program outreach requirements:

1. The program will be highlighted on the Contractor Web site with the State's provided content.
2. The attached partner standards will be adhered to with all public mentions of the rebate program, such as utility bill inserts, Web site pages, brochures, etc. SEE EXHIBIT B
3. The Contractor will submit a marketing plan to the GEO's Public Outreach Manager prior to any rebate program marketing activities taking place.

The State requests that the Contractor be open to partnering with the State on targeted outreach efforts in their territory beyond the rebate program.

Items to be submitted to the State

- i.** Definition of Territory - An Excel file containing the complete zip codes and/or addresses that define the Contractor Territory must be submitted to the State by February 10th, 2010
- ii.** Contractor Logo – An .EPS (if not available, an .JPG) must be submitted electronically to the State by February 10th, 2010.

Rebate Type	Rebate Calculation	Maximum Rebate to Customer
Energy Audits	If consumer pays \leq \$75, then \$0 rebate from GEO	\$ -
	If consumer pays \$76 to \$124, then \$25 rebate from GEO	\$ 25
	If consumer pays \$125 to \$184, then \$50 rebate from GEO	\$ 50
	If consumer pays \$185 to \$239, then \$75 rebate from GEO	\$ 75
	If consumer pays \$240 or more, then \$100 rebate from GEO	\$ 100
Insulation and Air Sealing	40% of total job cost up to \$600, other local incentives applied first	up to \$600
Duct Sealing	40 % of total job cost up to \$150 statewide, other local incentives applied first	Up to \$150
Furnaces-Gas Condensing - Partnered	40% of total job cost up to \$700 statewide, other local incentives applied first	Up to \$700
Energy Monitors	40 % of total job cost up to \$100 statewide, other local incentives applied first	\$100

GEO Rebate Program

General Terms and Conditions

- Only one rebate per type per property
- Residential applicants must be Colorado residents
- Business applicants must have a business physically located in Colorado
- Do-It-Yourself installations do not qualify
- Rebates are offered on a first-come, first-served basis
- The GEO reserves the right to inspect and verify any improvements or installations

Energy Efficiency Rebate Terms and Conditions

- A residence is defined as any existing R1 building or R2, R3 or R4 building used solely as living quarters, three stories or under above grade that does not have a centralized mechanical system serving multiple units.
- Rebates not available for new construction
- All furnace rebates are available to consumer for residential use and must be used to replace an old appliance in working order
- If a rebate category requires a certified contractor installation, contractor must use approved installation measures/procedures
- It is the applicant's responsibility to collect all required verification information and submit it to the GEO
- Purchases must be made from businesses with a physical location in Colorado. Out-of-state or online purchases do not qualify. Only one rebate per type per property.
- Installation must be in compliance with all local and state ordinances. Proper permits are required and must be submitted with the rebate application.

Renewable Energy Rebate Terms and Conditions

- New installations and new equipment only
- No system add-ons, expansions, or recycled components permitted
- Rebate eligibility determined by meter type
- Systems must be installed by a solar or wind contractor with a business license to operate in Colorado
- Energy Audits
 - A minimum of a walkthrough audit required for residential systems
 - A minimum of an online energy audit required for commercial applicants
- New Builds
 - Residential buildings – must be at minimum an ENERGY STAR Home
 - Commercial buildings – must be at minimum ASHRAE 90.1 (2007) or IECC 2009
- Installation must be in compliance with all local and state ordinances. Proper permits are required and must be submitted with the rebate application.



Governor's Energy Office

Dear Partner,

Thank you for partnering with the Governor's Energy Office (GEO). You play an important role in Colorado's New Energy Economy and in meeting the objectives of Colorado's Climate Action Plan.

We hope that you continue to explore the GEO's partnership opportunities. In addition, we ask that you communicate the importance of our partnership at all levels within your organization, as well as in your community. When doing so, it is important that the GEO name be referenced according to the enclosed GEO standards guidelines.

Please refer to the GEO standards guidelines for media protocol and contact information for the GEO Communications Team. They, as well as your GEO program contact, are happy to help you spread the word about your efforts. The enclosed guidelines also include a list of communications strategies for you to consider.

If you are interested in learning more about the GEO's other programs visit www.colorado.gov/energy or contact your GEO Regional Representative.

Again, thank you for your participation in our efforts to advance Colorado's New Energy Economy and make Colorado a leader in energy efficiency and renewable energy.

Sincerely,
The Governor's Energy Office



Standards Guidelines for the Governor's Energy Office

As a partner of the Governor's Energy Office (GEO) you play an important role in Colorado's New Energy Economy. We ask that you communicate the importance of your partnership with the GEO at all levels within your organization, as well as in your community. When doing so, it is important that the GEO name be referenced according to the standards in this document.

We encourage you to make use of the GEO communications team. We are here to help and welcome any inquiries.

- Please work with the GEO Media Relations Manager on any interaction with the press that involves the GEO.

Todd Hartman
Media Relations Manager
Todd.Hartman@state.co.us
(303) 866-2263

- All materials and website pages that include reference to the GEO must be approved in advance of publication by the GEO Public Outreach Manager.

Jennifer Hampton
Public Outreach Manager
Jennifer.Hampton@state.co.us
(303) 866-2259

Name Information

Refer to the "Governor's Energy Office" in every reference to the office. The name must be fully spelled out when referenced for the first time in written form. After the first reference, the acronym ("the GEO") may be used. For example: "The City of Golden is partnering with the Governor's Energy Office (GEO) on the Insulate Colorado program."

References to the Governor's Energy Office

When referring to a program or project that the GEO provides funding for, partners must include the following:

- A GEO approved description of the specific program including recognition of the GEO as a funder. Examples include: "In partnership with the Governor's Energy Office..." or "Supported by the Governor's Energy Office..."
- A link to the GEO website (or the site address if not online) "www.colorado.gov/energy".
- The GEO logo must be included on a partner's website, electronic documents, and printed materials if the GEO is a funder of a project, program or initiative. The GEO's communications team or your GEO contact must approve use of the logo with a visual sign-off.
- If informational materials are handed out to program participants, a copy of the GEO brochure should be included.

The Governor's Energy Office Logo

The GEO logo consists of the official Seal of the State of Colorado, along with the entire name of the office. There is a color version and a black and white version of the logo. Please do not change the logo in any way.



It is unacceptable to copy the logo from the GEO's website and paste it into a document, website, presentation or any other publication. Please request a properly formatted logo from your contact at the GEO and have the communications team, or your contact approve the use of the GEO logo.

Improper Usage of the Logo:

- Do not condense, extend, distort, crop or redraw any part of the logo.
- Do not infringe on the white space around the logo.
- Do not use the logo within text.
- Do not change the proportion of the State Seal and the name of the office.
- Do not split apart any elements of the logo.

Partner Communications Checklist

Please use this communications checklist as a guide to help you spread the word about your efforts, and your partnership with the GEO.

- Designate one person within your organization to be responsible for communicating and marketing the program. Make sure this person connects with the GEO communications team, in addition to the GEO program manager.
- Adhere to the standards included in this document.
- Ensure that the program is posted on your website in a relevant and visible location.
- Include announcements about the program in your organization's electronic and printed newsletters. Ask other community organizations to include information in their newsletters as well.
- Work with the GEO Media Relations Manager to earn press coverage in your local media outlets.
- Maximize the program's visibility at community events, in organization displays or at speaking opportunities.
- If your organization uses ongoing advertising in local publications (newspapers, magazines, etc) include information about the program in them.
- Consider advertising in local publications.
- Partner with relevant outlets in your community on advertisements, coupons, announcements and events
Relevant outlets might include:
 - Grocery stores
 - Farmers markets
 - Contractors (insulation installers, solar companies, energy auditors, etc.)
 - Non-profit organizations
 - City and/or County departments
 - University extension outlets
- Add program announcements and events to community event calendars if appropriate.
- If possible, include program information in "bill stuffers".
- Run information about the program on your community public access channel.
- Announce program information in new or ongoing public radio announcements.
- Gather success stories resulting from the program and highlight them through case studies, features in publications and as website content.
- Work with the GEO communications team to ensure that your correct organization information is posted on the GEO website.



Agenda Item 8 K

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Application to State Historical Fund for Shoenberg Farm Concrete Silo

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Authorize the City Manager to execute a grant application to the State Historical Fund in the approximate amount of \$70,724 to combine with a proposed City cash match of \$23,575 to complete preservation work on the Shoenberg Farm Concrete Silo.

Summary Statement

- A portion of Shoenberg Farm, including seven historic structures, is a designated local historic landmark located on the southwest corner of West 73rd Avenue and Sheridan Boulevard.
- The original farm buildings were built in 1911 as a facility for National Jewish Hospital.
- The original farm buildings were acquired by the City in 2009, using a State Historical Fund grant.
- Grant funding from the State Historical Fund and the Westminster Legacy Foundation has permitted further projects including the rehabilitation of the dairy barn, site and drainage improvements, historic structure assessments, and construction documents to rehabilitate five structures.
- This grant application will permit the structural and architectural repair of the 1950s-era concrete silo, which is badly deteriorated and very fragile.

Expenditure Required: \$94,299

Source of Funds: \$70,724 State Historical Fund Grant plus \$23,575 from the Shoenberg Farm Capital Project in the General Capital Improvement Fund

Policy Issue

Should City Council authorize a grant application in the amount of \$70,724 to the State Historical Fund, to be combined with a 25% cash match of \$23,575 (City funds) to complete structural and architectural preservation of the Shoenberg Farm Concrete Silo?

Alternative

Do not authorize the grant application. This alternative is not recommended because there is no other source of funding in this amount to pay for the critical stabilization of the Concrete Silo.

Background Information

Shoenberg Farm was built in 1911 at the request of National Jewish Hospital by international philanthropist Louis Shoenberg. The hospital required a supply of fresh milk and eggs to treat its tuberculosis patients in the early 20th Century. Mr. Shoenberg was a founding partner with David May of May Department Stores in 1877. Jacob Tepper bought the farm in 1921 and developed a large wholesale egg and dairy facility, as well as establishing 19 Dolly Madison Ice Cream stores throughout the Denver area.

City Council designated a portion of Shoenberg Farm a local historic landmark on March 31, 2008. The State Historical Fund (SHF) has awarded a total of \$847,886 to date for acquisition, historic structure assessments, site and drainage improvements, construction documents on five structures, and the exterior and structural rehabilitation of the dairy barn. The Westminster Legacy Foundation (WLF) has also awarded a total of \$12,105 for Shoenberg Farm projects.

With the amendment to the 2010 Budget last fall, City Council authorized \$12,000 as a cash match for a proposed \$35,000 grant for the stabilization of the Concrete Silo. Further engineering design demonstrated that the stabilization would be more complicated and expensive than originally anticipated. Therefore, Staff did not apply for the grant in late 2009 and pursued further design work in order to ensure an adequate stabilization project. The total budget for critical stabilization work as well as architectural improvements such as repair of the dome roof, replacement and repair of the hatch doors on the silo, and repair of the less deteriorated upper section of the silo is \$94,299. Staff is proposing to apply for a grant with the State Historical Fund for the entire project instead of the original, narrower focused stabilization project. The minimum cash match required for this grant will be \$23,575. The grant application will total \$70,724.

The following shows a summary of grant-funded projects that are currently underway at Shoenberg Farm, the source of the funding, and the amount available to fund the cash match required for this grant application to rehabilitate the Concrete Silo.

Shoenberg Projects - Funding					
	SHF Grant	WLF Grant	City Funds	Unspent	Notes
Acquisition	\$478,125		\$179,000	\$16,994*	
Barn Rehab	\$300,000		\$117,000		Loan
Farmhouse construction documents	\$18,000	\$3,000	\$6,000	\$3,000*	WLF grant frees up \$3,000 in City funds
Milkhouse construction documents	\$16,183	\$5,605			
Concrete Silo construction documents	10,578	\$3,500			
Concrete Silo Rehabilitation Project	\$70,724 (proposed)		\$12,000*		
* Funds available for silo project cash match:			\$31,994 (\$23,575 required for this grant)		

The site drainage improvements are underway and the barn work is expected to begin in April/May 2010. The Concrete Silo is recommended as the next rehabilitation project because it is severely deteriorated and very fragile. Stabilization will be done by adding concrete to the interior to strengthen and anchor the silo. A drainage system will be constructed to divert surface runoff away from the structure. The steel ties, concrete staves, wooden hatch doors and metal roof will all be repaired. This work is urgent because a severe windstorm or vehicle crash could destabilize the silo enough to cause it to collapse.

A condition of the major funding by the State Historical Fund is that Shoenberg Farm will be subject to a preservation easement monitored by the Colorado Historical Foundation. This easement requires that the City continue to make progress on preservation and rehabilitation of the Shoenberg Farm structures.

This project helps achieve the City Council's Strategic Plan Goal of "Vibrant Neighborhoods and Commercial Areas" by contributing to the objective of "preserve and restore historic assets."

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Intergovernmental Agreement with Boulder County - Cherry Creek Tree Farm
Open Space Tree Donation Program

Prepared By: Rob Davis, City Forester
Richard Dahl, Park Services Manager

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement between the City of Westminster and Boulder County to obtain trees from a Boulder County-owned tree nursery property at no charge to the City of Westminster.

Summary Statement

- Boulder County purchased property from Cherry Creek Tree Farm located at 3191 N. 107th Street, Longmont, CO 80501 (US 287 and Isabelle Rd).
- This property had been used as a tree nursery; however, Boulder County desires to return the property to traditional agricultural farming and needs all nursery trees currently on the property removed.
- In order to facilitate this transition to traditional agricultural farming the County will donate trees to the City of Westminster.
- The goal is to preserve as many of the nursery trees currently located on the property as possible, minimizing Boulder County's maintenance and tree removal costs, and increasing tree plantings in the City of Westminster.
- Westminster Staff will use in-house resources to dig up the trees on site, wrap the root balls in cage and burlap, and then transport them back to the City of Westminster. These trees will then be planted on publicly owned grounds as replacements for trees that have been removed in recent years.
- Westminster Forestry plans to dig up approximately 50 trees from the site, and will need to purchase materials for balling the trees for transport. Cost of materials will be less than \$15 per tree. Trees of this size would normally cost approximately \$200 per tree to purchase from a nursery. The funds for these materials are in the 2009 Community Enhancement Program budget.

Expenditure Required: \$750

Source of Funds: Community Enhancement Program
– Community Enhancement Project in the General Capital Improvement Fund

Policy Issue

Should the City of Westminster enter into an Intergovernmental Agreement with Boulder County to allow the City to dig up and transplant trees from Boulder County property to be used on public lands owned by the City of Westminster?

Alternative

City Council could choose to not approve the IGA. Staff does not recommend this, however, as this agreement benefits the City by creating the opportunity to plant 50 more trees than currently scheduled with a cost savings of approximately \$9,250 to the City.

Background Information

Boulder County purchased property from Cherry Creek Tree Farm located at 3191 N. 107th Street, Longmont, CO 80501 (US 287 and Isabelle Rd). This property had been used as a tree nursery. The County desires to return the property to traditional agricultural farming and needs all nursery trees currently on the property removed. In order to facilitate this transition to traditional agricultural farming, the County would like to donate trees to the City of Westminster. The following are some of the types of trees available at this site: maple, ash, honeylocust, hawthorn, crabapple, spruce and pine.

The goal of this IGA is to preserve as many of the nursery trees currently located on the property as possible, minimizing Boulder County's maintenance and tree removal costs, and increasing tree plantings in the City of Westminster.

City of Westminster Staff will use in-house resources to dig up the trees on site, wrap the root balls in cage and burlap, and then transport the trees back to the City of Westminster. These trees will then be planted on City of Westminster-owned grounds as replacements for trees that have been removed in recent years. Westminster Forestry plans to dig up approximately 50 trees from the site and will need to purchase materials for balling the trees for transport. The cost of the materials per tree will be less than \$15 with an estimated total expense of \$750. Under normal circumstances, if the City of Westminster were to purchase 50 trees of this size from a nursery, it would cost the City approximately \$9,250.

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**BOULDER COUNTY
AGREEMENT**

**CHERRY CREEK TREE FARM OPEN SPACE
TREE DONATION PROGRAM AND SERVICES**

This Agreement for Cherry Creek Tree Farm Open Space Tree Donation Program and B&B Field/Tree Digging Services ("Agreement"), is entered into this ___ day of _____, 2010, by and between the **County of Boulder**, a body corporate and politic (the "County") and the **City of Westminster**, a Colorado home rule City ("City"), 4800 West 92nd Avenue, Westminster, Colorado 80031, telephone 720-887-2446 and fax 720-887-6679 (collectively "the Parties").

Recitals

Whereas, the County owns the Cherry Creek Tree Farm Open Space property, located at 3191 N. 107th Street, Longmont, Colorado 80501, and which is depicted on Exhibit "A" (the "Property"); and

Whereas, the Property has been used as a tree nursery; however, the County desires to return the Property to traditional agricultural farming and needs all nursery trees currently on the Property to be removed; and

Whereas, in order to facilitate this transition to traditional agricultural farming and assist under-funded Boulder County departments and other local governmental entities that will not be purchasing trees in 2010 due to budget constraints, the County will donate trees to designated and approved entities; and

Whereas, the Parties desire to enter into this Agreement in an effort to preserve as many of the nursery trees currently located on the Property as possible, while minimizing the County's maintenance and tree removal costs and minimizing any adverse financial impact to the County's private tree nursery growers; and

Whereas, the County will continue managing the property with these goals in mind until a suitable buyer or tenant for the property can be found; and

Whereas, the Parties agree the work is specifically described as digging up designated trees, balling the trees, and wrapping the trees in burlap material ("B&B Field /Tree Digging"). It is agreed that after being wrapped, trees will be left on the Property to be picked up by the City; and

Whereas, the Parties desire to enter into this Agreement to set forth the manner in which costs for the B&B Field/Tree Digging Services, will be agreed upon.

Agreement

Now Therefore, in consideration of the above recitals and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The County hereby agrees to designate trees on the Property for donation to the City at no cost.
2. The City is authorized by the County to:
 - a. Enter into a Service Contract with a Contractor, selected from the approved Contractor list, attached as Exhibit "B", for B&B Field/Tree Digging Services on the Property, or
 - b. Utilize City equipment and City workforce to perform the B&B Field/Tree Digging Services on the Property.

If option b is selected, the City is required to submit a certificate of insurance meeting the requirements attached as Exhibit "C" prior to work commencing.

3. After the County has designated trees for donation, the City shall select and tag trees that it would like to receive. After trees have been tagged by the City, the Contractor or the City shall ball and bag the trees in burlap. All trees tagged by the City, and balled and bagged by Contractor or the City, must be removed from the Property by end of the calendar year in which they are tagged.

4. The City is responsible for payment to the Contractor for all costs associated with the work of balling and bagging tagged trees, if applicable. The City is also responsible for transportation, delivery and labor involved in removal of the trees.

5. Changes from the procedure established in this Agreement may only be made upon the prior written approval of both Parties.

6. This Agreement shall be valid through December 31, 2012, unless the Property is sold by the County, in which case the Agreement shall be immediately terminated.

Dated: _____

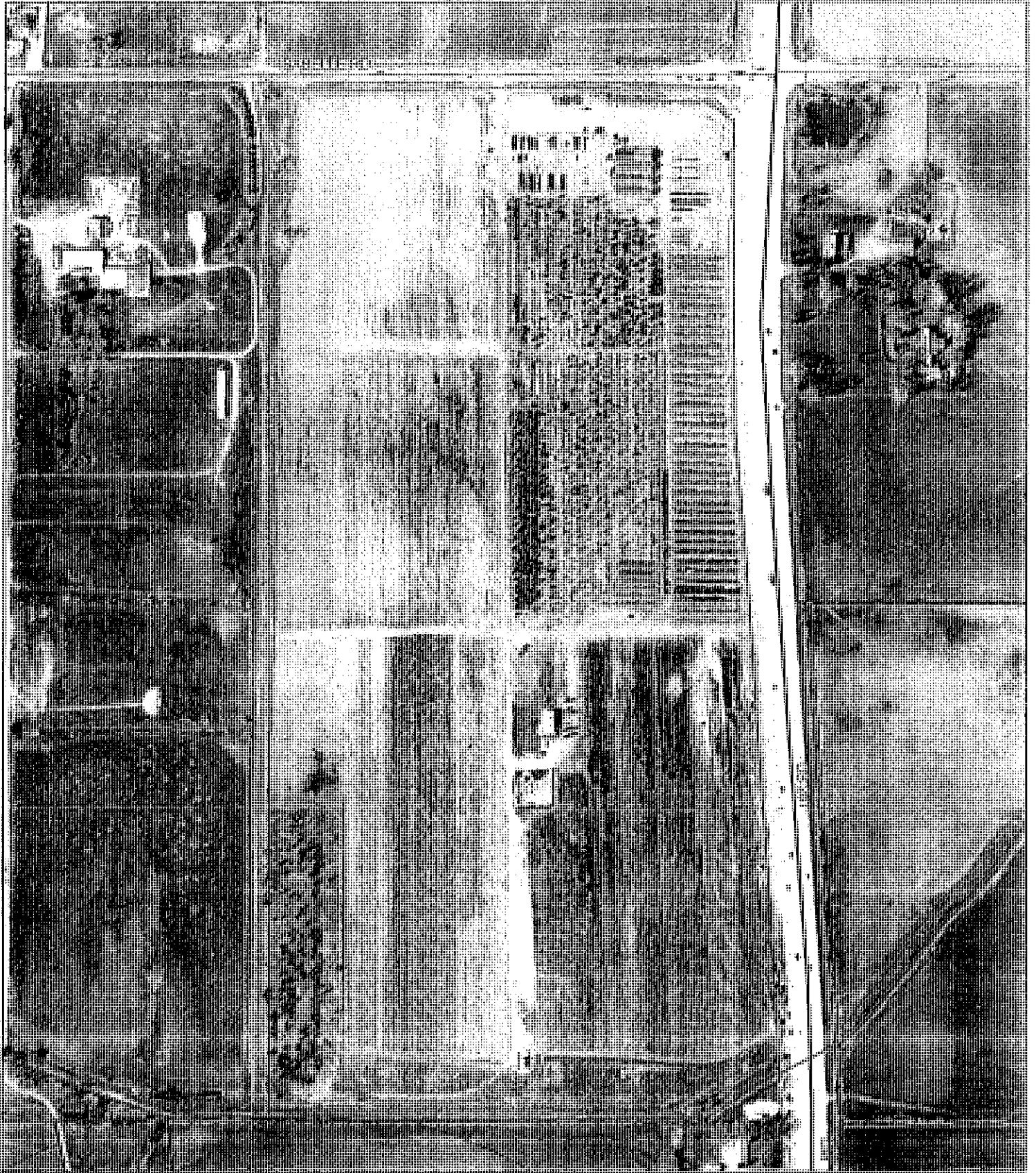
County of Boulder, a body corporate and politic

By _____
Ron Stewart, Director
Boulder County Parks and Open Space Department

City of Westminster, a Colorado home rule municipality

By _____
Bill Walenczak, Director
Parks, Recreation and Libraries

EXHIBIT "A"



Map created by: Meaghan Huffman, Aerial photo 2008
NAD 1983 HARN State Plane Colorado North FIPS 0501feet

Cherry Creek Tree Farms



0 50 100 200
Feet

DISCLAIMER:
This map is for illustrative purposes only, and is not suitable for parcel specific decision making. The areas depicted here are approximate. More site specific studies may be required to draw accurate conclusions.

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Post Office Box 471 • Boulder, Colorado 80306

Parks and Open Space Department

Administrative Office: 2045 13th Street • Boulder, Colorado 80302 • (303) 441-3950 • Fax: (303) 441-4594
Fairgrounds: 9595 Nelson Road • Longmont, Colorado 80501 • (303) 678-6235/441-3927

EXHIBIT "B"

BOULDER COUNTY

CHERRY CREEK TREE FARM OPEN SPACE B&B FIELD/TREE DIGGING SERVICES 2010

Please select from the following approved Contractors:

- Rainbow Sprinklers, Landscape & Nursery, dba Rainbow Nursery**
Attention: Steven Barnett
P.O. Box 418
Longmont, CO 80502
Office telephone: 303-652-3878
FAX number: 303-652-3487

- K & S Construction, Inc., dba Ward's Landscape, Inc.**
Attention: Steven Ward
9165 Nelson Road
Longmont, CO 80503-9395
Office telephone: 303-776-7991
FAX number: 303-776-9033

All work contracted will be between individual municipalities/agencies and the selected Contractor. Municipalities/agencies are responsible for payment to the Contractor for all costs associated with the work of balling and bagging tagged trees, if applicable. Each municipality/agency is also responsible for transportation, delivery and labor involved in removal of the trees from property.

All site visits must be coordinated through Boulder County Parks and Open Space Arborist, Ms. Cathy Thiltgen.

Contact information:

Office: 303-678-6196

Cell: 303-817-7908

Fax: 303-678-6177

Email: cthiltgen@bouldercounty.org

EXHIBIT "C"

BOULDER COUNTY INSURANCE REQUIREMENTS

Insurance Requirements: The Contractor shall procure and maintain at its own expense, and without cost to the County, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Contract has expired or is terminated:

a. Commercial General Liability. This coverage should be provided on an ISO 1998 Form or most current with minimum limits of \$600,000.00 combined single limit for each occurrence.

b. Automobile Liability. Minimum limits are required to be \$600,000.00 for each occurrence. Coverage must include:
-All vehicles owned, non-owned, and hired to be used on the Contract;
-Personal Injury Protection where applicable.

c. Workers' Compensation and Employer's Liability. Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000.00 Each Accident/\$500,000.00 Disease-Policy Limit/\$100,000.00 Disease-Each Employee.

The Contractor shall provide Certificates of Insurance to Boulder County demonstrating that the insurance requirements have been met prior to the commencement of Work under this Agreement.

The Commercial General Liability certificate shall indicate Boulder County as an ADDITIONAL INSURED. The Additional Insured wording should be as follows: County of Boulder, State of Colorado, a body corporate and politic, is named as Additional Insured.

The certificate holder is: Boulder County
Attn: Pam Stonecipher, Risk Manager
P.O. Box 471
Boulder, CO 80306

These Certificates of Insurance shall also contain a valid provision or endorsement that these policies may not be canceled, terminated, changed or modified without **thirty (30) days** written notice to the County.

Please forward a certificate(s) to the individual listed below.

Boulder County
Parks and Open Space Department
Attn: Renee Edick
5201 St. Vrain Road
Longmont, CO 80503

OR FAX: 303-678-6177



**WESTMINSTER
C O L O R A D O**

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 8 re 2009 4th Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor’s Bill No. 8 on second reading providing for supplemental appropriation of funds to the 2009 budget of the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor’s Bill on Second reading authorizing a supplemental appropriation to the 2009 budget of the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds.
 - General Fund amendments total: \$182,983
 - General Reserve Fund amendments total: 5,149,887
 - Utility Rate Stabilization Reserve Fund amendments total: 7,211,596
 - Sales & Use Tax Fund amendments total: 3,308,517
 - Parks Open Space & Trails Fund amendments total: 19,853
 - General Capital Improvement Fund amendments total: 158,149
- This Councillor’s Bill was passed on first reading March 8, 2010.

Expenditure Required: \$16,030,985

Source of Funds: The funding sources for these budgetary adjustments include carryover, transfers, scholarships, reimbursements, contributions, grants, program revenues, sales and use taxes, and rent.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **8**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Dittman - Lindsey

A BILL

FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE GENERAL, GENERAL RESERVE, UTILITY RATE STABILIZATION RESERVE, SALES & USE TAX, PARKS OPEN SPACE & TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by \$16,030,985. This appropriation is due to the receipt of funds from carryover, transfers, scholarships, reimbursements, contributions, grants, program revenues, sales & use taxes, and rent.

Section 2. The \$16,030,985 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A&B dated March 8, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$182,983
General Reserve Fund	5,149,887
Utility Rate Stabilization Reserve Fund	7,211,596
Sales & Use Tax Fund	3,308,517
Parks Open Space & Trails Fund	19,853
General Capital Improvement Fund	<u>158,149</u>
Total	<u>\$16,030,985</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

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

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of March, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of March, 2010.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Second Reading of Councillor's Bill No. 9 re City Park Playground
Supplemental Appropriation

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Pass Councillor's Bill No. 9 on second reading authorizing a supplemental appropriation in the amount of \$150,000 reflecting the City's receipt of a Jefferson County Joint Venture Grant for the City Park Playground.

Summary Statement

- In October of 2009, Staff received City Council's approval to submit a request to Jefferson County Open Space to help fund the development of the City Park Playground. Staff presented the grant request on January 13, 2010, and the City was awarded the full request of \$150,000 by the Jefferson County Board of County Commissioners.
- The Department of Parks, Recreation and Libraries has the appropriate matching funds available in the Parks Renovation Capital Improvement Program budget.
- With the grant award, Staff will be purchasing the remaining items to complete the park. These items included playground equipment and safety surfacing, and miscellaneous items such as trash cans.
- The proposed play area has a farm theme reflecting Westminster's agricultural heritage and therefore components will be selected to promote that theme. Bids will be solicited according to City policies through the U.S. Communities Government Purchasing Program, requests for bids, and in some instances sole sourcing of an item that coordinates with the park components that is not available from other companies.
- This Councillor's Bill was approved on first reading March 8, 2010.

Expenditure Required: \$150,000

Source of Funds: Jefferson County Joint Venture Grant

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **9**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

Lindsey - Major

A BILL

FOR AN ORDINANCE INCREASING THE 2010 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THIS FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$150,000. This appropriation is due to the receipt of a Jefferson County Joint Venture Grant.

Section 2. The \$150,000 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 C dated March 8, 2010, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$150,000</u>
Total	<u>\$150,000</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

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

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of March, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of March, 2010.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Second Reading on Councillor’s Bill No. 10 re Gas and Electric Franchise with Public Service Company of Colorado d/b/a Xcel Energy

Prepared By: Jane Greenfield, Assistant City Attorney, on behalf of the City Staff Xcel Task Force

Recommended City Council Action

Pass Councillor’s Bill No. 10 on second reading granting a gas and electric franchise to Public Service Company of Colorado, subject to execution of a final agreement regarding street and signal lighting.

Summary Statement

- The current franchise held by Public Service Company of Colorado is due to expire on March 26, 2010. Public Service Company of Colorado d/b/a Xcel Energy (the “Company”) has applied for a renewal of that franchise for a twenty year period commencing March 27, 2010. Staff has been in negotiations with the Company since May of last year and is prepared to recommend adoption of the new franchise, attached herewith.
- The franchise grants a non-exclusive right to use City streets and utility easements for the placement of Company facilities to serve City residents. The Company remains subject to the City’s police powers and ordinances.
- Under the new franchise, the Company continues to pay a franchise fee equal to three percent (3%) of gross revenues and will allocate annually one percent (1%) of its revenues from its electric service to fund overhead conversion of power lines (the “undergrounding fund”), as requested by the City.
- Additional issues addressed in the proposed franchise include:
 - expanded and clarified definitions;
 - tri-annual audits of franchise fees and, if requested, the undergrounding fund;
 - required annual coordination meetings for Company projects;
 - provisions for City use of Company facilities;
 - relocation and undergrounding standards and obligations;
 - environmental and conservation commitments; and
 - the performance obligations of the Quality of Service Plan agreed to by the Company in its 2006 PUC-approved settlement with the City.
- The proposed franchise contemplates that the Company and the City will finalize a companion agreement covering street and signal lighting issues in the near future. The Company’s failure to sign such agreement by June 30th would void the franchise.
- This Councillor’s Bill was approved on first reading by City Council on March 8, 2010.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager
Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **10**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Briggs / Major

**A BILL
FOR AN ORDINANCE GRANTING A GAS AND ELECTRIC FRANCHISE
TO PUBLIC SERVICE COMPANY OF COLORADO dba XCEL ENERGY**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council of the City of Westminster hereby finds:

a. The Public Service Company of Colorado ("Public Service") was granted a franchise pursuant to the laws of the State of Colorado and the City Charter and said franchise will expire on midnight, March 26, 2010; and

b. Public Service has applied for a renewed twenty-year gas and electric franchise; and

c. The public interest will be served by granting a non-exclusive right to Public Service to make reasonable use of the City streets and utility easements in order that it may provide gas and electric service to the residents and businesses within the City; and

d. All provisions of the City Charter regarding grants of franchise have been met.

Section 2. The City Council of the City of Westminster hereby grants to Public Service Company of Colorado, dba Xcel Energy, a franchise, in the form attached as Exhibit A hereto and which is herein incorporated by reference, for a period of twenty years, commencing on March 27, 2010.

Section 3. Chapter 6 of Title XVI of the Westminster Municipal Code is repealed in its entirety.

Section 4. 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 8th day of March, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of March, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Exhibit A

**FRANCHISE AGREEMENT BETWEEN THE CITY OF WESTMINSTER,
COLORADO AND PUBLIC SERVICE COMPANY OF COLORADO**

ARTICLE 1	DEFINITIONS
ARTICLE 2	GRANT OF FRANCHISE
ARTICLE 3	CITY POLICE POWERS
ARTICLE 4	FRANCHISE FEE
ARTICLE 5	ADMINISTRATION OF FRANCHISE
ARTICLE 6	SUPPLY, CONSTRUCTION, AND DESIGN
ARTICLE 7	RELIABILITY
ARTICLE 8	COMPANY PERFORMANCE OBLIGATIONS
ARTICLE 9	BILLING AND PAYMENT
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ARTICLE 12	PURCHASE OR CONDEMNATION
ARTICLE 13	MUNICIPALLY-PRODUCED UTILITY SERVICE
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ARTICLE I DEFINITIONS

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Westminster, a municipal corporation of the State of Colorado.
- §1.2 “City Council” or “Council” refers to the legislative body of the City.
- §1.3 “City Facilities” refers to all facilities owned by the City including but not limited to buildings, structures including City-owned street lights, traffic signals, parking lots, parks and recreational facilities, and water, sewer, storm water, reclaimed water, telecommunication and transportation systems.
- §1.4 “Clean Energy” refers to energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.
- §1.5 “Company” refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns and including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.
- §1.6 “Company Facilities” refers to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, conduit, mains, transformers, underground lines, gas compressors, meters, meter reading devices, control equipment, gas regulator stations, Company-owned street lights, wire, cables, poles, and communication and data transfer equipment related solely to Company’s provision of gas or electric utility service.
- §1.7 “Electric Gross Revenues” refers to those amounts of money which the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue from the sale or delivery of electricity to the City as a customer of the Company.
- §1.8 “Energy Conservation” refers to the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

- §1.9 “Energy Efficiency” refers to the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.10 “Force Majeure” refers to the inability to undertake an obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, terrorist acts, riots, acts of governmental authority, acts of God, floods, epidemics, quarantines, unavailability or shortages of labor, materials or equipment or failures or delays in delivery of materials.
- §1.11 “Gross Revenues” refers to those amounts of money which the Company receives (1) from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, (2) from the transportation of gas to its customers within the City and (3) those amounts of money, excluding expense reimbursements, which the Company receives from the use by others of Company facilities in or on Streets, Other City Property and City-owned Utility Easements within the City (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.12 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, not including Streets and City-owned Utility Easements within the City, but including without limitation City Parks and Open Space.
- §1.13 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.14 “Public Project” refers to (1) any public work or improvement that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, the Regional Transportation District, or the Urban Drainage and Flood Control District, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.
- §1.15 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.16 “Renewable Energy Resources” refers to wind; solar; geothermal; biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of

thirty megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

- §1.17 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City unless otherwise stated, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.18 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, right of way easements (excluding any easements the terms of which do not permit the use thereof by public utilities), and other public rights-of-way within the City, including public highways as determined under §43-2-201, C.R.S., which are primarily used for motorized vehicle traffic. Streets shall not include Utility Easements nor Other City Property.
- §1.19 “Supporting Documentation” refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise.
- §1.20 “Tariffs” refers to those tariffs of the Company on file and in effect with the PUC.
- §1.21 “Traffic Facilities” refers to City-owned or authorized traffic signals, traffic signage or other traffic control or monitoring devices, equipment or facilities, including all associated controls, connections and other support facilities or improvements, located in, on or under any Street.
- §1.22 “Utility Easement” refers to any easement over, under, or above public or private property, dedicated to public utility companies or the City for the placement and use of utility facilities, including but not limited to Company Facilities. Utility Easement shall not include any easement that is located within the Streets.
- §1.23 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE II
GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of City Streets and City-owned Utility Easements:

- (1) to provide Utility Service to Residents under tariffs on file with the PUC; and
- (2) to acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City, and the applicable provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Conflicting provisions of this franchise notwithstanding, street lighting service and traffic signal lighting service within the City shall be governed by, and provided pursuant to, the terms set forth in a separate "Street Lighting and Traffic Signal Lighting Service Agreement" entered into between the parties and by tariffs on file with the Colorado PUC.

C. Company Facilities in Other City Property. Company Facilities located, as of the effective date of this franchise, in Other City Property shall be subject to the terms and conditions set forth in City license agreements, permits, or other written agreements granting the Company the right to place its Facilities in such Other City Property. To the extent that such Company use of Other City Property is not specifically addressed by separate license agreements, permits or other written agreements, but has otherwise been authorized by the City, the Company may continue such use of Other City Property under the terms of this franchise.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The right to make reasonable use of City Streets and City-owned Utility Easements to provide Utility Service to the City and its Residents under the franchise is subject to and subordinate to any City usage of said Streets and City-owned Utility Easements.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets and City-owned Utility Easements and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise unless otherwise provided herein or by separate instrument.

D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term.

A. Term. This franchise shall take effect on March 27, 2010, and shall supersede any prior franchise grants to the Company by the City. This franchise shall terminate at midnight on March 26, 2030, unless extended by mutual consent.

B. Condition Subsequent. Concurrently with the approval of this franchise, the City and the Company are negotiating terms of a "Street Lighting and Traffic Signal Lighting Service Agreement" (the "Agreement"). The Agreement shall become effective on the date of its approval by City Council and in no event later than June 30, 2010. The Company shall signify its acceptance of the Agreement by executing the Agreement and delivering five (5) executed originals to the City Manager concurrently with its delivery of the executed originals of this franchise. Failure to execute and deliver the Agreement to the City in accordance with this section shall render this franchise void and of no further force and effect.

**ARTICLE III
CITY POLICE POWERS**

§3.1 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation of Streets and City-owned Utility Easements. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets and City-owned Utility Easements, including requirements for permits.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits, and orders enacted by the City.

ARTICLE IV FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets and City-owned Utility Easements, which are valuable public properties, and in recognition that the grant to the Company of the use of City Streets and City-owned Utility Easements is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City Residents, not including the City, who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets and City-owned Utility Easements. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents, not including the City.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

C. Audit of Franchise Fee Payments.

- (1) Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.
- (2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.
- (3) If the results of a City audit conducted pursuant to subsection C.(2) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all costs and expenses of the City's audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City Streets and City-owned Utility Easements.

**ARTICLE V
ADMINISTRATION OF FRANCHISE**

§5.1 City Designee. The City Manager shall designate in writing to the Company an official having full power and authority to administer the franchise. The City Manager may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said City representatives. The City Manager may change these designations by providing written notice to the Company. The City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets and City-owned Utility Easements.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities.

§5.3 Coordination of Work.

A. The Company agrees to coordinate its activities in City Streets and City-owned Utility Easements with the City. The City and the Company will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Streets, Other City Property or City Facilities, including but not limited to any planned City street paving project. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise, building and zoning codes, and City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

B. In addition to the foregoing meetings, the Company agrees to provide sufficient notice to the City whenever the Company initiates plans to significantly upgrade its infrastructure, including without limitation the replacement of utility poles and overhead lines, in order to allow for City input and consultation on Company work

plans prior to the time that said work plans are finalized so that the beneficial coordination described in B., above, may occur.

ARTICLE VI SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.
- §6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.
- §6.3 Service to City Facilities.
- A. Transport Gas. To the extent the City is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City for use in City facilities pursuant to separate contracts with the City.
- B. Charges to the City. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the Colorado PUC over the Company's regulated intrastate electric and gas rates.
- §6.4 Restoration of Service.
- A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.
- B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets, City-owned Utility Easements or Other City Property shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets, City-owned Utility Easements or Other City Property performed or caused to be performed by the Company shall be done:

- (1) in a high-quality manner;
- (2) in a timely and expeditious manner;
- (3) in a manner which minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances, and regulations.

C. No Interference with City Facilities. Company Facilities shall not interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets and City-owned Utility Easements. Company Facilities shall be installed and maintained in City Streets and City-owned Utility Easements so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets, City-owned Utility Easements and Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets and City-owned Utility Easements and Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, public land licenses, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets and City-owned Utility Easements and Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. Unless otherwise provided by law, the Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases requested by the City.

G. As-Built Drawings. Upon written request of the City designee, the Company shall provide, within 14 days of the request, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. As used in this Section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent Company system. The Company shall not be required to create drawings that do not exist at the time of the request.

H. Licenses for Use of Other City Property. Notwithstanding any other provisions in this Article 6, the Company shall comply with all terms and conditions of any license granted by the City to the Company for the use of Other City Property.

§6.6 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits, the City will not require the Company to pay the fees charged for such permits when performing relocations requested by the City under Section 6.8 of this franchise and undergroundings requested by the City under Article 11 of this franchise. Upon the Company submitting an excavation and construction design plan to the City, the City shall promptly and fully advise the Company in writing of all requirements for restoration of City Streets in advance of Company excavation projects in City Streets and Other City Property based on the design submitted, if the City's restoration requirements are not addressed in publicly-available standards.

§6.7 Restoration. When the Company does any work in or affecting the City Streets, City-owned Utility Easements, or Other City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such City Streets, City-owned Utility Easements to a condition that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, City-owned Utility Easements, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets, City-owned Utility Easements, or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration if not required by then-current City standards. If the Company fails to promptly restore the City Streets, City-owned Utility Easements, or Other City Property as required by this

Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such City Streets, City-owned Utility Easements or Other City Property, or remove the obstruction therefrom; provided however, City actions do not interfere unreasonably with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets, City-owned Utility Easements or Other City Property, or to remove any obstructions therefrom. In the course of its restoration of City Streets, City-owned Utility Easements, or Other City Property under this Section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City Streets, City-owned Utility Easements , or in Other City Property at no cost or expense to the City whenever the City shall determine such removal, relocation, change or alteration is necessary for the completion of any Public Project. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company Facilities in the City Streets, City-owned Utility Easements, or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from recovering its relocation costs and expenses from third parties.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

C. Relocation Performance. The relocations set forth in Section 6.8.A of this franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City designee requests, in writing, that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

D. Completion. Each such relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.7 of this franchise or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

E. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets, City-owned Utility Easements or Other City Property.

F. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this franchise.

G. Coordination. When requested in writing by the City or the Company, representatives of the City and the Company shall meet to share information regarding coordination of anticipated projects that will require relocation of Company Facilities in the City. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

H. Advance Notice. The City shall provide the Company with two (2) years advance notice of any planned street repaving to the extent the City has such information. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses, or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§6.9 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.

- §6.10 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC.
- §6.11 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

ARTICLE VII RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe, and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE VIII COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. Other than for Traffic Facilities, the Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.
- B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City

facilities shall be deemed good cause for a reasonable extension of time to complete its performance.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the City and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

D. New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this franchise and the Company's PUC tariffs.

§8.2 Adjustments To Company Facilities. The Company shall perform adjustments to Company Facilities, to accommodate City street maintenance, repair and paving operations at no cost to the City. "Adjustments to Company Facilities" means raising or lowering manholes and other appurtenances, utilizing the methodology provided by the City. At the City's request, the Company shall provide manhole extension rings to the City and/or City's Contractor for installation directly behind paving operations whenever this method for adjustment is deemed appropriate by the Company. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City operations in accordance with City instructions and, if required, readjusts, following City maintenance, repair and paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance or other operations that will require such adjustments to Company Facilities in Streets, City-owned Utility Easements, or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, to the extent permitted by law, the City will notify the Company within 45 days after the City has

knowledge of any such incident and will provide to the Company within a reasonable time, all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to City Interests. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law, the Company will notify the City within 45 days after the Company has knowledge of any such incident and will provide to the City within a reasonable time, all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE IX BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. The Company agrees to meet with the City's designee at least annually upon written request for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

B. Unless otherwise provided in its tariffs, the rules and regulations of the PUC, or Title 40 of the Colorado Revised Statutes, as the same may be amended, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

C. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this agreement and the applicable tariff on file and in effect from time to time with the PUC.

D. The Company shall provide all billings and any underlying support documentation reasonably requested by the City in an editable and manipulable electronic format that is acceptable to the Company and the City.

§9.2 Payment To City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any

nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City shall make such payments to the Company pursuant to the Company's tariffs until the challenge has been finally resolved.

ARTICLE X USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose or any other purpose consistent with City's police powers. The City will notify the Company in advance and in writing or by electronic mail of its intent to use Company facilities and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution poles. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§10.2 City Use of Company Street Lighting Poles. The City shall be allowed to use the Company's street lighting poles under the terms and conditions set forth above if it obtains prior written approval of the Company. Such approval shall not be unreasonably withheld or delayed. No such use shall be allowed if the Company determines that use of street lighting poles creates a safety issue or interferes with the Company's use of its Utility Facilities or its operations. The City shall not be required to obtain prior approval for the use of Company street lighting poles where emergency circumstances create an immediate danger to public health and safety. In that instance, the City shall notify the Company of the use of Company street lighting poles at the earliest practicable time.

The City shall be responsible for the Company's reasonable costs of determining whether the proposed use of street light poles creates a safety issue or interferes with Company Utility Facilities. The City shall not be required to remove its existing equipment or facilities from street lighting poles, unless such equipment or facilities create a safety hazard or interfere with the Company's use of those poles.

- §10.3 Third Party Use Of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets and City-owned Utility Easements, to utilize Company electric distribution poles for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution poles. The Company shall not be required to permit the use of Company distribution facilities for the provision of utility service except as otherwise required by law.
- §10.4 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific written request to the Company for any such use.
- §10.5 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE XI UNDERGROUNDING OF OVERHEAD FACILITIES

- §11.1 Underground Electrical Lines in New Areas. The Company shall, upon payment to the Company of the charges provided in its tariffs, place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders. "Newly developed areas" may include areas of infill or redevelopment exceeding five acres in size.
- §11.2 Underground Conversion At Expense Of Company.
- A. Underground Fund. The Company shall budget and allocate an annual amount, equal to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City Designee. Except as provided in §6.8 F., no relocation expense that the Company would be required to expend pursuant to Article 6 of this franchise shall be charged to this Fund.

B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any underground fund balance left accumulated under any prior franchise shall be carried over to this franchise. The City shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this franchise shall remain the property of the Company. At the expiration or termination of this franchise, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement To Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The City and the Company agree to meet during the period when the Company is preparing its estimate to discuss all aspects of the project toward the end of enabling the Company to prepare an accurate cost estimate. At the City's request, the Company will provide all documentation which forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company estimate and authorized the Company to proceed with the project. The Company's cost estimate shall be void unless accepted by the City within 60 days after it has been transmitted to the City.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides the Company the Supporting Documentation with which to complete the

project. The Company shall have ninety (90) days after receiving the City's request and Supporting Documentation to design project plans, prepare the good faith estimate, and transmit the same to the City for review. If the plans and estimate are approved by the City, the Company shall have 120 days from date of the City's authorization, plus any of the 90 unused days in preparing the good faith estimate to complete the project. The City and the Company shall agree to a longer completion date when required for large scale undergrounding projects. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.

D. Completion/Restoration. Each such undergrounding project shall be complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise, or as otherwise agreed with the City, and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

E. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged against the Fund balance.

§11.4 Audit of Underground Fund. Upon written request of the City, but no more frequently than once every three (3) years, the Company shall audit the Fund for the City. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the City and shall reconcile the Fund consistent with the findings contained in the audit report. If the City has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the City's

reasonable satisfaction, the Company shall, at its expense, cause an independent auditor to investigate and determine the correctness of the charges to the underground fund. The independent auditor shall provide a written report containing its findings to the City and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

B. Public Projects anticipated by the City.

ARTICLE XII PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, purchase, or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the

City. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities.

ARTICLE XIII MUNICIPALLY-PRODUCED UTILITY SERVICE

§13.1 Municipally-Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of Utility Service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not To Limit City's Rights. Nothing in this franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

ARTICLE XIV ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before

December 1 of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents. The Company agrees to help the City participate in Company programs and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall:

- (1) notify the City regarding all eligible Renewable Energy Resource programs;
- (2) provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and
- (3) advise Residents regarding eligible Renewable Energy Resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this agreement. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with energy conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this agreement in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE XV TRANSFER OF FRANCHISE

§15.1 Consent of City Required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except when the transfer is made in response to legislation or requirements of the PUC or the Federal Energy Regulatory Commission, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

§15.2 Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE XVI CONTINUATION OF UTILITY SERVICE

§16.1 Continuation of Utility Service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities pending resolution of the disposition of the system unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City

arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets, City-owned Utility Easements and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE XVII INDEMNIFICATION AND IMMUNITY

§17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

§17.2 Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§4-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE XVIII BREACH

§18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed and neither will take any legal action independently to secure modification of this franchise.

However, Company reserves the right to seek a change in its tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise, if a party (the “breaching party”) to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (1) specific performance of the applicable term or condition; and
- (2) recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a “material breach”), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets, City-owned Utility Easements and Other City Property.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

**ARTICLE XIX
AMENDMENTS**

- §19.1 Proposed Amendments. At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.
- §19.2 Effective Amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

**ARTICLE XX
EQUAL OPPORTUNITY**

- §20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.
- §20.2 Employment.
- A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.
- B. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.
- C. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations,

utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.

E. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

F. The Company shall identify and consider women, persons of color and other under represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

**ARTICLE XXI
MISCELLANEOUS**

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this franchise.

§21.3 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by first class mail, email or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

Mayor of Westminster
City of Westminster
4800 W. 92nd Avenue
Westminster, CO 80031

and

City Manager
City of Westminster
4800 W. 92nd Avenue
Westminster, CO 80031

With a copy to:

City Attorney
City of Westminster
4800 W. 92nd Avenue
Westminster, CO 80031

To the Company:

Regional Vice President, Customer and Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

§21.5 Examination Of Records.

A. The parties agree that a duly authorized representative of the City shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this franchise. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City, that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the City pursuant to the terms of this section. "Privileged communication" means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include information developed by the Company in preparation for PUC proceedings.

B. With respect to any information requested by the City which the Company identifies as "Confidential" or "Proprietary":

- (1) The City will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;
- (2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this franchise;

- (3) The information shall only be made available to City employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;
- (4) The information shall be held by the City for such time as is reasonably necessary for the City to address the franchise issue(s) that generated the request, and shall be returned to the Company when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the City may maintain the information until such issues are fully and finally concluded.

C. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this franchise, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this franchise without first conferring with the Company. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

D. Unless otherwise agreed between the Parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

§21.6 Other Information. Upon written request, the Company shall provide the City Manager or the City Manager's designee with:

- (1) Copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission;
- (2) A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

(3) Maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request; and

(4) A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.7 List of Utility Property. The Company shall provide the City, upon request not more than every two (2) years, a list of utility related property owned or leased by the Company within the City. All such records must be kept for a minimum of four (4) years.

§21.8 Payment of Taxes and Fees.

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

B. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC.

§21.9 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.10 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.

§21.11 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

§21.12 Severability. Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

§21.13 Force Majeure. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to Force Majeure, as defined herein.

§21.14 Earlier Franchises Superseded. This franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.

§21.15 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise.

§21.16 Calculation of Time. Any reference to time limits measured in days, shall be presumed to be calendar days, and not business days unless otherwise provided herein.

§21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Jefferson County, State of Colorado.

§21.18 Payment Of Expenses Incurred By City In Relation To Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this franchise, including the publication of notices, publication of ordinances, and photocopying of documents.

§21.19 Incremental Costs. The parties acknowledge that PUC rules, regulations and final decisions may require that incremental costs of complying with certain provisions of this franchise be borne by customers of the Company who are located within the City

§21.20 Change of Franchise Fee.

A. The Company shall report to the City, within sixty days, the execution or change of any franchise under which a municipality receives a franchise fee greater than is provided for herein or in which the undergrounding fund is greater than established in Section 11.2. herein.

B. Once each year the City Council may, by ordinance, change the franchise fee and the undergrounding fund percentage to that provided under any municipal franchise entered into by the Company in Colorado, after first giving thirty days' notice to the Company.

§21.21 Writing to Include Electronic Mail. Whenever either party is required to provide written notice or approval to the other under the provisions of this franchise, the requirement may be satisfied by a properly addressed electronic mail.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first above written.

CITY OF WESTMINSTER

ATTEST:

Clerk of the City of Westminster

Nancy McNally, Mayor, City of Westminster

APPROVED AS TO FORM:

Attorney for the City of Westminster

“CITY”

**PUBLIC SERVICE COMPANY OF
COLORADO**

By: _____
Jay Herrmann
Regional Vice President,
Customer and Community Services

Attest: _____
Asst. Secretary

“COMPANY”



Agenda Item 9 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Resolution No. 7 re Appointments to Fill Vacancies on Various Boards and Commissions

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 7 to appoint eligible applicants to fill vacancies on the Environmental Advisory Board, the Historic Landmark Board, the Open Space Advisory Board, the Parks, Recreation & Libraries Advisory Board, the Personnel Board, the Planning Commission, and the Special Permit and License Board.

Summary Statement

- City Council action is requested to appoint citizens to fill vacancies in alternate and regular memberships on seven of the City's established Boards and Commissions. The vacancies are the result of resignations received in December 2009 or the ineligibility of previous appointees to continue service due to the residency requirement.
- Having previously interviewed interested applicants, City Council's action will be to appoint ten individuals to fill existing vacancies on the Environmental Advisory Board, the Historic Landmark Board, the Open Space Advisory Board, the Parks, Recreation and Libraries Board, the Personnel Board, the Planning Commission, and the Special Permit and License Board.
- In April, City Council will be interviewing new applicants interested in serving on Boards and Commissions. While there should be no immediate vacancies to which these individuals can be appointed, they will be added to a pool of eligible applicants who Council can appoint to fill vacancies that might occur during 2010.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to fill vacancies on Boards and Commissions so a full complement of members can fulfill the duties established for each Board or Commission?

Alternative

None identified

Background Information

The terms of several members of the City's Boards and Commissions expired December 31, 2009, and the appointees were not reappointed due to resignation or relocation from the City, creating vacancies. Details are as follows.

A vacancy was created on the Environmental Advisory Board when Steve Breitzka, the alternate, was named a regular member to replace Belinda Butler-Veytia, who had resigned. If adopted, the attached resolution will appoint Irene Landers as the alternate member of the Board with her term of office expiring December 31, 2011.

At the conclusion of his December 31, 2009, term, Council received Stephen Graziano's resignation from the Historic Landmark Board. This added to an existing vacancy in the alternate membership that had not been filled in 2009 following appointment of the alternate to regular membership early that year. The attached resolution appoints Julie Marino to regular membership and Dar Vriesman to the alternate position, both terms to expire December 31, 2011.

The alternate member of the Open Space Advisory Board was vacant in 2009. If adopted, the attached resolution will name Pat Wales as the alternate for a term that will expire December 31, 2011. Ms. Wales was a long-time member of the Transportation Commission, and when it was dissolved, she expressed a desire to continue serving the City as a member of the Open Space Advisory Board.

There are two vacancies (a regular and an alternate) on the Parks, Recreation and Libraries Advisory Board, due to resignations. Beverly Bishop, the Board's secretary and a long-time member, resigned at the conclusion of her December 31, 2009 appointment in order to pursue other volunteer interests. The alternate member, Michael Angel, had resigned for business reasons earlier in the year. The attached resolution names Terrance Ramirez a regular member of this Board and Bernice Aspinwall the alternate. Both terms of offices will expire December 31, 2011. These individuals were members of boards that recently were dissolved and requested to be considered for appointment to another Board.

The appointment of Julie Marino to the Historic Preservation Board creates a vacancy on the Personnel Board where Ms. Marino has been serving as the 2nd alternate. The attached resolution names Phil Nathanson to the 2nd alternate position on the Personnel Board with a term of office to expire December 31, 2011.

At the end of his December 31, 2009 term, Joseph Barsoom resigned to pursue travel opportunities in his retirement. For employment reasons, Herb Atchison had submitted his resignation as one of two alternate members of the Commission earlier in 2009. Richard Mayo, the 1st alternate, was appointed to regular membership in January of 2010 to fill the vacancy created by Mr. Barsoom's resignation, leaving both alternate positions on the Commission vacant. If adopted, the attached resolution will name Christopher Beall the 1st alternate and Timothy McClung the 2nd alternate. The terms of both individuals' appointments will expire December 31, 2011. Both men were members of the recently dissolved Board of Adjustment.

Janel Chin moved from the City to relocate for employment reasons and resigned as the alternate on the Special Permit and License Board. The attached resolution appoints George Werkmeister the alternate member to this Board with a term to expire December 31, 2011. Mr. Werkmeister had been a member of the Board of Adjustment and wanted to remain involved in local government through appointment to another Board or Commission.

The functions of the City's Boards and Commissions directly promote the Strategic Plan's guiding principle to engage residents in local government through collaboration to address community and City issues and thereby support each one of the City's Strategic Plans Goals.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Resolution

RESOLUTION

RESOLUTION NO. 7

INTRODUCED BY COUNCILLORS

SERIES OF 2010

CITY OF WESTMINSTER BOARD AND COMMISSION NEW APPOINTMENTS

WHEREAS, vacancies exist on seven of the City's Boards and Commissions because of resignations received in recent months or the ineligibility of previous appointees to continue serving due to residency requirement; 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, the Board of Adjustment and the Transportation Commission were recently dissolved and Council appointees to those groups have completed applications to seek appointment to vacancies on Boards or Commissions; and

WHEREAS, City Council interviewed citizens who had applied for appointment to Boards and Commissions of personal interest to them.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the following individuals are hereby appointed to the City of Westminster Board or Commission listed below with their terms of office to expire December 31, 2011.

BOARD/COMMISSION	NAMES OF APPOINTEES
Environmental Advisory Board	Irene Landers (alternate)
Historic Landmark Board	Julie Marino and Dar Vriesman (alternate)
Open Space Advisory Board	Pat Wales (alternate)
Parks, Recreation and Libraries Advisory Board	Terrance Ramirez and Bernice Aspinwall (alternate)
Personnel Board	Phil Nathanson (2 nd alternate)
Planning Commission	Christopher Beall (1 st alternate) and Timothy McClung (2 nd alternate)
Special Permit and License Board	George Werkmeister (alternate)

PASSED AND ADOPTED this 22nd day of March, 2010.

ATTEST:

Mayor

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney



Agenda Item 10 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Resolution No. 8 re Compliance Hearing for the 144th Avenue and Zuni Street Annexation

Prepared By: Walter Patrick, Planner I

Recommended City Council Action

Adopt Resolution No. 8 accepting the annexation petition submitted by the City of Westminster and make the findings required by state statute on the sufficiency of the petition. This resolution sets the date of May 10, 2010, for the annexation hearing.

Summary Statement

- The 144th Avenue and Zuni Street annexation area contains 5.902 acres and consists of right-of-way area along 144th Avenue and the former Barnett property that has been purchased by the City for use as open space.
- In a 2009 Intergovernmental Agreement with Adams County, the City agreed to annex the 144th Avenue right-of-way areas between Tejon Street and Zuni Street.
- The surrounding Adams County zoning designations are primarily designed for pasturage and enjoyment of the rural environment. Open space uses on these properties are compatible with the Adams County zoning designations.

Expenditure Required: \$0

Source of Funds: NA

Policy Issue

Should the City set a date of May 10, 2010, for the annexation hearing for the 144th Avenue and Zuni Street property?

Alternative

Make a finding that there is no community of interest with the 144th Avenue and Zuni Street property. If this action is taken, the City-owned property will remain unincorporated and subject to Adams County regulations. Further, the City would be in violation of an existing Intergovernmental Agreement with Adams County in which the City agreed to annex the 144th Avenue right-of-way area between Tejon Street and Zuni Street.

Background Information

Nature of Request

Upon receiving a petition for annexation, the City Council is required by state statute to make a finding of whether or not said petition is in compliance with Section 31-12-107 (1), C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

1. An allegation that the annexation is desirable and necessary;
2. An allegation that the requirements of Sections 31-12-104 and 31-12-105, C.R.S., have been met; (These sections are to be reviewed by the Council at the formal public hearing.)
3. Signatures and mailing addresses of at least 50% of the landowners of the land to be annexed;
4. The legal description of the land to be annexed;
5. The date of each signature; and
6. An attached map showing the boundaries of the area.

Planning staff has reviewed the petition and has determined that it complies with the above requirements.

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date, at which time the Council will review the merits of the proposed annexation.

Location

The site is located along 144th Avenue between Tejon Street and Zuni Street.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- EXHIBIT A - Petition
- EXHIBIT B - Vicinity Map
- EXHIBIT C - Annexation Map (available for viewing in the City Clerk's Office)

RESOLUTION

RESOLUTION NO. **8**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**A RESOLUTION ACCEPTING A PETITION FOR ANNEXATION
OF THE 144th AVENUE and ZUNI STREET PROPERTY**

WHEREAS, there has been filed with the City Clerk of the City of Westminster, a petition, copies of which are attached hereto and incorporated by reference, for the annexation of certain territory therein-described to the City; and

WHEREAS, the City Council has been advised by the City Attorney and the City Manager that the petition and accompanying map are in substantial compliance with Sections 31-12-101, et.seq., Colorado Revised Statutes, as amended.

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

1. City Council finds the said petition and annexation map to be in substantial compliance with all state statutory requirements, including C.R.S. section 31-12-107 (1).
2. City Council hereby establishes May 10, 2010, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by C.R.S. section 31-12-108 (1).
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with C.R.S. section 31-12-108 (2).

PASSED AND ADOPTED this 22nd day of March, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER

Date Recd.	2/22/10
File	

Community Development Department Annexation Petition

The undersigned hereby petition the City Council of the City of Westminster to annex the territory described herein and shown on the map, filed herewith, designated "144th Avenue and Zuni Street Annexation."

In support of this petition, the Petitioner(s) allege(s) that:

1. It is desirable and necessary that the above-described territory be annexed to the City of Westminster.
2. The requirements of Section 31-12-104 and 31-12-105 of the Colorado Revised Statutes exist or have been met in that:
 - a. Not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the City of Westminster;
 - b. A community of interest exists between the territory proposed to be annexed and the City of Westminster;
 - c. The territory sought to be annexed is urban or will be urbanized in the near future; and
 - d. The territory sought to be annexed is integrated or is capable of being integrated with the City of Westminster.
 - e. In establishing the boundaries of the territory proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels of real estate without the written consent of the land owner or land owners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.
 - f. In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising twenty (20) acres or more which, together with the buildings and improvements situated thereon have an assessed valuation in excess of \$200,000 for ad valorem tax purposes for the year next preceding the annexation, shall be included within the territory proposed to be annexed without the written consent of the land owners, unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph, contiguity shall not be affected by a dedicated street, road or other public way.
 - g. The territory proposed to be annexed does not include any area included in another annexation proceeding involving a city other than the City of Westminster and is not presently a part of any incorporated city, city and county, or town.
 - h. The territory proposed to be annexed will not result in the detachment of the territory from any school district; or a resolution of the board of directors of the school district to which such area will be attached approving the proposed annexation is attached hereto; and
 - i. The proposed annexation would not have the effect of extending the boundary of Westminster more than three (3) miles in any direction in any one year.

3. The signer(s) of this petition comprise(s) the landowners of more than fifty percent (50%) of the territory to be annexed, excluding public streets and alleys.

4. Accompanying this petition are the original and ten (10) copies* of an annexation map containing the following information: [*Four copies required by State statute, but the City needs 10 sets for the review]

- a. A written legal description of the boundaries of the area proposed to be annexed.
- b. A map showing the boundary of the area proposed to be annexed.
- c. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks.
- d. Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.
- e. A surveyor's certificate prepared by a registered land surveyor that attests to the preparation of the map and certifies at least one-sixth (1/6) contiguity to the City of Westminster.
- f. An approval block for the City of Westminster in form and substance as provided in the City's most current Plan Submittal Guidelines.

Signature of Petitioner

X *Brent McFall* **
Name Brent McFall
Title City Manager
Company City of Westminster ***
Mailing address of signer
4800 West 92nd Ave.
Westminster, CO 80031
Date of Signing 2/22/10

Signature of Petitioner

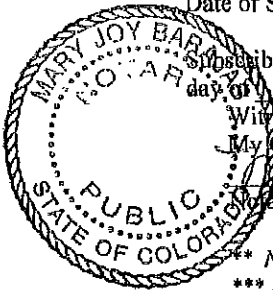
X _____ **
Name _____
Title _____
Company _____ ***
Mailing address of signer

Date of Signing _____

Subscribed and sworn to before me this 22nd
day of February, 2010.
Witness my hand and Official Seal.
My Commission expires Jan. 27, 2013
Mary Joy Barajas
Notary Public

Subscribed and sworn to before me this ___
day of _____, 20__.
Witness my hand and Official Seal.
My Commission expires _____

Notary Public



** No signature is valid if date is more than 180 days prior to filing the Petition with the City Clerk.

*** If corporation or partnership, provide proof of authorization to sign

My Commission Expires 1-27-13
City of Westminster
City Manager's Office
Adams County
4800 West 92nd Avenue
Westminster, CO 80031

Attachments:

- Exhibit A - Affidavit of Circular (required)
- Exhibit B - Written legal description(s) of the land owned by each Petitioner (required)
- Exhibit C - Fire District Withdrawal Petition (if applicable)

Legal Description
144th Avenue and Zuni Street

A parcel of land located in the southwest quarter of the southwest quarter of Section 16, and the northwest quarter of the northwest quarter of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado being more particularly described as follows:

Commencing at the southwest corner of Section 16, Township 1 South, Range 68 West of the Sixth Principal Meridian, said point being the Point of Beginning; thence along said westerly line of the southwest quarter of the southwest quarter of said Section 16 N00°22'19"W a distance of 60.00 feet to a point on the northerly right-of-way line of West 144th Avenue extended; thence along said northerly right-of-way line the following five (5) consecutive courses; 1.) N89°57'07"E a distance of 654.68 feet; 2.) thence S00°27'07"E a distance of 20.00 feet; 3.) thence N89°57'07"E a distance of 599.70 feet; 4.) thence N00°32'16"W a distance of 15.00 feet; 5.) thence N89°57'07"E a distance of 55.00 feet to a point on the easterly line of the southwest quarter of the southwest quarter of said Section 16; thence S00°32'16"E along said easterly line a distance of 55.00 feet to the southeast corner of the southwest quarter of the southwest quarter of said Section 16; thence S00°19'35"E along the easterly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 30.00 feet; thence N89°57'07"W along a line which is 30 feet southerly of and parallel to the northerly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 467.54 feet; thence S00°02'53"E a distance of 49.54 feet; thence S89°57'07"W a distance of 8.00 feet; thence S00°02'49"E a distance of 32.50 feet; thence S89°57'11"W a distance of 82.88 feet; thence N00°02'49"W a distance of 32.50 feet; thence S89°57'11"W a distance of 100.40 feet; thence 135.45 feet along the arc of a curve to the right, having a radius of 991.50 feet, a central angle of 07°49'38" and a chord which bears N86°08'00"W a distance of 135.34 feet to a point on the westerly line of Barnett Estates recorded July 28th, 1995 at File No. 17, Map No. 409, Reception No. C0091433; thence along the westerly and northerly line of said Barnett Estates the following two (2) consecutive courses 1.) S00°15'12"E a distance of 217.81 feet; 2.) thence S89°57'48"W a distance of 515.58 feet to a point on the easterly line of the northwest quarter of the northwest quarter of said Section 21; thence N00°15'12"W along the said easterly line a distance of 288.00 feet to the Point of beginning.

Said parcel contains 5.902 acres (257,074 sq. ft.), more or less.





Agenda Item 10 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Resolution No. 9 re Compliance Hearing for the 144th Avenue and Tejon Street Annexation

Prepared By: Walter Patrick, Planner I

Recommended City Council Action

Adopt Resolution No. 9 accepting the annexation petition submitted by the City of Westminster and make the findings required by state statute on the sufficiency of the petition. This resolution sets the date of May 10, 2010, for the annexation hearing.

Summary Statement

- The 144th Avenue and Tejon Street annexation area contains 1.122 acres and consists of right-of-way area along 144th Avenue and a City-owned parking area used for the adjacent McKay Lake Open Space.
- In a 2009 Intergovernmental Agreement with Adams County, the City agreed to annex the 144th Avenue right-of-way areas between Tejon Street and Zuni Street.
- The surrounding Adams County zoning designations are primarily designed for pasturage and enjoyment of the rural environment. Open space uses on these properties are compatible with the Adams County zoning designations.

Expenditure Required: \$0

Source of Funds: NA

Policy Issue

Should the City set a date of May 10, 2010 for the annexation hearing for the 144th Avenue and Tejon Street Property?

Alternative

Make a finding that there is no community of interest with the 144th Avenue and Tejon Street property and do not set a hearing date. If this action is taken, the City-owned property will remain unincorporated and subject to Adams County regulations. Further, the City would be in violation of an existing Intergovernmental Agreement with Adams County in which the City agreed to annex the 144th Avenue right-of-way area between Tejon Street and Zuni Street.

Background Information

Nature of Request

Upon receiving a petition for annexation, the City Council is required by state statute to make a finding of whether or not said petition is in compliance with Section 31-12-107 (1), C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

1. An allegation that the annexation is desirable and necessary;
2. An allegation that the requirements of Sections 31-12-104 and 31-12-105, C.R.S., have been met; (These sections are to be reviewed by the Council at the formal public hearing.)
3. Signatures and mailing addresses of at least 50% of the landowners of the land to be annexed;
4. The legal description of the land to be annexed;
5. The date of each signature; and
6. An attached map showing the boundaries of the area.

Planning staff has reviewed the petition and has determined that it complies with the above requirements.

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date, at which time the Council will review the merits of the proposed annexation.

Location

The site is located on the south side of 144th Avenue at Tejon Street.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- EXHIBIT A - Petition
- EXHIBIT B - Vicinity Map
- EXHIBIT C - Annexation Map (available for viewing in the City Clerk's Office)

RESOLUTION

RESOLUTION NO. **9**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**A RESOLUTION ACCEPTING A PETITION FOR ANNEXATION
OF THE 144th AVENUE and TEJON STREET PROPERTY**

WHEREAS, there has been filed with the City Clerk of the City of Westminster, a petition, copies of which are attached hereto and incorporated by reference, for the annexation of certain territory therein-described to the City; and

WHEREAS, the City Council has been advised by the City Attorney and the City Manager that the petition and accompanying map are in substantial compliance with Sections 31-12-101, et.seq., Colorado Revised Statutes, as amended.

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

1. City Council finds the said petition and annexation map to be in substantial compliance with all state statutory requirements, including C.R.S. section 31-12-107 (1).
2. City Council hereby establishes May 10, 2010, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by C.R.S. section 31-12-108 (1).
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with C.R.S. section 31-12-108 (2).

PASSED AND ADOPTED this 22nd day of March, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER

Date Received	2/22/10
File No.	

**Community Development Department
Annexation Petition**

The undersigned hereby petition the City Council of the City of Westminster to annex the territory described herein and shown on the map, filed herewith, designated "144th Avenue and Tejon Street Annexation."

In support of this petition, the Petitioner(s) allege(s) that:

1. It is desirable and necessary that the above-described territory be annexed to the City of Westminster.
2. The requirements of Section 31-12-104 and 31-12-105 of the Colorado Revised Statutes exist or have been met in that:
 - a. Not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the City of Westminster;
 - b. A community of interest exists between the territory proposed to be annexed and the City of Westminster;
 - c. The territory sought to be annexed is urban or will be urbanized in the near future; and
 - d. The territory sought to be annexed is integrated or is capable of being integrated with the City of Westminster.
 - e. In establishing the boundaries of the territory proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels of real estate without the written consent of the land owner or land owners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.
 - f. In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising twenty (20) acres or more which, together with the buildings and improvements situated thereon have an assessed valuation in excess of \$200,000 for ad valorem tax purposes for the year next preceding the annexation, shall be included within the territory proposed to be annexed without the written consent of the land owners, unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph, contiguity shall not be affected by a dedicated street, road or other public way.
 - g. The territory proposed to be annexed does not include any area included in another annexation proceeding involving a city other than the City of Westminster and is not presently a part of any incorporated city, city and county, or town.
 - h. The territory proposed to be annexed will not result in the detachment of the territory from any school district; or a resolution of the board of directors of the school district to which such area will be attached approving the proposed annexation is attached hereto; and
 - i. The proposed annexation would not have the effect of extending the boundary of Westminster more than three (3) miles in any direction in any one year.

3. The signer(s) of this petition comprise(s) the landowners of more than fifty percent (50%) of the territory to be annexed, excluding public streets and alleys.

4. Accompanying this petition are the original and ten (10) copies* of an annexation map containing the following information: [*Four copies required by State statute, but the City needs 10 sets for the review]

- a. A written legal description of the boundaries of the area proposed to be annexed.
- b. A map showing the boundary of the area proposed to be annexed.
- c. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks.
- d. Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.
- e. A surveyor's certificate prepared by a registered land surveyor that attests to the preparation of the map and certifies at least one-sixth (1/6) contiguity to the City of Westminster.
- f. An approval block for the City of Westminster in form and substance as provided in the City's most current Plan Submittal Guidelines.

Signature of Petitioner

X [Signature] **
 Name Brent McTall
 Title City Manager
 Company City of Westminster***
 Mailing address of signer
4800 West 92nd Ave
Westminster, CO 80031
 Date of Signing 2/22/10

Signature of Petitioner

X _____ **
 Name _____
 Title _____
 Company _____ ***
 Mailing address of signer

 Date of Signing _____

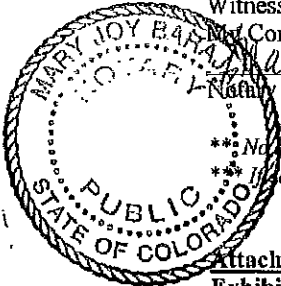
Subscribed and sworn to before me this 22nd day of February, 2010.

Witness my hand and Official Seal.
 My Commission expires Jan. 27 2013
[Signature]
 Notary Public

Subscribed and sworn to before me this ___ day of _____, 20__.

Witness my hand and Official Seal.
 My Commission expires _____

 Notary Public



** No signature is valid if date is more than 180 days prior to filing the Petition with the City Clerk.
 *** If corporation or partnership, provide proof of authorization to sign

Attachments:

- Exhibit A - Affidavit of Circular (required)
- Exhibit B - Written legal description(s) of the land owned by each Petitioner (required)
- Exhibit C - Fire District Withdrawal Petition (if applicable)

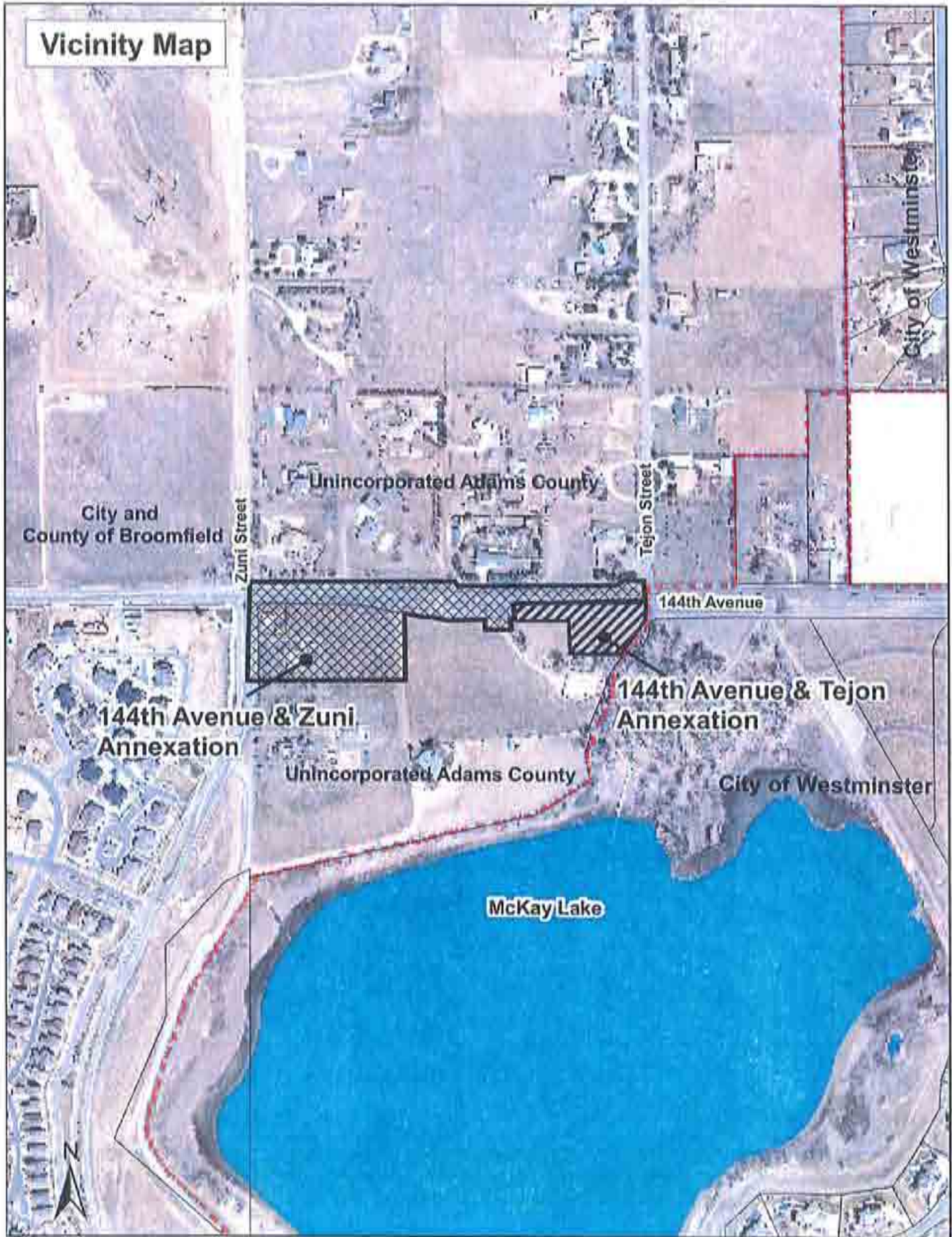
My Commission Expires _____
 City of Westminster
 City Manager's Office
 Adams County
 4800 West 92nd Avenue
 Westminster, CO 80031

Legal Description
144th Avenue and Tejon Street

A parcel of land located in the northwest quarter of the northwest quarter of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado being more particularly described as follows:

Commencing at the northwest corner of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian thence N89°57'07"E along the northerly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 1309.53 feet to the northeast corner of the northwest quarter of the northwest quarter of said Section 21; thence S00°19'35"E along the easterly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 30.00 feet to the Point of Beginning; thence S00°19'35"E along said easterly line a distance of 50.13 feet; thence S35°01'57"W a distance of 29.16 feet; thence S35°19'56"W a distance of 125.59 feet; thence S89°58'53"W a distance of 4.86 feet; thence N00°01'07"W a distance of 10.00 feet; thence S89°58'53"W a distance of 166.00 feet; thence N00°01'07"W a distance of 116.76 feet; thence S89°57'11"W a distance of 207.51 feet; thence N00°02'53"W a distance of 49.54 feet; thence N89°57'07"E along a line which is 30 feet southerly of and parallel to the northerly line of the northwest quarter of the northwest quarter of said Section 21, a distance of 467.54 feet to the Point of Beginning.

Said parcel contains 1.122 acres (48,880 sq. ft.), more or less.





Agenda Item 10 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 22, 2010



SUBJECT: Councillor's Bill No. 11 re Amended Redevelopment Assistance Agreement for the Northgate Shopping Center in the South Westminster Urban Renewal Area

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Adopt Councillor's Bill No. 11 authorizing the City Manager to sign an amended redevelopment assistance package with Parkwood East, LLC in substantially the same form as the attached Agreement to improve the Northgate Shopping Center located at the southeast corner of 72nd Avenue and Federal Boulevard.

Summary Statement

- Parkwood East, LLC (Developer) purchased the 21-acre Northgate shopping center at the southeast corner of 72nd Avenue and Federal Boulevard.
- In April 2007, the Developer entered into an Agreement with the City and Westminster Economic Development Authority (WEDA) to improve the property for the Rancho Liborio grocery and center.
- The Agreement provides for the following financial assistance:
 - The Developer receives an annual rebate of 50% of sales taxes collected from Liborio grocery, the adjoining in-line commercial space and the two commercial pads;
 - The rebate period is for a maximum of 6 years which began January 7, 2009.
 - The rebate is capped at \$2.6 million.
- In exchange for the financial assistance, the Developer agreed to complete all improvements to the site as per the approved Official Development Plan (ODP) and evaluate the feasibility of demolition or reuse of the dilapidated structures located to the east of the Liborio grocery.
- The Agreement also stipulates that should the Developer sell the property, the Agreement would be terminated unless otherwise agreed to by the City.
- The Developer has found a prospective buyer for the property that is interested in accelerating development of the entire property, and is requesting authorization to assign the Agreement.
- City staff and the Developer have agreed to the following changes to the Agreement that would be favorable to the City, thereby making the assignment of the Agreement more acceptable.
 - The dilapidated structures on the property will be demolished and removed by January 1, 2011 at cost to the Developer;
 - The unfinished improvements required pursuant to the ODP will be completed and a final Certificate of Occupancy obtained by August 31, 2010, unless otherwise agreed to by the City;
 - Financial penalties will be imposed along with the possibility of termination to the Agreement should the Developer fail to meet the obligations as specified above.
 - The Agreement will expressly permit an assignment to a prospective buyer(s).

Expenditure Required: Up to \$2,426,311 (Remaining Rebate Balance)

Source of Funds: Sales tax proceeds from the Northgate Shopping Center Project

Policy Issue

Should the City of Westminster permit the Developer to assign the redevelopment assistance Agreement with Parkwood East, LLC to facilitate a sale of the Northgate center to a prospective buyer?

Alternative

As an alternative, the City Council could opt not to allow the assignment of the Agreement. This alternative could result in Parkwood East, LLC not being able to sell the property for several years, thereby delaying any further planning for and/or improvements to the property. A new developer prospect may be better suited to developing the property in a manner consistent with the City's vision and interest for the area in an accelerated manner.

Background Information

The City of Westminster has been working to improve and/or redevelop the Northgate Shopping Center and adjoining vacant land over the better part of 7 years. In late 2001, a developer was selected through a request-for-proposal (RFP) process to work with the Westminster Economic Development Authority (WEDA) to acquire the property from the Pomponio family and to develop the property into a grocery-anchored shopping center surrounded by single family and townhouse development. The developer was successful in securing a letter-of-intent (LOI) from the Albertsons Corporation to construct a new 50,000 square foot Albertsons grocery store. The developer, however, was not successful in negotiating the acquisition of the property from the Pomponio family. Based on a valuation appraisal prepared for WEDA and the developer's estimate of development costs, it was estimated that WEDA and/or the City of Westminster would need to provide from \$4-\$6 million in assistance to make this redevelopment project financially viable. This cost, however, had the potential to increase dependant upon a thorough assessment of the environmental contamination. Shortly after completing the financial assessment, Albertson's decided to not proceed with construction of a new store, which eventually led to the developer terminating the project.

In 2004, the City of Westminster was approached by TEBO Development Company relative to possible development of the property. TEBO was negotiating a contract to purchase the property from the Pomponio family. Thereafter, the City assisted TEBO in further assessing the environmental conditions and discussing a variety of development opportunities. This work and subsequent discussions led to TEBO indicating a range of \$10-\$12 million in WEDA or City assistance to make the project financially viable. TEBO shopped the project site around to prospective businesses with no success and terminated any further interest in pursuing the project in 2006.

As Parkwood East LLC, Carlson Associates acquired the Northgate shopping center from the Pomponio family in 2007. With the acquisition, Parkwood East was successful in recruiting Rancho Liborio grocery to occupy the old 45,000 square foot Grocery Warehouse building. In conjunction with this success, Parkwood East decided to replace the old in-line commercial space with a newly constructed building and moved forward with plans to remediate the environmental contamination known to exist on the subject and adjacent Regis University owned property. An ODP was submitted and approved by the City that provided for a complete renovation of the exterior of the Grocery Warehouse building, construction of new commercial in-line space, and improvements to the parking lot.

Given the high cost of acquisition and the proposed improvements, estimated at \$9.2 million, Parkwood East requested and received a business assistance package from the City and WEDA. Provisions of the Agreement included the following:

- The City of Westminster provided no up-front funding.
- The Developer receives an annual rebate of 50% of sales taxes collected.
- The rebate period is for a maximum of 6 years.
- The rebate is capped at \$2.6 million.

In addition, the assistance package held the Developer to the following performance requirements:

- The Developer is was required to make all improvements in accordance with the approved Official Development Plan;
- Rancho Liborio was required to move into the space;
- The Developer is to obtain approval from the State of Colorado relative to a Voluntary Cleanup Plan (VCUP) for the site;
- The Developer was required to install the approved contaminant remediation system and provide regular and satisfactory progress towards the remediation; and
- The Developer was to work with the City to determine potential for reuse or demolition of the dilapidated buildings east of the grocery, and proceed with the reuse or demolition as agreed to, within 3 years.

The sales tax rebate period commenced on January 7, 2009 upon Rancho Liborio grocery obtaining a temporary certificate of occupancy. The rebate period is due to expire on January 7, 2015, leaving five years of remaining sales tax rebate. Parkwood East received its first rebate in January 2010 in the amount of \$173,689 leaving a remaining balance of up to \$2,426,311 in sales tax rebate potential. Based on current sales tax collections, the total actual rebate to be paid over the 6-year period would be closer to \$1.2 million.

Developer has complied with all aspects of the agreement with the exception of completing the improvements per the approved ODP and obtaining a final certificate of occupancy and is still responsible for submitting a proposal relative to reuse or demolition of the dilapidated structures. The continuing deterioration of these buildings is of growing concern, and Staff continues to look for a means by which the buildings could be demolished and removed from the site earlier rather than later.

Another provision in the Agreement stipulates that it shall become void should Parkwood East sell the property to another party unless otherwise agreed to by the City. Parkwood East has expressed an interest in selling the property, and is requesting that the City authorize a sale without voiding the Agreement. Parkwood East further is seeking City permission to assign the Agreement to a buyer. Parkwood East is currently under contract to sell the property to an out of state developer interested in accelerating development of the undeveloped portion of the site.

Staff supports the request relative to the continuance and assignment of the Agreement in the event of a sale subject to modifications to the Agreement. It is proposed that the Agreement be amended to reflect the following changes:

- All ODP improvements shall be completed by August 31, 2010 unless otherwise agreed to by the City. Should the Developer fail to complete the improvements by such date, ten percent (10%) of the Sales Tax Rebate shall be forfeited for each month the Developer fails to complete the required improvements. Should the Developer fail to complete improvements by January 1, 2011, the Agreement would be rendered null and void.
- The Developer shall demolish and remove the dilapidated buildings east of the Rancho Liborio grocery to the satisfaction of the City, by no later than January 1, 2011. Should the Developer fail to remove the buildings by such date, this Agreement would be subject to termination.
- The Developer would be permitted to sell all or a portion of the property and assign the rights and obligations of the Agreement to the purchaser(s) without termination of the Agreement. Should the Developer assign the rights and obligations the assignee would become responsible for fulfilling the remaining obligations of the Agreement

All other provisions of the Agreement would remain in effect as originally approved.

Staff believes the amendments as proposed will result in significant benefit to the City and South Westminster neighborhood. Under the proposed amendments, the dilapidated structures east of Rancho Liborio will be removed much more quickly than under the terms of the original Agreement, thereby eliminating a blight and eyesore from the South Westminster landscape. The City could further benefit from working with a new development team that could lead to a more accelerated development of the site.

Approval of this proposed amended Agreement supports the City Council Strategic Plan Goals of a “Financially Sustainable City Government Providing Exceptional Services,” “Vibrant Neighborhoods and Commercial Areas,” and “Strong, Balanced Local Economy” by working to rehabilitate deteriorating commercial areas and supporting a healthy retail base.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **11**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING AN AMENDED REDEVELOPMENT ASSISTANCE
AGREEMENT FOR THE REDEVELOPMENT OF THE NORTHGATE SHOPPING CENTER
IN WESTMINSTER, COLORADO**

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

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

WHEREAS, the City of Westminster ("City") has indicated its desire to improve and redevelop the area at 72nd Avenue and Federal Boulevard, including the property known as the Northgate Shopping Center site, within the South Westminster Urban Renewal Area; and

WHEREAS, the Parkwood East LLC has all of the property in ownership covered by this Agreement; and

WHEREAS, the Westminster City Council did approve a Redevelopment Assistance Agreement between the City, the Westminster Economic Development Authority and Parkwood East LLC providing financial assistance on April 23, 2007.

WHEREAS, the City and Parkwood East LLC are in agreement that amendments to said Redevelopment Assistance Agreement are in the interest of both parties; and

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 Mayor of the City of Westminster is hereby authorized to sign an Amended Redevelopment Assistance Agreement with Parkwood East LLC 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 22nd day of March, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of April, 2010.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT "A"

FIRST AMENDED REDEVELOPMENT ASSISTANCE AGREEMENT

This First Amended Redevelopment Assistance Agreement (this "Amendment") made this 12th day of April, 2010, replaces that certain Redevelopment Assistance Agreement effective the 9th of January, 2008 (the "Effective Date"), by and among the **CITY OF WESTMINSTER** ("City"), a Colorado home-rule municipality, and the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, an urban renewal authority organized and existing pursuant to the provisions of Part 1, Article 25, Title 31, C.R.S. ("WEDA"), and **PARKWOOD EAST, LLC**, 12460 1st Street, Eastlake, Colorado 80614 ("Developer").

In consideration of the mutual promises set forth below, the City, WEDA and Developer agree as follows:

1. Definitions.
 - a. Sales Tax Rebate Area. Sales Tax Rebate Area means the real property described on Exhibit "A" attached hereto and incorporated herein by this reference.
 - b. Phase 2 Improvement Area. Phase 2 Improvement Area means the real property described on Exhibit "B" attached hereto and incorporated herein by this reference.
 - c. Rebate Year. Rebate Year means each 12 month period starting on the Rebate Commencement Date.
 - d. Rebate Commencement Date. Rebate Commencement Date means the date on which the City issues a temporary or a permanent certificate of occupancy for a Liborio's grocery store within the Sales Tax Rebate Area.
 - e. Rebate Period. Rebate Period means the 6 year period of time commencing on the 7th of January, 2009 and ending on the sixth (6th) anniversary thereof being the 7th of January, 2015.
2. Sales Tax Rebate.
 - a. The Maximum Rebate payable under this Agreement is Two Million Six Hundred Thousand Dollars and no cents (\$2,600,000) ("Maximum Rebate").
 - b. During the Rebate Period, the City shall rebate to Developer an amount equal to 50% of sales tax collections paid to the City that are attributable to the City's 3.0% General Sales Tax on sales generated by tenants occupying the commercial space on the Property as defined below (the "Rebate"). The Rebate shall not extend beyond the Rebate Period nor exceed the Maximum Rebate.
 - c. The Rebate shall not include any sales tax collected and received from any Westminster business located and operating outside the Sales Tax Rebate Area that relocates to the Sales Tax Rebate Area and ceases operations at the previous location.
 - d. The Rebates shall be paid by the City on an annual basis within sixty (60) days following the end of each Rebate Year.

3. Conditions Precedent. The City's obligation to pay any Rebate otherwise payable under this Agreement is subject to the following conditions precedent:

a. Developer shall have completed all improvements within the Sales Tax Rebate Area in accordance with the final Official Development Plan (ODP) for the Northgate Shopping Center approved by the City. All improvements shall be completed and final Certificate of Occupancy obtained no later than August 31, 2010. If any building permit or permits are not issued on or before May 15, 2010, the City shall agree in good faith to an extension for completion of the improvements without penalty. Should the Developer fail to so complete the improvements and obtain a final Certificate of Occupancy by August 31, 2010, unless otherwise agreed to by City, ten percent (10%) of the Sales Tax Rebate shall be forfeited for each month the Developer fails to complete the required improvements and obtain the Certificate of Occupancy. Should the Developer fail to complete improvements and obtain a Certificate of Occupancy by January 1, 2011, this Agreement shall become null and void.

b. Liborio's grocery store shall occupy and have commenced business operations at the Northgate Shopping Center.

c. Developer shall have submitted a reasonably acceptable Voluntary Cleanup Plan for approval by the State of Colorado.

In the event any of the foregoing conditions have not been satisfied on or before the end of the first Rebate Year, this Agreement shall automatically terminate and the City shall have no obligation whatsoever to Developer.

3. Other Conditions. Developer shall provide evidence of continued progress relative to the Voluntary Cleanup Plan approved by the State until such time as the Plan is completed and the Property is released by the State. Should the condition not be met, the City may hold any Rebate otherwise due until such time Developer is in compliance with said condition. Any interest income earned on any amount so held shall accrue to the benefit of the City.

4. Demolition of Dilapidated Structures. The Developer shall demolish and remove the buildings, as shown in Exhibit "B", to the satisfaction of the City, by no later than January 1, 2011. Should the Developer fail to remove the buildings by such date, this Agreement shall be deemed terminated.

5. Intent of Parties.

a. This instrument shall constitute the entire agreement between the City and Developer 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, except that it does not supersede any agreement between the City of Westminster and Developer regarding the Official Development Plan (ODP) or any other development plans for the Northgate Shopping Center.

b. Notwithstanding any possible interpretation of this Agreement to the contrary, Developer shall have no rights or remedies against WEDA, and WEDA shall have no duties or obligations to Developer, under this Agreement.

c. Nothing in this Agreement shall be deemed or construed as a waiver of any provision of the City Code or the City Charter.

6. Termination.

a. Unless sooner terminated as provided in this Agreement, this Agreement shall terminate when the total Sales Tax Rebates reach the Maximum Rebate Amount, or upon the date of the City's payment to Developer of the final Rebate following the conclusion of the sixth (6th) Rebate Year, whichever event occurs sooner.

b. The Developer may sell all or a portion of the Sales Tax Rebate Area and assign the rights and obligations of the Agreement to the purchaser(s) without terminating this Agreement. Should the Developer assign the rights and obligations of this Agreement, the Assignee shall assume full responsibility for fulfilling the remaining obligations of this Agreement.

7. 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 obligations 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.

8. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple year fiscal 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.

9. Notices. Any notices or other communications required or permitted to be given under this Agreement will be sufficiently given and will be deemed given when given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, at the address below or at such address or addresses as either party hereafter designates in writing to the other party hereto.

To the City of Westminster:

J. Brent McFall
City Manager, City of Westminster
4800 West 92nd Avenue
Westminster CO 80031
Telephone: (303) 430-2400
Facsimile: (303) 430-1809

To Parkwood East, LLC:

Clay Carlson
12460 1st Street
P.O. Box 247
Eastlake, CO 80614-0247

10. Governing Law; Disputes.

a. 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, the Westminster Municipal Code, and the Colorado Urban Renewal Law.

b. 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 Adams County, Colorado. In the event of such a lawsuit, the prevailing party therein shall be entitled to recover its reasonable attorney fees and costs that were incurred as a result thereof.

11. WEDA's Obligations to City.

a. WEDA agrees to repay the City any amounts paid by the City to Developer pursuant to this Agreement, regardless of whether net tax increment existed at the time any such payment was made.

b. WEDA's obligations shall be payable when and if sufficient tax increment revenue is available to permit WEDA to meet its obligation under this Agreement after meeting all of WEDA's other prior and superior obligations, including but not limited to debt service. WEDA's repayment obligations to the City under this Agreement shall be due and payable by January 31 following the end of the calendar year in which any Rebate is paid to Developer by the City.

c. WEDA shall have no further obligation to the City after January 31 following the year in which this Agreement terminates.

CITY OF WESTMINSTER

BY: _____
Nancy McNally, Mayor

ATTEST:

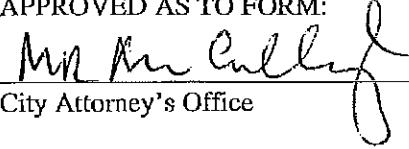
City Clerk

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

BY: _____
J. Brent McFall, Executive Director

ATTEST:

Secretary

APPROVED AS TO FORM:


City Attorney's Office

PARKWOOD EAST, LLC.

BY: _____
Name: _____
Title: _____

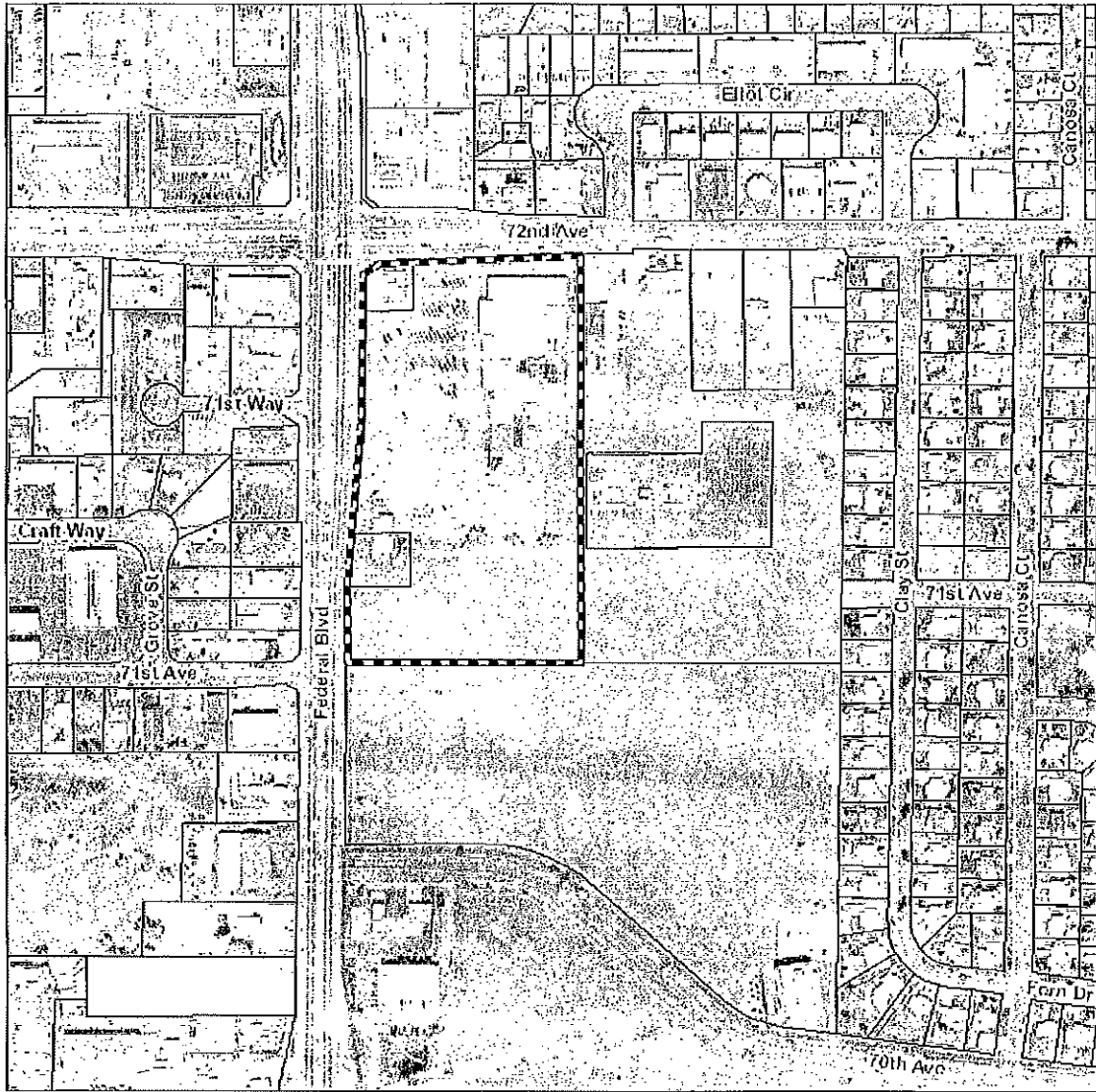
ATTEST:

Secretary

Exhibit A

Carlson Business Assistance Agreement

Sales Tax Rebate Area



 Development Area Boundary



**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, March 22, 2010
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (January 25, 2010)
- 3. New Business**
 - A. Amended Redevelopment Assistance Agreement for the Northgate Shopping Center in the South Westminster Urban Renewal Area
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JANUARY 25, 2010 AT 7:11 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Dittman and Board Members Briggs, Kaiser, Major, and Winter. Board Member Lindsey was absent. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney for the Authority, and Linda Yeager, Secretary.

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Major, to approve the minutes of the meeting of December 21, 2009 with no additions or corrections. The motion carried unanimously.

PUBLIC HEARING TO CONSIDER 2010 BUDGET AMENDMENT

The Chairperson opened the public hearing at 7:12 p.m. Mr. McFall reported that the Board had appropriated carryover funds to an account designated for use in facilitating purchase of property for the Westminster Urban Reinvestment Project. One property had been acquired and another acquisition would be considered by the Board later in the meeting. At the current time, staff believed it advisable to request appropriation of the full carryover. Neither Council nor the public had any questions. The Chairperson closed the hearing at 7:13 p.m.

RESOLUTION NO. 118 AUTHORIZING SUPPLEMENTAL APPROPRIATION TO 2010 BUDGET

Upon a motion by Vice Chairperson Dittman, seconded by Kaiser, the Board voted unanimously at roll call to adopt Resolution No. 118 authorizing the supplemental appropriation of \$7,629,154 to the Westminster Economic Development Authority.

RATIFICATION OF WESTMINSTER CENTER URBAN REINVESTMENT PROJECT EXPENSES

Mayor Pro Tem Dittman moved to ratify expenses previously authorized by City Council for the Westminster Center Urban Reinvestment Plan project and charged to the City's General Capital Improvement Fund. Board Member Major seconded the motion, which carried by unanimous vote.

RESOLUTION NO. 119 TO ACQUIRE LOT 13, BLOCK 1, WESTMINSTER MALL

It was moved by Board Member Briggs and seconded by Board Member Winter to adopt Resolution No. 119 authorizing the Executive Director and the Authority's legal counsel to take all necessary legal measures to acquire Lot 13, Block 1, Westminster Mall 2nd Amended Plat, County of Jefferson, State of Colorado, including proceeding with condemnation if necessary. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no other business to be considered, the meeting adjourned at 7:15 p.m.

ATTEST:

Secretary

Chairperson

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
March 22, 2010



SUBJECT: Amended Redevelopment Assistance Agreement for the Northgate Shopping Center in the South Westminster Urban Renewal Area

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Authorize the Executive Director to sign an amended redevelopment assistance package with Parkwood East, LLC in substantially the same form as the attached Agreement to improve the Northgate Shopping Center located at the southeast corner of 72nd Avenue and Federal Boulevard.

Summary Statement

- Parkwood East, LLC (Developer) purchased the 21-acre Northgate shopping center at the southeast corner of 72nd Avenue and Federal Boulevard.
- In April 2007, the Developer entered into an Agreement with the City of Westminster and Westminster Economic Development Authority (WEDA) to improve the property for the Rancho Liborio grocery and center.
- The Agreement provides for the following financial assistance:
 - The Developer receives an annual rebate of 50% of sales taxes collected from Liborio grocery, the adjoining in-line commercial space and the two commercial pads;
 - The rebate period is for a maximum of 6 years which began January 7, 2009.
 - The rebate is capped at \$2.6 million.
- In exchange for the financial assistance, the Developer agreed to complete all improvements to the site as per the approved Official Development Plan (ODP) and evaluate the feasibility of demolition or reuse of the dilapidated structures located to the east of the Liborio grocery.
- The Agreement also stipulates that should the Developer sell the property, the Agreement would be terminated unless otherwise agreed to by the City.
- The Developer has found a prospective buyer for the property that is interested in accelerating development of the entire property, and is requesting authorization to assign the Agreement.
- City staff and the Developer have agreed to the following changes to the Agreement that would be favorable to the City and WEDA, thereby making the assignment of the Agreement more acceptable.
 - The dilapidated structures on the property will be demolished and removed by January 1, 2011 at cost to the Developer;
 - The unfinished improvements required pursuant to the ODP will be completed and a final Certificate of Occupancy obtained by August 31, 2010 unless otherwise agreed to by the City;
 - Financial penalties will be imposed along with the possibility of termination to the Agreement should the Developer fail to meet the obligations as specified above.
 - The Agreement will expressly permit an assignment to a prospective buyer(s).

Expenditure Required: Up to \$2,426,311 (Remaining Rebate Balance)

Source of Funds: Sales tax proceeds from the Northgate Shopping Center Project

Policy Issue

Should WEDA permit the Developer to assign the redevelopment assistance Agreement with Parkwood East, LLC to facilitate a sale of the Northgate center to a prospective buyer?

Alternative

As an alternative, WEDA could opt not to allow the assignment of the Agreement. This alternative could result in Parkwood East, LLC not being able to sell the property for several years, thereby delaying any further planning for and/or improvements to the property. A new developer prospect may be better suited to developing the property in a manner consistent with the City's vision and WEDA's interest for the area in an accelerated manner.

Background Information

WEDA and the City of Westminster have been working to improve and/or redevelop the Northgate Shopping Center and adjoining vacant land over the better part of 7 years. In late 2001, a developer was selected through a request-for-proposal (RFP) process to work with the Westminster Economic Development Authority (WEDA) to acquire the property from the Pomponio family and to develop the property into a grocery-anchored shopping center surrounded by single family and townhouse development. The developer was successful in securing a letter-of-intent (LOI) from the Albertsons Corporation to construct a new 50,000 square foot Albertsons grocery store. The developer, however, was not successful in negotiating the acquisition of the property from the Pomponio family. Based on a valuation appraisal prepared for WEDA and the developer's estimate of development costs, it was estimated that WEDA and/or the City of Westminster would need to provide from \$4-\$6 million in assistance to make this redevelopment project financially viable. This cost, however, had the potential to increase dependant upon a thorough assessment of the environmental contamination. Shortly after completing the financial assessment, Albertson's decided to not proceed with construction of a new store, which eventually led to the developer terminating the project.

In 2004, the City of Westminster was approached by TEBO Development Company relative to possible development of the property. TEBO was negotiating a contract to purchase the property from the Pomponio family. Thereafter, the City assisted TEBO in further assessing the environmental conditions and discussing a variety of development opportunities. This work and subsequent discussions led to TEBO indicating a range of \$10-\$12 million in WEDA or City assistance to make the project financially viable. TEBO shopped the project site around to prospective businesses with no success and terminated any further interest in pursuing the project in 2006.

As Parkwood East LLC, Carlson Associates acquired the Northgate shopping center from the Pomponio family in 2007. With the acquisition, Parkwood East was successful in recruiting Rancho Liborio grocery to occupy the old 45,000 square foot Grocery Warehouse building. In conjunction with this success, Parkwood East decided to replace the old in-line commercial space with a newly constructed building and moved forward with plans to remediate the environmental contamination known to exist on the subject and adjacent Regis University owned property. An ODP was submitted and approved by the City that provided for a complete renovation of the exterior of the Grocery Warehouse building, construction of new commercial in-line space, and improvements to the parking lot. WEDA approved of the planned improvements.

Given the high cost of acquisition and the proposed improvements, estimated at \$9.2 million, Parkwood East requested and received a business assistance package from the City and WEDA. Provisions of the Agreement included the following:

- The City of Westminster and WEDA provided no up-front funding.
- The Developer receives an annual rebate of 50% of sales taxes collected.
- The rebate period is for a maximum of 6 years.
- The rebate is capped at \$2.6 million.

In addition, the assistance package held the Developer to the following performance requirements:

- The Developer is was required to make all improvements in accordance with the approved Official Development Plan;
- Rancho Liborio was required to move into the space;
- The Developer is to obtain approval from the State of Colorado relative to a Voluntary Cleanup Plan (VCUP) for the site;
- The Developer was required to install the approved contaminant remediation system and provide regular and satisfactory progress towards the remediation; and
- The Developer was to work with the City to determine potential for reuse or demolition of the dilapidated buildings east of the grocery, and proceed with the reuse or demolition as agreed to, within 3 years.

The sales tax rebate period commenced on January 7, 2009 upon Rancho Liborio grocery obtaining a temporary certificate of occupancy. The rebate period is due to expire on January 7, 2015, leaving five years of remaining sales tax rebate. Parkwood East received its first rebate in January 2010 in the amount of \$173,689 leaving a remaining balance of up to \$2,426,311 in sales tax rebate potential. Based on current sales tax collections, the total actual rebate to be paid over the 6-year period would be closer to \$1.2 million.

The developer has complied with all aspects of the agreement with the exception of completing the improvements per the approved ODP and obtaining a final certificate of occupancy and is still responsible for submitting a proposal relative to reuse or demolition of the dilapidated structures. The continuing deterioration of these buildings is of growing concern, and Staff continues to look for a means by which the buildings could be demolished and removed from the site earlier rather than later.

Another provision in the Agreement stipulates that it shall become void should Parkwood East sell the property to another party unless otherwise agreed to by the City. Parkwood East has expressed an interest in selling the property, and is requesting that the City authorize a sale without voiding the Agreement. Parkwood East further is seeking City and WEDA permission to assign the Agreement to a buyer. Parkwood East is currently under contract to sell the property to an out of state developer interested in accelerating development of the undeveloped portion of the site.

Staff supports the request relative to the continuance and assignment of the Agreement in the event of a sale subject to modifications to the Agreement. It is proposed that the Agreement be amended to reflect the following changes:

- All ODP improvements shall be completed by August 31, 2010 unless otherwise agreed to by the City. Should the Developer fail to complete the improvements by such date, ten percent (10%) of the Sales Tax Rebate shall be forfeited for each month the Developer fails to complete the required improvements. Should the Developer fail to complete improvements by January 1, 2011, the Agreement would be rendered null and void.
- The Developer shall demolish and remove the dilapidated buildings east of the Rancho Liborio grocery to the satisfaction of the City, by no later than January 1, 2011. Should the Developer fail to remove the buildings by such date, this Agreement would be subject to termination.
- The Developer would be permitted to sell all or a portion of the property and assign the rights and obligations of the Agreement to the purchaser(s) without termination of the Agreement. Should the Developer assign the rights and obligations the assignee would become responsible for fulfilling the remaining obligations of the Agreement

All other provisions of the Agreement would remain in effect as originally approved.

SUBJECT: Amended Northgate Assistance Package

Page 4

Staff believes the amendments as proposed will result in significant benefit to the City, WEDA, and South Westminster neighborhood. Under the proposed amendments, the dilapidated structures east of Rancho Liborio will be removed much more quickly than under the terms of the original Agreement, thereby eliminating a blight and eyesore from the South Westminster landscape. The City could further benefit from working with a new development team that could lead to a more accelerated development of the site.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment

ATTACHMENT "A"

FIRST AMENDED REDEVELOPMENT ASSISTANCE AGREEMENT

This First Amended Redevelopment Assistance Agreement (this "Amendment") made this 12th day of April, 2010, replaces that certain Redevelopment Assistance Agreement effective the 9th of January, 2008 (the "Effective Date"), by and among the **CITY OF WESTMINSTER** ("City"), a Colorado home-rule municipality, and the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, an urban renewal authority organized and existing pursuant to the provisions of Part 1, Article 25, Title 31, C.R.S. ("WEDA"), and **PARKWOOD EAST, LLC**, 12460 1st Street, Eastlake, Colorado 80614 ("Developer").

In consideration of the mutual promises set forth below, the City, WEDA and Developer agree as follows:

1. Definitions.
 - a. Sales Tax Rebate Area. Sales Tax Rebate Area means the real property described on Exhibit "A" attached hereto and incorporated herein by this reference.
 - b. Phase 2 Improvement Area. Phase 2 Improvement Area means the real property described on Exhibit "B" attached hereto and incorporated herein by this reference.
 - c. Rebate Year. Rebate Year means each 12 month period starting on the Rebate Commencement Date.
 - d. Rebate Commencement Date. Rebate Commencement Date means the date on which the City issues a temporary or a permanent certificate of occupancy for a Liborio's grocery store within the Sales Tax Rebate Area.
 - e. Rebate Period. Rebate Period means the 6 year period of time commencing on the 7th of January, 2009 and ending on the sixth (6th) anniversary thereof being the 7th of January, 2015.
2. Sales Tax Rebate.
 - a. The Maximum Rebate payable under this Agreement is Two Million Six Hundred Thousand Dollars and no cents (\$2,600,000) ("Maximum Rebate").
 - b. During the Rebate Period, the City shall rebate to Developer an amount equal to 50% of sales tax collections paid to the City that are attributable to the City's 3.0% General Sales Tax on sales generated by tenants occupying the commercial space on the Property as defined below (the "Rebate"). The Rebate shall not extend beyond the Rebate Period nor exceed the Maximum Rebate.
 - c. The Rebate shall not include any sales tax collected and received from any Westminster business located and operating outside the Sales Tax Rebate Area that relocates to the Sales Tax Rebate Area and ceases operations at the previous location.
 - d. The Rebates shall be paid by the City on an annual basis within sixty (60) days following the end of each Rebate Year.

3. Conditions Precedent. The City's obligation to pay any Rebate otherwise payable under this Agreement is subject to the following conditions precedent:

a. Developer shall have completed all improvements within the Sales Tax Rebate Area in accordance with the final Official Development Plan (ODP) for the Northgate Shopping Center approved by the City. All improvements shall be completed and final Certificate of Occupancy obtained no later than August 31, 2010. If any building permit or permits are not issued on or before May 15, 2010, the City shall agree in good faith to an extension for completion of the improvements without penalty. Should the Developer fail to so complete the improvements and obtain a final Certificate of Occupancy by August 31, 2010, unless otherwise agreed to by City, ten percent (10%) of the Sales Tax Rebate shall be forfeited for each month the Developer fails to complete the required improvements and obtain the Certificate of Occupancy. Should the Developer fail to complete improvements and obtain a Certificate of Occupancy by January 1, 2011, this Agreement shall become null and void.

b. Liborio's grocery store shall occupy and have commenced business operations at the Northgate Shopping Center.

c. Developer shall have submitted a reasonably acceptable Voluntary Cleanup Plan for approval by the State of Colorado.

In the event any of the foregoing conditions have not been satisfied on or before the end of the first Rebate Year, this Agreement shall automatically terminate and the City shall have no obligation whatsoever to Developer.

3. Other Conditions. Developer shall provide evidence of continued progress relative to the Voluntary Cleanup Plan approved by the State until such time as the Plan is completed and the Property is released by the State. Should the condition not be met, the City may hold any Rebate otherwise due until such time Developer is in compliance with said condition. Any interest income earned on any amount so held shall accrue to the benefit of the City.

4. Demolition of Dilapidated Structures. The Developer shall demolish and remove the buildings, as shown in Exhibit "B", to the satisfaction of the City, by no later than January 1, 2011. Should the Developer fail to remove the buildings by such date, this Agreement shall be deemed terminated.

5. Intent of Parties.

a. This instrument shall constitute the entire agreement between the City and Developer 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, except that it does not supersede any agreement between the City of Westminster and Developer regarding the Official Development Plan (ODP) or any other development plans for the Northgate Shopping Center.

b. Notwithstanding any possible interpretation of this Agreement to the contrary, Developer shall have no rights or remedies against WEDA, and WEDA shall have no duties or obligations to Developer, under this Agreement.

c. Nothing in this Agreement shall be deemed or construed as a waiver of any provision of the City Code or the City Charter.

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a. Unless sooner terminated as provided in this Agreement, this Agreement shall terminate when the total Sales Tax Rebates reach the Maximum Rebate Amount, or upon the date of the City's payment to Developer of the final Rebate following the conclusion of the sixth (6th) Rebate Year, whichever event occurs sooner.

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To the City of Westminster:

J. Brent McFall
City Manager, City of Westminster
4800 West 92nd Avenue
Westminster CO 80031
Telephone: (303) 430-2400
Facsimile: (303) 430-1809

To Parkwood East, LLC:

Clay Carlson
12460 1st Street
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c. WEDA shall have no further obligation to the City after January 31 following the year in which this Agreement terminates.

CITY OF WESTMINSTER

BY: _____
Nancy McNally, Mayor

ATTEST:

City Clerk

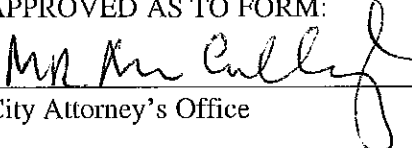
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

BY: _____
J. Brent McFall, Executive Director

ATTEST:

Secretary

APPROVED AS TO FORM:



City Attorney's Office

PARKWOOD EAST, LLC.

BY: _____

Name: _____

Title: _____

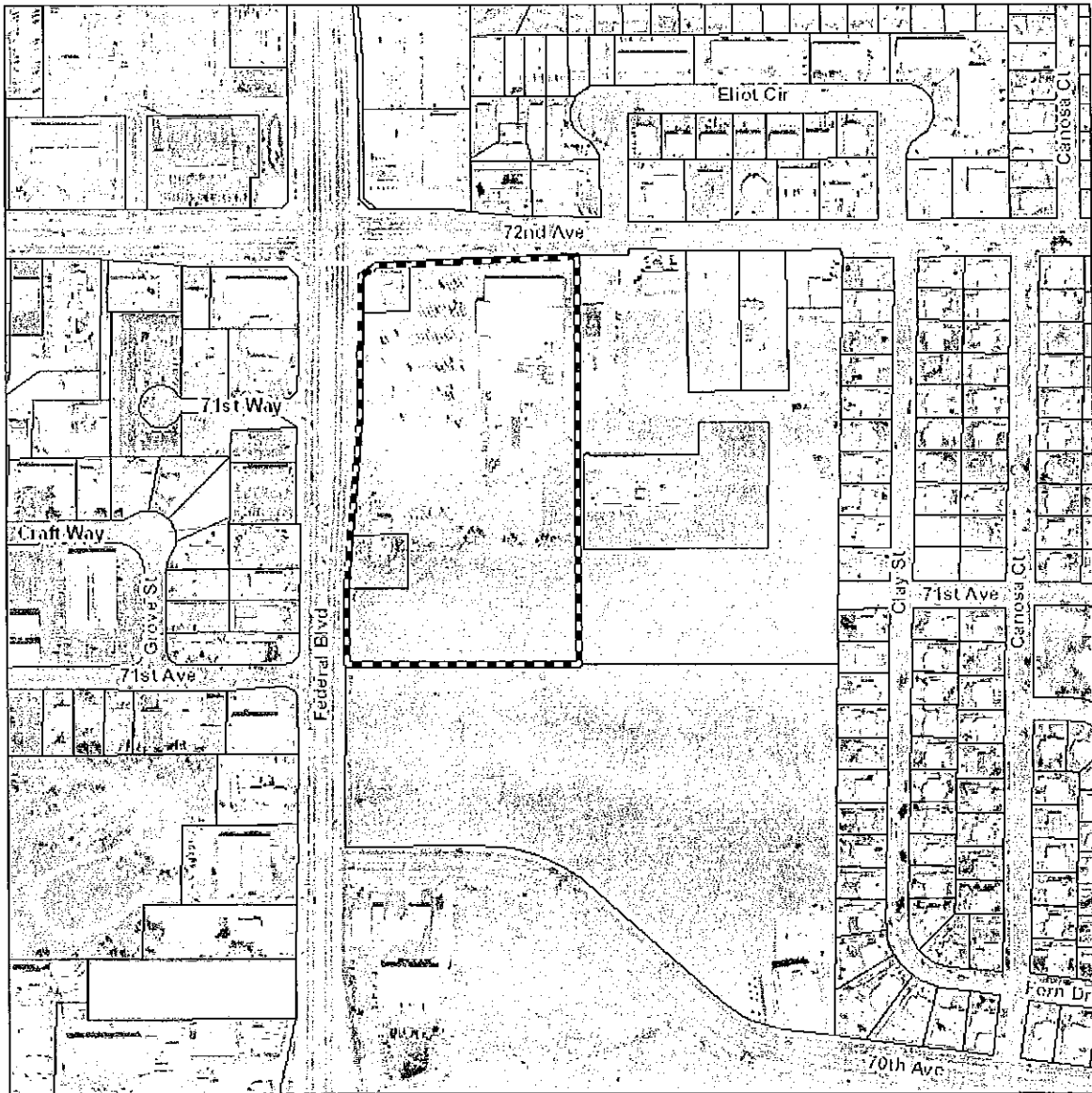
ATTEST:

Secretary

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Carlson Business Assistance Agreement

Sales Tax Rebate Area



 Development Area Boundary

