



CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
5. City Council Comments
6. Presentations

A. Arbor Day/Earth Day/Tree City USA Proclamation

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. Light Duty Vehicle Purchase
- B. City Park Pump House Construction Contract
- C. Westminster Promenade Light Towers – Conversion to LED
- D. 2013 Hot-In-Place Recycling and Repaving Project
- E. 2013 Water Meter and Meter Parts Purchase
- F. 2013 Asphalt Pavement Rehabilitation Projects
- G. 2013 Stripping and Pavement Parking Project Contract
- H. Police Department Cumulative Purchases Over \$50,000 in 2013
- I. Second Reading of Councillor's Bill No. 11 re Proposed EDA with MSI, LLC
- J. Second Reading of Councillor's Bill No. 12 re Proposed EDA for Colorado Casual Furniture
- K. Second Reading of Councillor's Bill No. 13 re Supplemental Appropriation for Jessica Ridgeway Memorial Park
- L. Second Reading of Councillor's Bill No. 14 re 2012 Budget 4th Quarter Supplemental Appropriation

9. Appointments and Resignations

10. Public Hearings and Other New Business

A. Resolution No. 14 re Traffic Signal Maintenance IGA with Colorado Department of Transportation

11. Old Business and Passage of Ordinances on Second Reading

12. Miscellaneous Business and Executive Session

A. City Council

B. Executive Session

1. Discuss strategy and progress on potential sale of certain WEDA-owned real property and the Authority's position thereto, as authorized by CRS 24-6-402 (4)(a) – (*WEDA Executive Session – Verbal*)

13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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



WESTMINSTER
Strategic Plan
2012-2017
Goals and Objectives

STRONG, BALANCED LOCAL ECONOMY

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



FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

- Invest in well-maintained and sustainable city infrastructure and facilities
- Secure and develop long-term water supply
- Focus on core city services and service levels as a mature city with adequate resources
- Maintain sufficient reserves: general fund, utilities funds and self insurance
- Maintain a value driven organization through talent acquisition, retention, development and management
- Institutionalize the core services process in budgeting and decision making
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



SAFE AND SECURE COMMUNITY

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



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

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



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

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



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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MARCH 25, 2013, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Briggs, to approve the minutes of the regular meeting of March 18, 2013, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that Community Pride Day was approaching on May 11 and provided details about the event. He encouraged citizens that wanted to participate to contact Patti Wright, the Open space Volunteer Coordinator, so that team assignments to different locations throughout the community could be made. The event would conclude with a barbecue in the courtyard at City Hall.

Following this meeting, the Westminster Economic Development Authority Board of Directors would conduct a meeting. Then the Board would move to the Board Room for purposes of conducting an executive session to discuss strategy and progress on negotiations related to the Westminster Urban Center Redevelopment; to the possible sale, acquisition, trade or exchange of property interests, including future leases; and to provide instructions to the Authority's negotiators as authorized by Section 24-6-402(4)(a) and (e), CRS.

COUNCIL REPORTS

Mayor Pro Tem Winter invited citizens to attend the Mayor/Council Breakfast on March 27 at 7 a.m. at the Westminster Grange. This was an opportunity to tell the Council where the City was doing a good job, what it could do better, and to make suggestions for the future.

Councillor Atchison thanked City crews for working diligently throughout the weekend storm to clear streets of snow. He and other members of Council had received email from appreciative citizens.

Councillor Briggs announced that the Westminster Historical Society had scheduled a variety of activities during the month of May to celebrate 25 years of being in the Bowles House. He encouraged people to participate.

Councillor Major announced that the Fire Chief's Red Chili Cook-Off would be held on March 27 at the Orchard Town Center Rock Bottom Restaurant; the Fire Chief's Green Chili Cook-Off would be on April 3 at the Promenade Rock Bottom Grill. Both events were fundraising opportunities to replenish the Firemen's Burn Fund.

Mayor McNally reported that the results of the Community Summit were on the City's website. The input would be reviewed at the Council's April Retreat. On June 26 the Citizen Advisory Committee to RTD (Regional Transportation District) was coming to Westminster City Hall to meet. Mayor McNally stressed the importance of either attending the meeting to voice concerns or of sending the City Council emails that could be entered into the record on behalf of those who could not attend. Loud and clear input about the service promised when the RTD tax passed was vital. Without commuter rail, Westminster and the north corridor would have a 100-year disadvantage over the balance of the Denver metro area.

PRESENTATION OF FIRST QUARTER 2013 BUSINESS LEGACY AWARDS

Mayor McNally and City Council joined together to present the first quarter 2013 Business Legacy Awards to 29 businesses celebrating 25 years of operations in Westminster. A reception for award recipients had been held immediately preceding the City Council meeting. Ryan Johnson, Economic Development Specialist, thanked Zoe's Coffee Shop for providing refreshments enjoyed at the reception.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the February Financial Report; based on the City Manager's report and recommendation, determine that the public interest would be best served by ratifying an \$88,066 expenditure to Aslan Construction, Inc. for emergency pipe repairs and replacement of distribution system valves in pressure zone 4; authorize the City Manager to purchase Workers' Compensation Excess Insurance for \$79,681 from Midwest Employers Casualty Company; based on the City Manager's recommendation, determine that the public interest would be best served by awarding contracts and approve 2013 expenditures to Titleist in an amount not to exceed \$70,000, Nike U.S.A. Golf Division in an amount not to exceed \$70,000, and Oakley in an amount not to exceed \$75,000; and authorize the City Manager to sign a contract, in substantially the same form as distributed in the agenda packet, with the State of Colorado Historical Fund in the amount of \$169,704 for the Shoenberg Farm Milk House stabilization and preservation project.

It was moved by Councillor Kaiser, seconded by Councillor Major, to approve the consent agenda as presented. The motion carried with all Council members voting favorably.

COUNCILLOR'S BILL NO. 14 PROVIDING 4TH QTR 2012 BUDGET SUPPLEMENTAL APPROPRIATION

Upon a motion by Councillor Briggs, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to pass on first reading Councillor's Bill No. 14 providing for a supplemental appropriation of funds to the 2012 budget of the General, Water, Legacy Ridge, Heritage at Westmoor, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, General Capital Improvement, and Community Development Block Grant Funds.

RESOLUTION NO. 12 AUTHORIZING HISTORIC FUND GRANT APPLICATION

It was moved by Councillor Lindsey and seconded by Councillor Kaiser to adopt Resolution No. 12 authorizing the Department of Community Development to apply for a competitive grant from the State Historic Fund by April 1, 2013, for 75% of the cost to repair and stabilize the historic barn located at 9215 Pierce Street. The motion passed unanimously at roll call.

RESOLUTION NO. 13 ADOPTING CITY'S WATER CONSERVATION PLAN

Councillor Atchison moved, seconded by Mayor Pro Tem Winter, to adopt Resolution No. 13 adopting a water conservation plan for the City. The motion passed unanimously on roll call vote.

ADJOURNMENT

With no further business to come before the City Council, it was moved by Councillor Atchison, seconded by Councillor Kaiser, to adjourn. The motion passed and the Mayor adjourned the meeting at 7:19 p.m.

ATTEST:

Mayor

City Clerk



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Arbor Day/Earth Day/Tree City USA Proclamation

Prepared By: John Kasza, City Forester
Rachel Harlow-Schalk, Sr. Projects Officer

Recommended City Council Action

Mayor McNally will present a proclamation to City Forester John Kasza and Sr. Projects Officer Rachel Harlow-Schalk proclaiming April 20, 2013 as Arbor Day and Earth Day in the City of Westminster, and accept the Tree City USA Award presented by Keith Wood, a member of the Colorado State Forest Service.

Summary Statement

- The City will once again be celebrating Arbor Day and Earth Day on Saturday, April 20, 2013. A description of the events taking place this day is included in the background section of this memorandum.
- Keith Wood, a member from the Colorado State Forest Service will present the Tree City USA award to the Mayor and City Council. This will be the 28th consecutive year that the City has received the Tree City USA Award.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified.

Background Information

In 1872, J. Sterling Morton, the editor of Nebraska's first newspaper, proposed a tree-planting holiday to be called Arbor Day. Since that time, Arbor Day celebrations have spread to every state in the nation and many foreign countries.

The Tree City USA Award is sponsored by the National Arbor Day Foundation and recognizes towns and cities across America that achieves the standards of the Tree City USA Program. This program is designed to recognize communities that effectively manage public tree resources and encourage the implementation of community tree management including four Tree City USA Program elements:

1. A Tree Board or Department (The City's board consists of City Forester John Kasza, Park Supervisor Rod Larsen, Park Services Manager Rich Dahl, and Director of Parks Recreation and Libraries Don Tripp).
2. A community tree ordinance, (Westminster Municipal Code Title XIII, Chapter 3).
3. A community forestry program with an annual budget of at least \$2/capita.
4. An Arbor Day observance and proclamation.

In 1962, Senator Gaylord Nelson of Wisconsin suggested that, due to rising concern over the state of the environment, one day be set-aside in observance of the environment. The first Earth Day was held on April 20, 1970. Earth Day is now celebrated annually on April 22 around the world to raise awareness of and encourage citizen participation in activities that protect and preserve the Earth's resources. For the City of Westminster, April 20, 2013, is established as Earth Day in order to coordinate with Arbor Day events.

Events scheduled for Arbor Day and Earth Day are as follows:

Arbor Day School Program and Tree Planting: Thursday, April 18, 2013

Park Service Division staff will present an Arbor Day Program to the Witt Elementary 4th grade classes and plant a tree in Kensington Park. Winners of a poster contest at the school will be recognized and tree seedlings and educational literature will be distributed.

Arbor Day and Earth Day Celebration: Saturday, April 20, 2013

Park Service Division staff will distribute bare-root Littleleaf Linden, Winter King Hawthorn, and Dawn Redwood trees, educational literature, and wood chip mulch. There will be a small tree sale and a drawing will be held for a free tree. The winner of the drawing will be contacted by phone and need not be present to win. Panorama Orthopedics & Spine Center is sponsoring the seedling giveaway for the third year with the purchase of 300 trees. Additionally, members of the Environmental Advisory Board and Green Team will be on hand to provide information on recycling, household hazardous waste, and storm water protection. Because the attendees are community involved and consciously aware of needs in the community, attendees will also have the opportunity to become active in community volunteer programs.

SUBJECT: Proclamation re Arbor Day/Earth Day/ Tree City USA

Page 3

Westminster's participation in Tree City USA, Arbor Day, and Earth Day supports City Council's Strategic Plan goal of a Beautiful and Environmentally Sensitive City by setting an example of easy ways residents can protect and preserve our natural resources.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Proclamation

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day called Arbor Day be set aside for the planting of trees; and

WHEREAS, The holiday called Arbor Day is now observed throughout the nation and the world; and

WHEREAS, Trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, are a source of joy and spiritual renewal, and provide habitat for wildlife; and

WHEREAS, Trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, Westminster has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree planting ways; and

WHEREAS, In 1970, Senator Gaylord Nelson of Wisconsin, suggested in a speech that a one-day demonstration be held to show concern for the environment. April 22, 1970, was designated the original Earth Day. Denis Hayes, then a Harvard Law School student, left school to organize the event, which involved thousands of schools, universities, and environmental groups as well as members of Congress and officials and activists throughout the U.S.; and

WHEREAS, The holiday called Earth Day is now observed throughout the nation and world on April 22 to focus attention on protecting the Earth and its resources.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim Saturday, April 20, 2013, to be

ARBOR DAY and EARTH DAY

in the City of Westminster, and urge all citizens to support efforts to protect our trees and to support our City's urban forestry program; urge all citizens to plant trees to gladden the hearts and promote the wellbeing of present and future generations; and further urge all citizens to become aware of water quality impacts.

Signed this 8th day of April 2013.

Nancy McNally, Mayor



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Light Duty Vehicle Purchase

Prepared By: Jeffery H. Bowman, Fleet Manager

Recommended City Council Action

Based on the results of the State of Colorado light duty vehicle bid, ratify the purchases of seven Chevrolet light duty vehicles for \$201,120 to Dellenbach Chevrolet, and the purchase of one Chevrolet and one GMC light duty vehicle for \$61,188 to John Elway Chevrolet-GMC, and the purchase of two Toyota hybrid light duty vehicles for \$50,732 to Go Toyota, for a total amount of \$313,040.

Summary Statement

- City Council action is requested to ratify eleven light duty vehicle purchases based on the State of Colorado light duty vehicle bid. These vehicles were previously approved and are within the amount authorized by City Council in the 2013 General Capital Outlay Replacement Fund budgets as outlined below:
 - General Capital Outlay Replacement Fund
 - One vehicle for the Fire Department
 - One vehicle for the Department of General Services
 - Four vehicles for the Department of Parks, Recreation and Libraries
 - Five vehicles for the Police Department
- Staff anticipated purchasing these vehicles during the first quarter of 2013. History shows the state of Colorado bid award has very early cut-off dates, so eleven vehicles had to be ordered by March 28, 2013. To that end, Staff identified the vehicles that were expected to be impacted by early cutoffs in the February 4, 2013, Staff Report titled 2013 Purchases of Light Duty Vehicles off Government Awards, and outlined the intent to request ratification for the purchases.
- Staff has placed orders for eleven of fourteen vehicles identified in the February 4, 2013 Staff Report.
- The City saves considerable dollars by purchasing vehicles through the State of Colorado vehicle bid process when possible.

Expenditure Required: \$313,040

Source of Funds: \$313,040 - General Capital Outlay Replacement Fund

Policy Issue

Should the City ratify the purchase for eleven light duty vehicles using the State of Colorado vehicle bid awards as outlined in this agenda memorandum?

Alternatives

Council could choose to not approve the purchase of eleven light duty vehicles. This alternative is not recommended because all of the vehicles needing to be replaced have a maintenance history that make it impractical to keep them in regular service.

Background Information

City Staff documents the details for each replacement vehicle being purchased. These details are critical and require extensive review because a vehicle ordered using a government award cannot be exchanged. When a cut-off date is issued by the manufacturer for a specific model, vehicles ordered after that date become the next model year; in this case, they would become 2014 models. Missing the cut-off date generally means an increase in cost, a delay receiving the vehicle as current year models are being produced, and requiring the City to maintain the old vehicle for a longer period of time. Some vendors bidding on governmental bids have created very short timelines to purchase under a guaranteed price. As outlined in the February 4, 2013 Staff Report, once the purchase is made, City Council would be asked to ratify the purchase at a subsequent City Council meeting.

Staff shared details for the replacement of 14 light duty vehicles in the February 4, 2013 Staff Report, but has only placed orders for eleven vehicles included in this Agenda Memo. Two of the fourteen not included in this Agenda memo are being “rebuilt” rather than replaced and one other was below the \$50,000 cumulative purchase, per vendor threshold. Although two Police Accident Investigation vans are above the dollar amount listed in the February 4, 2013 Staff Report, 2012 Police cars are being placed into service in 2013, reducing the total GCORF budget. In addition, rebuilds of older Police, marked Crown Vics offset the GCORF budget further. Finally, during the 2010 - 2011 Optimization Study, Police Department reduced their number of Accident Investigation Vans from four, to three, so the importance of building the Accident Investigation vans correctly is being met. The added cost includes an interior build-out designed to allow accident victims and Police Staff to work inside, out of the weather while completing paperwork.

All approved replacement vehicles identified in the table below have reached a point where it is no longer economically reasonable to maintain them in service. Please note, the life-to-date vehicle maintenance costs in the table do not include accident repairs or fuel cost. All vehicles are used to either transport crews, animals, prisoners, or investigate accidents around the City and one truck is assigned plow duties.

DEPARTMENT	OLD UNIT #	YEAR	REPLACE- MENT MAKE/MODEL	MILES	LIFE-TO-DATE VEHICLE MAINTENANCE COST	NEW VEHICLE MAKE/MODEL	PRICE	BIDDER AWARDED
General Capital Outlay Replacement Fund								
Fire	5117	2001	Chevrolet Suburban	96,12	\$38,825	Chevrolet Suburban	\$35,020	John Elway Chevrolet/GMC
General Services	1005	2006	Chevrolet Uplander	100,078	\$9,998	Toyota Prius V	\$25,491	Go Toyota
Parks, Recreation & Libraries	7083	2001	Chevrolet 2500 Regular Cab Pickup	81,021	\$15,383	Chevrolet 3500 HD Regular Cab 4wd Pickup	\$24,341	Dellenbach Chevrolet

DEPARTMENT	OLD UNIT #	YEAR	REPLACE- MENT MAKE/MODEL	MILES	LIFE-TO-DATE VEHICLE MAINTENANCE COST	NEW VEHICLE MAKE/MODEL	PRICE	BIDDER AWARDED
General Capital Outlay Replacement Fund								
Parks, Recreation & Libraries	7086	2001	Chevrolet 2500 Crew Cab Pickup	97,701	\$22,062	Chevrolet 3500 HD Crew Cab 4wd Pickup	\$28,604	Dellenbach Chevrolet
Parks, Recreation & Libraries	7704	1997	Ford E350 15 Passenger Van	92,183	\$15,470	GMC 3500 Savana 15 Passenger Van	\$26,168	John Elway Chevrolet/GMC
Parks, Recreation & Libraries	7801	1999	Chevrolet 2500 Regular Cab 4wd Pickup	71,924	\$5,616	Chevrolet 2500 HD Regular Cab 4wd Pickup	\$24,469	Dellenbach Chevrolet
Police	8129	2004	Chevrolet Malibu	94,895	\$19,146	Toyota Prius V	\$25,241	Go Toyota
Police	8444	2002	Chevrolet 3500 Cargo Van	94,968	\$35,981	Chevrolet 2500 Cargo w/ Interior Build and Emergency Light	\$37,095	Dellenbach Chevrolet
Police	8445	2003	Chevrolet 3500 Cargo Van	122,414	\$33,387	Chevrolet 2500 Cargo w/ Interior Build and Emergency Light	\$39,828	Dellenbach Chevrolet
Police	8590	2006	Chevrolet 3500 Cargo Van	127,541	\$13,178	Chevrolet 3500 Cargo Van	\$23,493	Dellenbach Chevrolet
Police	8614	2004	Chevrolet 3500 Cargo Van	124,465	\$28,123	Chevrolet 3500 Cargo Van	\$23,290	Dellenbach Chevrolet

The replacement of these vehicles supports Council’s Strategic Plan goals of Safe and Secure Community, Financially Sustainable City Government, and Beautiful City by maintaining a cost effective, dependable fleet of vehicles.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

Agenda Item 8 B

City Council Meeting
April 8, 2013



SUBJECT: City Park Pump House Construction Contract

PREPARED BY: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will be served by waiving the City's Formal Bid Process and awarding a negotiated sole source contract with Sand Construction of Colorado, LLC for the construction of the new metal pump house structure at City Park in the amount of \$94,543 and a 10% contingency amount of \$9,400 for a total project cost of \$103,943.

Summary Statement

- In September of 2012, City Council authorized remodeling of space at City Park Fitness Center to create the new Employee Wellness Clinic. This would require relocation and build out of space for an IT Disaster Recovery Server room, Mind and Body Offices and Fitness programs, and storage space for Parks & Recreation summer camp programs and special events.
• In October 2012, Sand Construction successfully completed the build out of space at the Northwest Water Treatment Facility for the IT Disaster Recovery Server Room along with remodeling space within City Park Fitness for staff and programs presently using the space that was needed for the new Employee Wellness Clinic.
• The final relocation was to find space to accommodate approximately 650 square feet of storage for equipment and supplies used by Summer Camp Staff and special events held on City Park grounds.
• After an exhaustive search throughout the City for a facility with enough storage space to accommodate Recreations needs, it was determined, because of its adjacency to City Park where the majority of programs and special events were held, the lower pump house would best meet the needs of special events and programming Staff.
• Based on the amount of technical design assistance Sand Construction has provided at no cost to the City since the new Wellness Clinic was approved, the successful build out of the Wellness Clinic itself, and Sand Construction's willingness to negotiate a reduced price from their original proposal, Staff is recommending awarding Sand Construction a contract for the demolition and rebuild of the pump house building to a metal structure adding an additional 600 square feet for storage.

Expenditure Required \$103,943

Source of Funds \$30,000 Employee Wellness Clinic, Capital Improvement Fund
\$43,943 Building Operations and Maintenance Major Maintenance Capital Improvement Fund
\$30,000 Parks Recreation and Libraries JCOS Capital Improvement Fund

Policy Issue

Should City Council award a sole source construction contract to Sand Construction for the demolition and rebuilding of the City Park Pump House building?

Alternatives

City Council could direct Staff to go back out for competitive bids to provide design and construction services to demolish and construct the new pump house facility. Staff does not recommend this approach based on the amount of design work already accomplished at no cost by Sand Construction to this point, the amount of time it would require to go through the formal bid process and Sand Construction's willingness to negotiate a reduced price allowing City Staff to assist with portions of the project helping to reduce the overall project costs. Furthermore, with Sand Construction's permission, Staff used Sand's design and scope of work to obtain two other proposals to assure staff had a market price comparison when reviewing Sand Construction proposal.

Background Information

In September 2012, Council authorized the remodel of space at the City Park Fitness center to create the new Employee Wellness Center. Build out of this space would require relocating the City's IT Disaster Recovery Room, staff and Program in the Mind & Body Studio and storage space for Day Camp and special events. In September and October of 2012, Sand Construction successfully remodeled space at North West Water Treatment Facility for the IT Disaster Recovery Server Room along with remodeling space in the upper level of City Park fitness to accommodate the Mind and Body Offices and massage rooms being displaced by remodeling for the Wellness Clinic.

In September 2012, City Council authorized the Employee Wellness Construction Contract with Sand Construction. The final relocation of space to allow Sand Construction to begin the construction of the new Wellness Clinic was the storage space being used by Summer Camp Programs, Playground staff and special events supplies and equipment. While Staff continued to try and find storage space to accommodate Recreation needs, and to keep the Wellness Clinic remodel project on schedule, Building Maintenance staff rented a portable POD storage unit to store half of the materials which were taking up space in the proposed Wellness Clinic area, on a temporary basis. The other half of the supplies and equipment were stored in the back maintenance area in City Park Recreation Center.

Working with Parks and Recreation Staff and after an exhaustive search for storage space in a number of city facilities, keeping in mind the requirement for the adjacency to City Park property, Staff began looking at the feasibility of using the lower City Park Pump House for storage purposes. Although each department agreed this would be an ideal location for Recreation Staff storage needs, meeting the criteria for Staff to be as close to the Park as possible for the services they provide the public, the pump house needed some fairly major repairs and also needed to be expanded for all the supplies and equipment presently in temporary storage. The existing pump house was scheduled for siding replacement along with replacing the existing shingle roof and underlayment this coming spring or summer. That cost estimated to be approximately \$20,000. The present pump house construction is no more than a residential tuff shed on a slab of concrete built around a massive irrigation pump.

Staff contacted Sand Construction, which had just started the remodel of the new Wellness Clinic to request a price quote. The requirements included: demolish the existing pump house, keep the existing electrical service, irrigation pump and concrete foundation in place, and for sustainability purposes, upgrade the building to be a metal building with twice the space of the existing pump house.

The original proposal received from Sand Construction to build a new metal building adding an additional 650 square feet came back at a cost of \$130,022. With Sand Construction's permission to use their scope of work as a basis to request an additional apples-to-apples proposal, Palace Construction was contacted and asked to submit a proposal for the same scope of work. Staff had

successfully worked with Palace Construction on a number of other large maintenance or construction projects for the City. Palace's proposal for the metal building and increased square footage came back in the amount of \$140,189.

With the cost of the project more than what Staff had expected, Staff worked with Sand Construction on further reducing the scope of work allowing Parks and Building Operations & Maintenance staff to complete grading, excavation, electrical and plumbing requirements. The negotiated reduced scope of work was then sent to three construction companies for pricing of the demolition and reconstruction of a metal building. Proposals were received by:

CMM Construction Management	\$102,627
Palace Construction	\$ 98,069
Sand Construction	\$ 94,543

Staff would like to note that Sand Construction's original proposal was in the amount of \$86,443, however; Staff has since included the requirement to place a three foot brick façade around the base of the metal structure for aesthetics. The brick work, excavation, concrete and footings requirement to add the façade was an additional \$8,100. Staff agrees with the importance of keeping the storage location of equipment and supplies in close proximity to City Park Recreation Centers and Fields for use in Summer Day Camp activities and special events held on or near the adjacent soccer fields, pavilion and Christopher fields.

After review of all three proposals and Sand Construction's willingness to negotiate a reduced price from their original proposal, Staff is recommending to award a sole source contract to Sand Construction for the demolition of the existing pump house structure and construction of a new metal building that would double the amount of square footage for the Recreation Division's storage needs.

Staff believes awarding a construction contract to Sand Construction for the demolition of the existing pump house and construction of a new larger metal building in its place achieves City Council's Goal of being a Financially Sustainable City Government investing in well maintained and sustainable City Infrastructure and Facilities and providing exceptional services by entering into a timely, cost effective project with a proven construction service provider.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Construction Contract

City Project No. 10495

**CONSTRUCTION CONTRACT (CITY PROJECT MANAGER)
FOR THE FOLLOWING PROJECT:**

City Park Pump House Construction
City Park Fitness Center, 10475 Sheridan Blvd

This Construction Contract, effective this 15th day of April, 2013, by and between **SAND CONSTRUCTION OF COLORADO, LLC** (hereinafter, "Contractor"), a limited liability company organized pursuant to the laws of the State of Colorado and located at 5106 West 58th Avenue, Arvada, CO 80002, and the **CITY OF WESTMINSTER** (hereinafter, "City" or "Owner"), a home-rule municipal corporation organized pursuant to the laws of the State of Colorado, located at 4800 West 92nd Avenue, Westminster, Colorado, 80031, provides that the Contractor and City, in consideration of the mutual covenants hereinafter set forth, agree as follows:

PART 1 – WORK; TIME

1.01 The Contractor agrees to furnish all of the technical, administrative, professional, and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to perform in a workmanlike manner all Work required by the Contract Documents.

1.02 The Contractor agrees to undertake the performance of the Work within ten (10) days after receipt of the Notice to Proceed and agrees that the Work will be completed within ninety (90) calendar days of the date of the Notice to Proceed unless the contract time is extended by the City as provided in the Contract Documents.

1.03 The Parties agree that, in any section in which the Contractor prepares any document for "the approval of the City," such approval does not mean that City is responsible for the accuracy, thoroughness, or judgment contained in the document. City does not waive the right to hold the Contractor responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the City is relying on the expertise of the Contractor.

PART 2 - CONTRACT PRICE AND PAYMENT

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Bid Proposal, not to exceed one hundred three thousand nine hundred forty three Dollars (\$103,943).

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

2.03 Prior to final payment, all Work specified by the Contract Documents must be completed. Payment shall be made only after the procedure specified by the General Conditions is completed.

2.04 The City represents that either an appropriation for the price specified in this Construction

Contract has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

PART 3 - CONTRACTOR'S REPRESENTATIONS

3.01 In order to induce the City to enter into this Construction Contract, the Contractor makes the following representations:

(a) The Contractor has familiarized himself with the nature and the extent of the Contract Documents, Work, the location and site of the Work and all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

(b) Contractor has carefully studied all physical conditions at the site and existing facilities affecting cost, progress or performance of the Work.

(c) Contractor has given the City written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the City is acceptable to the Contractor.

3.02 Contractor agrees to remedy all defects appearing in the Work or developing in the materials furnished and the workmanship performed under this Construction Contract for a period of one (1) year or such other time that is specified in the Contract Documents after the date of acceptance of the Work by the City, and further agrees to indemnify and save the City harmless from any costs encountered in remedying such defects. Contractor shall provide a performance bond that shall remain in effect until all defects are corrected as required by this paragraph.

3.03 Contractor is an independent contractor and nothing herein contained shall constitute or designate the Contractor or any of its employees or agents as agents or employees of the City.

PART 4 - CONTRACT DOCUMENTS

4.01 The Contract Documents, which comprise the entire Construction Contract between the City and the Contractor, are attached to this Construction Contract and made a part hereof, including:

Sand Construction Proposal dated March 15, 2013
Notice to Proceed
Performance Bond
Payment Bond
Construction Contract
Construction Drawings
Special Conditions
Addendum
Project Specifications
Change Orders
General Conditions, including table of contents
Insurance Certificates
Tax-Exempt Certificates

In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both parties shall govern the original documents.

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be altered, amended or repealed by a modification, in writing, executed by the City and the Contractor.

PART 5 - PROJECT MANAGER

5.01 The Project Manager, for the purposes of the Contract Documents, is the following, or such other person or firm as the City may designate in writing:

Name: Brian Grucelski, Maintenance Foreman
Address: 6575 W 88th Avenue, Westminster, CO 80031
Telephone: 303.658.2555 office, 303.472.4838 mobile

The Project Manager is authorized to represent and act as agent for the City with respect to City's rights and duties under the Contract Documents, provided, however, the Project Manager shall not have any authority to approve any Change Order or approve any amendment to the Construction Contract or Contract Documents, except for those minor Change Orders defined in paragraph 7.4.1 of the General Conditions, such authority being specifically reserved to the duly authorized official of the City having such approval authority pursuant to the City's Charter and ordinances. In the event of doubt as to such authority, the Contractor may request a written representation from the City Manager resolving such doubt and designating the person with authority under the circumstances, which written representation shall be conclusive and binding upon the City.

PART 6 - ASSIGNMENT

6.01 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

6.02 It is agreed that this Construction Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

PART 7 - GOVERNING LAW AND VENUE

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter of the City of Westminster.

7.02 This Construction Contract shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the Owner's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

PART 8 - LIQUIDATED DAMAGES

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City one hundred fifty Dollars (\$ 150) for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance Bond shall pay such damages. Also, the City may withhold all, or any part of, such liquidated damages from any payment due the Contractor.

PART 9 - MODIFICATIONS

This Construction Contract shall be modified only by written Change Orders or Addenda agreed upon by the parties hereto, duly issued in form approved by the City Attorney and in conformance with the other Contract Documents.

PART 10 - AUTHORITY

The person or persons signing and executing this Construction Contract on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Construction Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

PART 11 - CONTINGENCY

This Construction Contract is expressly contingent upon the approval of the City of Westminster's City Council of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by City Council, neither Party shall be bound to the terms of this Construction Contract.

INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO GENERAL SERVICES DEPARTMENT, ATTENTION: BRIAN GRUCELSKI.

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract in triplicate. Two counterparts have been delivered to the City and one counterpart has been delivered to the Contractor. All portions of the Contract Documents have been signed or identified by the City and the Contractor.

**SAND CONSTRUCTION
OF COLORADO, LLC**

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Attest: _____

Secretary

Attest: _____

City Clerk

(Corporate Seal,
if applicable)

(Seal)

Address for giving notice:

Address for giving notice:

4800 West 92nd Avenue
Westminster, Colorado 80031

Approved as to legal form:

City Attorney

I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

City Manager

Account No. 81275012993.81800.8888
Account No. 80975050305.81800.8888
Account No. 80375012312.81800.8888

City Project No. 10495

**GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT
(CITY PROJECT MANAGER)**

TABLE OF CONTENTS

ARTICLE 1	GENERAL PROVISIONS
1.1	Definitions
1.2	Execution, Correlation and Intent
1.3	Ownership and Use of Documents
ARTICLE 2	OWNER
2.1	Information and Services Required of the Owner
2.2	Owner's Right to Stop the Work
2.3	Owner's Right to Carry Out the Work
ARTICLE 3	CONTRACTOR
3.1	Review of Contract Documents and Field Conditions by Contractor
3.2	Supervision and Construction Procedures
3.3	Labor and Materials
3.4	Reserved
3.5	Warranty
3.6	Taxes
3.7	Permits, Fees and Notices
3.8	Allowances
3.9	Superintendent
3.10	Contractor's Construction Schedule
3.11	Documents and Samples at the Site
3.12	Shop Drawings, Product Data and Samples
3.13	Use of Site
3.14	Cutting and Patching of Work
3.15	Cleaning Up
3.16	Communications
3.17	Royalties and Patents
3.18	Indemnification
3.19	Attorneys Fees
ARTICLE 4	ADMINISTRATION OF THE CONTRACT
4.1	Project Manager
4.2	Project Manager's Administration of the Construction Contract
4.3	Claims and Disputes
4.4	Resolution of Claims and Disputes

ARTICLE 5	SUBCONTRACTORS
5.1	Award of Subcontracts and Other Contracts for Portions of the Work
5.2	Subcontractual Relations
5.3	Contingent Assignment of Subcontracts
ARTICLE 6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
6.1	Owner's Right to Perform Work and to Award Separate Contracts
6.2	Mutual Responsibility
6.3	Owner's Right to Clean Up
ARTICLE 7	CHANGES IN THE WORK
7.1	Changes
7.2	Change Orders
7.3	Construction Change Directives
7.4	Minor Changes in the Work
ARTICLE 8	TIME
8.1	Date of Commencement of the Work
8.2	Progress and Completion
8.3	Delays and Extensions of Time
ARTICLE 9	PAYMENTS AND COMPLETION
9.1	Contract Sum
9.2	Schedule of Values
9.3	Applications for Payment
9.4	Certificates for Payment
9.5	Decisions to Withhold Certification
9.6	Progress Payments
9.7	Failure of Payment
9.8	Substantial Completion
9.9	Partial Occupancy or Use
9.10	Final Completion and Final Payment
ARTICLE 10	PROTECTION OF PERSONS AND PROPERTY
10.1	Safety Precautions and Programs
10.2	Safety of Persons and Property
10.3	Emergencies
10.4	Use of Explosives, Driving or Removal of Piles, Wrecking, Excavation Work or Other Similar and Potentially Dangerous Work
10.5	Underground Utilities
ARTICLE 11	INSURANCE REQUIREMENTS
11.1	Contractor's Insurance

- 11.2 Additional Named Insured
- 11.3 Builder's Risk/Property Insurance
- 11.4 General Requirements

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

- 12.1 Uncovering of Work
- 12.2 Correction of Work
- 12.3 Acceptance of Defective or Non-Conforming Work

ARTICLE 13 MISCELLANEOUS PROVISIONS

- 13.1 Governing Law
- 13.2 Successors and Assigns
- 13.3 Written Notice
- 13.4 Claims for Damages
- 13.5 Performance and Payment bond
- 13.6 Rights and Remedies
- 13.7 Tests and Inspections
- 13.8 Litigation and Work Progress
- 13.9 Equal Employment Opportunity
- 13.10 Commercial Driver's License Substance Screening

ARTICLE 14 TERMINATION OF THE CONTRACT

- 14.1 Termination by the Contractor
- 14.2 Termination by the Owner for Cause
- 14.3 Suspension by the Owner for Convenience

ARTICLE 1

GENERAL PROVISIONS

1.0 This Construction Contract is expressly contingent upon the approval of the City of Westminster's City Council of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by City Council neither Party shall be bound to the terms of this Construction Contract.

1.1 DEFINITIONS

1.1.1 "Application for Payment" means the Contractor's request for payment submitted to the Project Manager according to the process set forth in paragraphs 9.3.1- 9.3.4.

1.1.2 "Bidding Documents" means the Bid Packet including its Bid Notice, Invitation to Bid, Instructions to Bidders, Bid Form, Non-Collusion Affidavit of Prime Bidder, Bidder's Certification, Bid Bond, and any attachments and exhibits to the Bid Packet.

1.1.3 "Certificate for Payment" means the amount approved for payment by the Project Manager after the receipt of the Contractor's Application for Payment, as more fully defined in paragraph 9.4.1.

1.1.4 "Change Order" means a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; or the extent of the adjustment in the Contract Time, if any, as more fully defined in paragraph 7.2.

1.1.5 "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Construction Contract, or other disputes between the Owner and Contractor arising out of or relating to the Construction Contract.

1.1.6 "Construction Change Directive" means a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, as defined more fully in paragraphs 7.3.1- 7.3.9.

1.1.7 "Construction Contract" or "Contract" means the entire and integrated agreement between the parties hereto, evidenced by the Contract Documents, which supersedes all prior negotiations, representations, or agreements, either written or oral, subject only to amendment or modification as permitted by Article 7.

1.1.8 "Contract Documents" means the Construction Contract, the Conditions of the Contract (General, Special, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all other documents listed in the Contract, including the Bidding Documents, the Notice of Award, Notice to Proceed; Performance Bond; Payment Bond; Certificates of Insurance; and Tax-Exempt Certificates. Nothing contained in the Contract Documents creates any contractual relationship

between the Owner any subcontractor, sub-subcontractor, or supplier of equipment or materials (except as provided in paragraph 5.4 hereof).

1.1.9 “Contract Sum” means the amount stated in paragraph 2.01 of the Construction Contract and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

1.1.10 “Contract Time” means the period of time allotted in the Contract Documents for Substantial Completion of the Work, including authorized adjustments thereto.

1.1.11 “Contractor” means the person or entity identified as such in the Construction Contract or an authorized representative thereof.

1.1.12 “Date of Commencement of the Work” is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Construction Contract or such other date as may be established therein.

1.1.13 The “Date of Substantial Completion” is the date certified by the Project Manager in accordance with paragraph 9.8.

1.1.14 “Day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

1.1.15 “Drawings” are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.16 “Final Completion” means the finding by the Project Manager that the final Certificate for Payment should be issued based on his knowledge, information and belief that the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate for Payment, is due and payable, as more fully defined in paragraph 9.10.1.

1.1.17 “Modification” means (1) a written amendment to the Construction Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written Order for a Minor Change in the Work approved by the Owner pursuant to paragraph 7.4.

1.1.18 “Notice to Proceed” means the form issued by the City and accepted in writing by the Contractor that notifies Contractor to begin work on or before a date certain, establishes an end date, and returns bid security.

1.1.19 “Order for a Minor Change in the Work” means an order issued by the Project Manager adjusting the Contract Sum or extending the Contract Time as permitted by paragraph 7.4.1.

1.1.20 “Owner” means the person or entity identified as such in the Construction Contract or an authorized representative thereof. The term “City” may be used interchangeably with the term “Owner.”

1.1.21 “Project” means the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.22 “Project Manager” means the City representative identified as such in Part 5 of the Contract.

1.1.23 “Project Manual” means the volume usually assembled for the Work which may include the bidding requirements, sample forms, conditions of the Contract, and Specifications.

1.1.24 “Specifications” or “Project Specifications” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, and performance of related services.

1.1.25 “Subcontractor” means a person or entity who has a direct contract with the Contractor to perform any of the Work at the site or an authorized representative thereof. "Subcontractor" does not include any separate contractor or his subcontractor.

1.1.26 “Substantial Completion” means the stage in the progress of the Work when the Work (or designated portion thereof that the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or use the Work for its intended use as more fully explained in paragraph 9.8.1.

1.1.27 “Sub-subcontractor” means a person or entity who has a direct or indirect contract with a subcontractor to perform any of the Work at the site or an authorized representative thereof.

1.1.28 “Underground Utilities” means any below ground line, structure, facility or installation used by a utility or service provider including, but not limited to, telephone company lines, cable and conduit; cable television lines, cable and conduit; internet lines, cable and conduit; sewer lines and water lines, including individual sewer and water service lines; stormwater lines; gas lines; electrical lines, cables and conduit; and traffic signal lines, cable and conduit.

1.1.29 “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations for the completed construction required by the Contract Documents. The Work may constitute the whole or a part of the Project.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor and shall be maintained by the Project Manager.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the Site, and having familiarized himself with the urban site construction circumstances of the Project, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify Owner and Project Manager of such fact.

1.2.3 The Contract Documents include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. Any differences between the requirements of the Drawings and the Specifications or any differences within the Drawings themselves or within the Specifications themselves have been referred to the Owner by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all Bidders.

If any such differences or conflicts were not called to the Owner's attention prior to submission of bids, the Project Manager shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements, and subject to the approval of the Owner, the Contractor shall perform the work at no additional cost or time to the Owner in accordance with the Project Manager's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an." The fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.7 Interpretation of Contract Documents - masculine includes both the masculine and the feminine; singular includes the singular and the plural; headings are for reference only and are not substantive

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 The Drawings, Specifications, and other similar or related documents and copies thereof are furnished to the Contractor for the purpose of performing the Work and are, and shall remain, the property of the Owner. The Contractor may retain one record set. Neither the Contractor nor any subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other similar or related documents, and Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). All copies of such documents shall be returned to the Owner upon completion of the Work. The Drawings, Specifications, and other similar or related documents and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written

consent of the Owner. The Contractor, subcontractors, sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and solely for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyright or other reserved rights.

ARTICLE 2

OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 The Owner shall furnish surveys describing the physical characteristics, legal limitations and utility locations, if such utilities are the property of Owner, for the site of the Project, and a legal description of the site, if necessary. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine site characteristics and conditions. In connection with the foregoing, Contractor shall locate prior to performing any work, all Underground Utilities. If utility locate services are provided in the field by utility owners, Contractor nonetheless remains solely responsible to determine the actual location of all Underground Utilities.

2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Such approvals and the like shall be provided by Owner within a time and in a manner as to avoid any unreasonable delays in the Work or schedule of Contractor and shall include only such approvals for permanent facilities which are necessary to perform the Work as set forth in the Contract Documents.

2.1.3 Information or services required to be furnished by Owner shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

2.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

2.1.5 The Owner shall forward all instructions to the Contractor through the Project Manager.

2.1.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9, and 11 respectively.

2.2 OWNER'S RIGHT TO STOP THE WORK

2.2.1 If the Contractor fails to correct defective Work as required by Paragraph 12.2 or fails to carry out the Work in accordance with the Contract Documents, or fails or refuses to provide a

sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor, or disregards the instructions of the Project Manager or Owner when based on the requirements of the Contract Documents, the Owner or the Project Manager, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner and the Project Manager to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under paragraph 2.3.1 hereof, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation and additional services and expenses made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission discovered. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents hereof unless the Contractor recognized or reasonably should have recognized such error, inconsistency or omission and failed to report it to the Owner. If the Contractor performs any construction activity involving an error, inconsistency or omissions in the Contract Documents that Contractor recognized or reasonably should have recognized, without such notice to the Owner, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

3.1.1.1 If any errors, inconsistencies, or omissions in Contract Documents are recognized or reasonably should have been recognized by the Contractor, any member of its organization, or any of its subcontractors, the Contractor shall be responsible for notifying the Owner in writing of such error, inconsistency, or omission before proceeding with the Work. The Owner will take such notice under advisement and within a reasonable time commensurate with job progress, render a decision. If Contractor fails to give such notice and proceeds with such work, it shall

correct any such error, inconsistency, or omission at no additional cost to Owner.

3.1.2 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, the Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Project Manager at once.

3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to paragraph 3.12.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. The Contractor shall be solely (subject to the terms and provisions of Article 4 hereof), responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

The Contractor shall review any specified construction or installation procedure, including those recommended by manufacturers, and shall advise the Owner if the specified procedure deviates from good construction practice or if following the procedure will affect any warranties, and may propose any alternative procedure which the Contractor will warrant.

3.2.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract or other arrangements with the Contractor. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.2.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Project Manager in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 13.7 by persons other than the Contractor.

3.2.4 The Contractor shall be solely responsible for locating all existing underground installations, including Underground Utilities and their service connections, in advance of excavating or trenching, by contacting the owners thereof and prospecting. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor remains ultimately responsible to determine the actual location of all Underground Utilities, facilities, structure, or installations. The Contractor shall use his own information and shall not rely upon any information shown or not shown on the plans or on field locates provided by the utility owner concerning existing Underground Utilities, facilities, structure, or installations. Any delay, additional work, or extra cost to the Contractor caused by existing Underground Utilities, facilities, structures or installations shall not constitute a claim for extra work, additional payment, or damage.

3.2.5 The Contractor has the responsibility to ensure that all equipment and material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order material and equipment on time, taking into account the current market and delivery conditions and that they provide equipment and materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient methods of overall installation.

3.2.6 The Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work, report errors or inconsistencies to the Owner before commencing work, and review the placement of the structure(s) and permanent facilities on the site with the Owner after all lines are staked out and before foundation work is started. Contractor shall provide access to the Work for the Owner, the Project Manager, other persons designated by Owner, and governmental inspectors. Any encroachments, as revealed by an improvement survey, made by Contractor or its subcontractors (of any tier) on adjacent properties due to construction, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of the Contractor and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole expense, either by the removal of the encroachment (and subsequent reconstruction on the project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

3.4.3 Materials shall conform to manufacturer's standards in effect at the date of execution of the Construction Contract and shall be installed in strict accordance with manufacturer's directions. The Contractor shall, if required by the Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

3.3.4 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by the Contractor in accordance with the Contract Documents.

3.4 RESERVED

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 Experienced manufacturer's representatives shall be used to supervise the installation of equipment as may be required by the Owner. Any special tools or equipment which may be required for first class work shall be provided by the Contractor.

3.5.3 The acceptance at any time of materials or equipment by or on behalf of the Owner shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality or uniformity, to the material or equipment specified, or are not as represented to the Owner.

3.5.4 In the absence of detailed specifications, all materials shall conform to the latest standards of the American Society for Testing Materials (ASTM) available at the time notice inviting Contractors to bid is published unless otherwise indicated.

3.5.5 Any reference to standard specifications in any of the Contract Documents shall always imply the latest edition of such standard specifications or specifications available at the time notice inviting contractors to bid is published unless otherwise indicated.

3.5.6 Within one year after the date of Final Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Contractor shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Owner shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to the Contractor or his agent, the Contractor shall neglect to make, or undertake with due diligence to make the aforesaid repairs, the Owner is hereby authorized to make such repairs at the Contractor's expense. In case of an emergency, the Contractor will be notified and shall correct and make repairs within the necessary time constraints. Failure of the Contractor to respond to the notification shall result in the Owner making the necessary repairs at the Contractor's expense. This obligation shall survive termination of the Contract.

3.5.7 Should the Owner claim by written communication before the warranty period expires that certain defects exist and that these require repair or replacement, the warranty period and applicable surety shall be automatically extended for as long as these defects remain unremedied.

3.6 TAXES

3.6.1 All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by the Owner are exempt from State and other State-collected sales and use taxes and from Westminster sales and use taxes. However, such materials may be subject to sales and use taxes imposed by other local taxing authorities.

3.6.2 Prior to City's issuance of the Notice to Proceed and start of work, the Contractor shall deliver to the Project Manager two copies of the completed and executed "Application for Exemption Certificate" with the approval of the Department of Revenue, State of Colorado, affixed. These certificates will serve as an indication to the Owner that the Contractor has acquired the necessary exemption for State and other State-collected sales and use taxes. The Contractor also agrees to make the same requirement, as contained above, of the material suppliers and subcontractors on this project.

3.6.3 Westminster use tax will be due on construction tools and equipment used on the Project if a legally imposed local sales or use tax was not paid on the full purchase price of these items. If such local sales or use tax was less than that of the City of Westminster, Contractor, equipment suppliers, and subcontractors shall pay to Westminster the difference between such local sales or use tax and the tax imposed by Westminster. Any sales or use tax due Westminster may be prorated according to the time the tools or equipment are located within the City, providing an equipment declaration form is properly filed with the City. This paragraph 3.6.3 shall apply to all construction tools and equipment which had a purchase price of \$2,500 or more.

3.6.4 All books and records pertaining to the Project that will allow the accurate determination of any tax due must be retained and be kept available for inspection by the City for three years after the completion of the Project.

3.6.5 All applicable taxes are to be paid by Contractor and are to be included in appropriate bid items; except that, the Contractor shall not be reimbursed for any State or other sales or use taxes incurred as a result of failure to obtain an exemption certificate prior to City's issuance of the Notice to Proceed.

3.6.6 A copy of the Construction Equipment Declaration for Proration of Municipal Use Tax form shall be obtained from the City's Finance Department.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall obtain any necessary building permit and applicable inspections and shall secure and pay for all other permits and governmental fees, licenses and inspections by other jurisdictions necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required.

3.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes or in the exercise of due care should observe that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Project Manager in writing, and any suggested changes shall be made to the Owner. The Contractor shall notify the Project Manager of all conflicts between the Drawings and Specifications and any laws, ordinances, rules, regulations, or restrictions that come to the Contractor's attention or should have come to his attention in the exercise of due care.

3.7.4 It is the responsibility of the Contractor to make certain that all his Work is done in accordance with applicable laws, statutes, building codes and regulations, and the Contractor

shall bear any costs related to his failure to do so.

3.7.5 If the Contractor performs Work, including without limitations, the installation of any materials or equipment that it knows, or reasonably should know, would be contrary to laws, statutes, ordinances, building codes, rules, and regulations, the Contractor shall assume full responsibility for such work and shall bear all costs attributable to the correction thereof or related thereto, including all fines and penalties.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid unreasonable delay in the Work;
- .2 these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
- .3 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
- .4 whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

3.9.2 Contractor shall assign a person to be and remain the Superintendent to generally and directly supervise and coordinate the performance of the Work. The naming of such person is and was a material inducement to Owner to enter into the Contract. If such person is not the Superintendent or does not remain the Superintendent for any reason whatsoever, the Owner reserves the right to review and approve or disapprove said Superintendent's replacement, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause.

3.9.3 Owner shall have the right, upon notice, to demand that the Superintendent or other key personnel retained by Contractor be replaced by Contractor. In the event of such demand,

Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract, may, at Owner's option, be terminated for cause.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.10.1 A preconstruction conference shall be scheduled at the time the Notice of Award is issued. The Contractor, at the preconstruction conference, shall prepare and submit for the Owner's review and approval a Contractor's construction schedule for the Work, in such form and detail as Owner may require. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to the Project Manager with Contractor's applications for payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to the Owner for its review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the Schedule.

3.10.2 The Contractor shall prepare and keep current, for the Project Manager's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Project Manager reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections (all changes and selections to be approved by the Owner in advance) made during construction, and approved Shop Drawings, Product Data and Samples and similar required submittals. These shall be available to the Project Manager and shall be delivered to him for the Owner upon completion of the Work.

3.11.2 At the date of Substantial Completion and as a condition precedent to Final Payment, the Contractor shall furnish the following documents (unless directed otherwise by Owner) to the Project Manager for submittal to the Owner: record drawings showing the field changes and selections affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of the Drawings. The Contractor shall maintain at the job site one (1) set of Drawings and indicate thereon each field change as it occurs.

3.11.3 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be delivered in hard copy **and** in a electronic/digital format acceptable to the Owner.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 The Contractor shall review, approve and submit to the Owner, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action.

3.12.5 The Contractor shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Owner. Such Work shall be in accordance with approved submittals.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's or Project Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

3.12.8 The Contractor shall direct specific attention, in writing, on resubmitted Shop Drawings, Product Data, Samples, or similar submittals to revisions other than those required by the Owner on previous submittals.

3.12.9 When professional certification of performance criteria of materials, systems, or equipment is required of the Contractor by the Contract Documents, the Owner shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications. If any or all such calculations or certifications are found to be inaccurate or incomplete, Contractor shall assume full responsibility and bear all costs attributable or related thereto, including, without limitation, the expense of Owner's additional

services associated with the verification of such calculations or certifications, and the expense of Owner's additional services made necessary by the failure of such calculations or certifications to be accurate or complete.

3.12.10 Contractor shall furnish Owner with copies of all operator's instructions, service and parts manuals, and all other literature received by Contractor from the manufacturer or supplier of equipment furnished under the Contract. All operator's instructions, service and parts manuals, and all other such literature shall be bound in permanent binders satisfactory to the Project Manager.

3.12.11 Copies of any manufacturer's guaranty or certificate as may be required by the Contract Documents or normally included with the product, shall be submitted to the Owner through the Project Manager prior to Substantial Completion of the Work issued by the Owner.

3.12.12 Throughout the progress of construction, the Contractor shall maintain a careful up-to-date record of all changes on the plans and drawings during actual construction. Upon completion of Work, and prior to Substantial Completion issued by the Owner, the Contractor shall file with the Project Manager one set of complete drawings with all changes and Contractor's field construction notes neatly and legibly recorded thereon. Such drawings shall indicate in part the exact routing, if changed from drawing location, of Underground Utilities, oxygen supply, condenser water lines, fuel oil tanks and lines, fire protection lines and any other major buried utility lines, and routing of conduit runs which are buried or concealed in concrete slabs. Such information may be used to prepare record drawings for the Owner.

3.12.13 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be maintained and delivered in hard copy **and** in a electronic/digital format acceptable to the Owner.

3.13 USE OF SITE

3.13.1 The Contractor shall confine his construction operations to the immediate vicinity of the location shown on the plans and shall use due care in placing construction tools, equipment, excavated materials, materials and equipment for installation and supplies, so as to cause the least possible damage to property and interference with traffic. The placing of such tools, equipment, and materials shall be subject to the approval of the Project Manager. If it is necessary or desirable that the Contractor use land outside the Owner's right-of-way, the Contractor shall obtain consent from, and shall execute a written agreement with, the owner and tenant of the land and shall be responsible for all associated costs, including clean-up and restoration.

3.13.2 The Contractor shall protect, shore, brace, support and maintain all Underground Utilities, drains, and underground construction uncovered or otherwise affected by the construction work performed by him.

3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly. It is the intent of the Contract Documents that all areas requiring cutting and patching shall be restored to a completely finished condition acceptable to the Owner.

3.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the

Owner or any separate contractors by cutting, patching or otherwise altering such work, or by excavation.

The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the prior written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 COMMUNICATIONS

3.16.1 The Contractor shall forward all communications to the Owner through the Owner's Project Manager, except as the Owner may otherwise direct in writing.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall protect, defend, indemnify and save harmless the Owner, and each of Owner's officers, agents, servants and employees, including the Project Manager from liability of any nature or kind, including cost and expense for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner, or the Owner's officers, agents, servants, or employees, unless otherwise specifically stipulated in the Contract Documents.

3.17.2 If the Contractor uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Contractor or his Surety shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under the Contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

3.17.3 The Contractor shall pay all royalty and license fees.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner and the Project Manager and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of

tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Contractor, any subcontractor, any sub-subcontractor, supplier of equipment or materials, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 3.18.

3.18.2 In any and all claims against the Owner or any of Owner's agents or employees by any employee of the Contractor, any subcontractor, any sub-subcontractor, any supplier of equipment or materials, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor, sub-subcontractor, supplier of equipment or materials under the workers' compensation act, disability benefit acts or other employee benefit acts.

3.18.3 RESERVED

3.18.4 The Contractor's indemnification hereunder shall apply without regard to whether acts or omissions of one or more of the Indemnitees hereunder would otherwise have made them jointly or derivatively negligent or liable for such damage or injury, excepting only that the Contractor shall not be obligated to so protect, defend, indemnify, and save harmless if such damage or injury is due to the sole negligence of one or more of the Indemnitees.

3.19 ATTORNEYS FEES

3.19.1 In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Construction Contract, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 PROJECT MANAGER

4.1.1 Subject to the limitations set forth in paragraph 5.01 of the Construction Contract, the Project Manager is empowered to act for Owner during the construction of the Work.

4.1.2 In case of termination of employment of the Project Manager, Owner may at any time employ or retain any other person it may deem qualified to perform all or any part of the duties of the Project Manager hereunder or to exercise any of its rights hereunder. Owner shall notify all parties in writing, setting forth the scope of said replacement of Project Manager's duties and responsibilities, prior to making this change.

4.2

PROJECT MANAGER'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Project Manager will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative during construction and until final payment is due. The Owner's instructions to the Contractor shall be forwarded through the Project Manager. The Project Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 OMITTED

4.2.3 The Project Manager will not have control or charge of safety precautions and programs or any construction means, methods or decision-making in connection with the Work.

4.2.4 The Project Manager shall at all times have access to the Work wherever it is in preparation and progress.

4.2.5 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by Owner, the Owner and Contractor shall endeavor to communicate through the Project Manager, provided, however, that Owner may instruct, correspond, or negotiate with Contractor directly. Communications by and with subcontractors and suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Project Manager.

4.2.6 Based on the progress and quality of the Work, an evaluation of the Contractor's Applications for Payment, and all other information available, the Project Manager will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in paragraph 9.4.

4.2.7 The Project Manager will have the responsibility and authority to reject Work which does not conform to the Contract Documents. Whenever the Project Manager considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Paragraph 13.7 whether or not such Work has been fabricated, installed or completed.

4.2.8 The Project Manager will promptly review and approve or reject or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, and Samples, for conformance with information given and the design concept expressed in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay in the Work or in the activities of the Contractor or separate contractors, while allowing sufficient time in the Project Manager's reasonable judgment to permit adequate review. The Project Manager's review of the Contractor's submittals shall not relieve the Contractor of any of Contractor's obligations under the Contract Documents. The Project Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.9 The Project Manager will prepare Change Orders in accordance with Article 7, and will have authority to order Minor Changes in the Work as provided in paragraph 7.4.1. All Change Orders, Construction Change directives, and Field Directives shall require the approval of Owner in writing to be binding on Owner.

4.2.10 The Project Manager shall determine the date(s) of Substantial Completion and Final Completion, shall issue a Certificate of Substantial Completion when and as required by the Contract Documents, will receive, review, and maintain written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Claims must be made by written notice to the Project Manager. The responsibility to substantiate claims shall rest with the party making the claim.

4.3.2 OMITTED

4.3.3 Time limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by change order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 Failure of the Work to comply with the requirements of the Contract Documents;
- .3 Terms of special warranties required by the Contract Documents; or
- .4 Faulty or defective Work appearing after Substantial Completion.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Site conditions which an experienced and prudent contractor could have anticipated by visiting the site, familiarizing himself with the local conditions under which the Work is to be performed and correlating his observations with the requirements of the Contract Documents shall not be considered as claims for concealed or unknown conditions, nor shall the locations of utilities which differ from locations provided by the utility companies. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such

determination must be made within twenty-one (21) days after the Owner has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be subject to further proceeding pursuant to paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3.

If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Project Manager, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable grounds, claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive. Such claims shall be subject to Paragraph 8.3.

4.3.8 Claims for additional time. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary. Such claims shall be subject to Paragraph 8.3

4.3.9 Injury or damage to person or property. Subject to the Parties' obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in paragraphs 4.3.7 OR 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Project Manager will review all claims by the Contractor and take one or more of the following preliminary actions within ten days of receipt of a claim: (1) request additional supporting data from the Contractor, (2) submit a schedule to the Contractor indicating when the Owner expects to take action, (3) reject the claim in whole or in part, stating reasons for rejection, (4) recommend approval of the claim by the Owner, or (5) suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.4.2 If a claim has been resolved, the Project Manager will prepare or obtain appropriate documentation.

4.4.3 If a claim has not been resolved, the Contractor shall within ten (10) days after the Project Manager's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Project Manager, (2) modify the initial claim, or (3) notify the Project Manager that the initial claim stands.

4.4.4 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Project Manager, the Project Manager will notify the Contractor in writing that the Project Manager's decision will be made within seven (7) days, which decision shall be considered advisory only and not binding in the event of litigation in respect of the claim. Upon expiration of such time period, the Project Manager will render to the parties the Owner's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 5

SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Construction Contract, shall furnish to the Project Manager in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not the Owner has reasonable objection to any such proposed person or entity.

5.1.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable and timely objection under the provisions of paragraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.1.3 If the Owner has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by paragraph 5.1.1.

5.1.4 The Contractor shall make no substitution for any subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By an appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all

rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this paragraph 5.3, and, upon written request of the subcontractor, identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Contractor hereby assigns to Owner (and Owner's assigns) all its interest in any subcontract agreements and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work, which assignment will be effective upon acceptance by Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in writing. It is agreed and understood that Owner may accept said assignment at any time during the course of construction prior to Final Completion. Upon such acceptance by Owner, (1) Contractor shall promptly furnish to Owner true and correct copies of the designated subcontract agreements and purchase orders, and (2) Owner shall be required to compensate the designated subcontractors or suppliers only for compensation accruing to such parties for work done or materials delivered from and after the date on which Owner determines to accept the subcontract agreements or purchase orders. All sums due and owing by Contractor to the designated subcontractors or suppliers for Work performed or material supplied prior to Owner's acceptance of the subcontract agreements or purchase orders shall constitute a debt between such parties and Contractor. It is further agreed that all subcontract agreements and purchase orders shall provide that they are freely assignable by Contractor to Owner and Owner's assigns under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Construction Contract with Contractor and may not be withdrawn prior to Final Completion. Contractor shall deliver or cause to be delivered to Owner a written acknowledgment in form and substance satisfactory to Owner from each of its subcontractors and suppliers of the contingent assignment described herein no later than ten (10) days after the date of execution of each subcontract agreement and purchase order with such parties.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Construction Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term "Contractor" in the Contract Documents in each case shall mean the

Contractor who executes each separate Construction Contract.

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule as requested by the Owner. If the Contractor claims additional cost or time or both because of any such revisions, the Contractor shall make such claim as provided elsewhere in the Contract Documents. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors access to the site and all areas of the Work as may be reasonably necessary for the performance of their work, reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for proper execution and results of Contractor's Work or render it incompatible with Contractor's Work. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive his Work, except as to defects not then reasonably discoverable.

6.2.3 Subject to Paragraph 8.3 hereof, any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor cause damage to the work or property of the Owner, or to other completed or partially completed construction or property on the site or to property of any adjoining owner or other party, the Contractor shall promptly remedy such damage as provided in paragraph 10.2.4.

6.2.5 Should the Contractor cause damage to the work or property of any separate contractor, or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, its officers, employees, and agents, to the full extent as agreed to under paragraph 3.18.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor, separate contractors, and the Owner as to their responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.15, the Owner may clean up and allocate the cost thereof among the contractors responsible therefor.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Construction Contract, and without invalidating the Construction Contract, only by Change Order, Construction Change Directive, or Order for a Minor Change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement between the Owner and the Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an Order for a Minor Change in the Work may be issued by the Project Manager alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or Order for a Minor Change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted; provided however, that Owner may increase the number of units without change in the unit price if reasonable.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

The Contract Sum and the Contract Time may be changed only by Change Order.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in paragraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Construction Contract, order changes in the Work within the general scope of the Construction Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in paragraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed five percent (5%) of such Work's actual cost for Contractor and ten percent (10%) of such Work's actual cost to be apportioned between any and all subcontractors and sub-subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Project Manager may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this paragraph 7.3.6, actual costs shall be defined as and limited to the following:

- .1 costs of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;
- .3 reasonable rental costs of machinery and equipment, exclusive of hand tools, obtained and used specifically for such Work, whether rented from the Contractor or others; and
- .4 costs of premiums for all bonds (if any), permit fees, and sales, use or similar

taxes directly attributable to such Work. Actual cost does not include any item which could be deemed to be a general conditions cost or overhead, such as but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses.

7.3.7 Pending final determination of actual cost to the Owner, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Project Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be determined in accordance with Paragraph 8.3 hereof.

7.3.9 When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Project Manager will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8

TIME

8.1 DATE OF COMMENCEMENT OF THE WORK

8.1.1 The Date of Commencement of the Work shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Construction Contract. By executing the Construction Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall begin the Work on the Date of Commencement of the Work. The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall carry the Work forward expeditiously with adequate forces and shall

achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed, disrupted, or otherwise interfered with at any time, or from time to time, in the performance of the Work, the rights and obligations of the parties with respect to such delay shall be as set forth in this subsection 8.3. Contractor's exclusive remedy for any delay, disruption, or interference shall be as set forth in this subsection 8.3.

8.3.1.1 Any delay within the control of the Contractor or within the control of any subcontractor, agent or supplier thereof (including, without limitation, delay within the joint control of the Contractor or one or more of his subcontractors, agents or suppliers) shall be the sole responsibility of the Contractor, and the Contractor shall not be entitled to any extension of time or to any increase in the Contract Sum as the result of any such delay.

8.3.1.2 Upon the occurrence of any delay which will affect the date of Substantial Completion caused by fire, flood, unusually severe weather or other act of God, or by court order, unforeseen, concealed, or differing condition related to the Work or other factors beyond the reasonable control of any party hereto or his agents, employees or subcontractors, then the period of performance specified herein shall be extended by Change Order or Construction Change Directive, on a day-for-day basis, but such extension shall not result in any increase in the Contract Sum, and provided that Contractor complies with subsection 8.3.1.4 below.

8.3.1.3 Upon the occurrence of any delay which will affect the date of Substantial Completion not concurrent with delays described under subsections 8.3.1.1 and 8.3.1.2 above, which is proximately caused by acts or omissions within the control of the Owner, his agents or employees, the period of performance specified herein shall be extended by Change Order or Construction Change Directive on a day-for-day basis and the Contractor shall be entitled to reimbursement of actual, proven costs reasonably and necessarily incurred as a direct consequence of such delay, but not in excess of the amount above the Contract Sum for each day of such delay as specified in the Contract Documents.

8.3.1.4 Any claim for an extension of time under subsections 8.3.1.2, and 8.3.1.3 above, and any claim for additional compensation authorized by subsection 8.3.1.3 above, shall be made as follows:

- .1 The Contractor shall, within five (5) days after the onset of any delay, notify the Project Manager in writing of the causes of delay, the facts relating thereto, and the requested time extension. In the case of a continuing delay, only one claim is necessary. Proof of any recoverable delay costs shall be submitted within fifteen (15) days after the end of any period of delay.
- .2 The Project Manager shall determine whether the cause for the claim for an extension of time is beyond the control of the Contractor pursuant to subsections 8.3.1.1, 8.3.1.2, AND 8.3.1.3 above. Owner shall either approve or disapprove the extension requested or claim made.
- .3 Should a time extension or delay cost claim be granted by the Owner, a Change Order or other notice, signed by the Owner, shall be issued to indicate the new date for completion, or the adjustment to the Contract Sum.

- .4 Failure by Contractor to timely provide, in writing, a request for time extension, claim for delay costs, or proof of such costs, shall constitute a waiver by Contractor of any time extension or reimbursement of delay costs which Contractor may have otherwise been granted pursuant to this subsection 8.3.
- .5 Nothing herein shall prevent Contractor from requesting, and Owner granting, an extension of time contingent upon payment by Contractor of an agreed amount of liquidated damages in consideration of the time extension.

8.3.2 Contractor expressly acknowledges and confirms his obligation to minimize the cost impact of any delay, delay charges being an unproductive expenditure of public funds. Therefore Contractor shall, to the best of his ability, re-assign personnel and equipment, commence or accelerate unaffected portions of the Work, and otherwise employ all prudent measures available to minimize delay costs. In no event shall the Owner be liable for payment of delay costs which could have been avoided or mitigated by any means reasonably available to the Contractor.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contractor will not be allowed any claims for anticipated profits, for loss of profits, or for any damages or additional costs incurred because of a difference between the estimate of any item and the amount of the item actually required, or for the elimination of any part of the Work. Funds for construction of the Work herein contemplated are limited. The Owner reserves the right to eliminate or reduce the items of the proposal or any of the Work as may be required to bring the cost of the Work within the limits of available funds.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule of values allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to subcontractors, supported by such evidence of correctness as the Project Manager may direct. This Schedule, when approved by the Project Manager, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Construction Contract, the Contractor shall submit to the Project Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Contractor's right to payment as the Project Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing for subsequent incorporation in the Work. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 When application for payment includes materials stored off the project site or stored on the project site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the application. Suitable storage which is off the project site shall be a bonded warehouse or appropriate storage approved by Owner with the stored materials properly tagged and identifiable for this project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Owner's sole discretion.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Project Manager will, within seven (7) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor in writing his reasons for withholding a certificate in whole or in part as provided in paragraph 9.5.1.

9.4.2 No Certificate for Payment shall be issued unless it appears to the Project Manager that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, but without in any way waiving any of Owner's rights or claims under the Contract Documents, the quality of the Work is in accordance with the Contract Documents and that all certificates required under the Contract Documents have been furnished in proper form. However, the issuance of a Certificate for Payment will not be a representation that the Project Manager has made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Project Manager may decline to certify payment and may withhold his certificate in

whole or in part, to the extent reasonably necessary to protect the Owner, if in his opinion he is unable to make the determinations as provided in paragraph 9.4.2. If the Project Manager is unable to make such determinations as provided in paragraph 9.4.2 and to certify payment in the amount of the application, he will notify the Contractor as provided in paragraph 9.4.1. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which he is able to make such determinations. The Project Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to maintain accurate and up-to-date as-built drawings.

9.5.2 When the above grounds are removed, Certificates for Payment shall be made by the Project Manager for amounts withheld because of them.

9.6 PROGRESS PAYMENTS

9.6.1 After the Project Manager has issued a Certificate for Payment, the Owner shall make payment in a timely manner not to exceed thirty (30) days from the time the Project Manager issued the Certificate for Payment. The Owner may refuse to make payment on any Certificate for Payment for any default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8. The Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

9.6.2 The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such subcontractor's Work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

9.6.3 The Project Manager may, on request and at his discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Project Manager on account of Work done by such subcontractor.

9.6.4 The Owner shall not have any obligation to pay or to see the payment of any monies to any subcontractor except as may otherwise be required by law.

9.6.5 Payment to suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3, and 9.6.4.

9.6.6 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6.7 RETAINAGE

9.6.7.1 In addition to any amounts withheld from payment pursuant to any other provision in this Construction Contract, and if the Contractor is satisfactorily performing the Construction Contract, Owner shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

- .1 Owner shall retain ten percent (10%) of each progress payment until the Work is at least fifty percent (50%) complete.
- .2 After the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, reduce retainage to five percent (5%) of each progress payment. A retainage of five percent (5%) of any progress payment shall not limit the Owner's discretion to retain ten percent (10%) of any subsequent progress payment.

9.6.7.2 In no event shall the amount retained pursuant to paragraph 9.6.7 be reduced to less than five percent (5%) of the Contract Sum until after final acceptance of the project by the Owner.

9.7 FAILURE OF PAYMENT

9.7.1 If the Project Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8, pay the Contractor within thirty (30) days after the date established in the Contract Documents any amount certified by the Project Manager, then the Contractor may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order.

9.8 SUBSTANTIAL COMPLETION

9.8.1 The Work will not be considered suitable for Substantial Completion review until all project systems included in the Work are operational as designed and scheduled, all designated or

required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Construction Contract are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the building or utilize the improvements on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the date of Substantial Completion.

9.8.2 When the Contractor considers that the Work, or a designated portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Project Manager a list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such items upon notification by the Project Manager. The Contractor shall then submit a request for another inspection by the Project Manager to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Project Manager will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein, which time shall be no longer than thirty (30) days after the scheduled completion date. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Project Manager, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage of construction regardless of whether the Contract Time has expired (hereinafter sometimes referred to as "partial occupancy"). Such partial occupancy may commence whether or not the applicable portion of the Work is Substantially Complete.

9.9.2 In the event of partial occupancy, the Contractor shall promptly secure endorsement from its insurance carriers and consent from its sureties, if any.

9.9.3 In the event of partial occupancy before Substantial Completion as provided above, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit such building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make

temporary provisions for such Work as soon as possible so that the aforementioned building services may be put into operation and use. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.4 In the event of partial occupancy prior to Substantial Completion, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of the operation and cost of necessary security, maintenance and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. The Owner shall assume proportionate and reasonable responsibility for the cost of the above services, reduced by any savings to Contractor for such services realized by reason of partial occupancy. Further, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of insurance and damage to the Work. Contractor's acceptance of arrangements proposed by Owner in respect of such matters shall not be unreasonably withheld, delayed, or conditioned. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.5 In each instance, when the Owner elects to exercise its right of partial occupancy as described herein, Owner will give Contractor advance written notice of its election to take the portion or portions involved, and immediately prior to partial occupancy, Contractor, and the Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the same.

9.9.6 It shall be understood, however, that partial occupancy shall not: (1) constitute final acceptance of any Work, (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents; provided that Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy.

9.9.7 Subject to the terms and conditions provided herein, if the Contractor claims that delay or additional cost is involved because of partial occupancy by the Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Project Manager will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Construction Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Project Manager's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in paragraph 9.10.2 have been fulfilled. Final Payment is also subject to all City Charter and City Code requirements. Warranties required by the Contract Documents shall commence on the date that the Project Manager issues a final Certificate of Payment to the Owner.

9.10.2 Neither the final payment nor the remaining retained percentage shall become due until

the Contractor submits to the Project Manager:

9.10.2.1 Evidence of compliance with all requirements of the Contract Documents: notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents, including but not limited to (a) instruction of Owner's representatives in the operation of mechanical, electrical, plumbing and other systems, (b) delivery of keys to Owner with keying schedules, sub-master and special keys, (c) delivery to Owner of Contractor's general warranty as described in Paragraph 3.5, and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for Project Manager's review and delivery to Owner, (d) delivery to Project Manager of printed or typewritten operating, servicing, maintenance and cleaning instructions for the Work; parts lists and special tools for mechanical and electrical work;

9.10.2.2 If required by the Owner, (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Construction Contract, to the extent and in such form as may be designated by the Owner, and (d) a final waiver of liens in a form satisfactory to Owner, covering all Work including that of all subcontractors, vendors, labor, materials and services, executed by an authorized officer and duly notarized;

9.10.2.3 In addition to the foregoing, all other submissions required by other articles and paragraphs of the specifications including final construction schedule shall be submitted to the Project Manager before approval of Final Payment;

9.10.2.4 If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Project Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Project Manager, and without terminating the Construction Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Manager prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,

- .3 failure of the Work to comply with the requirements of the Contract Documents,
- .4 terms of any special warranties required by the Contract Documents, or
- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Project Manager and Owner.

9.10.5 The acceptance of final payment by the Contractor, a subcontractor, or supplier shall constitute a waiver of all claims by that payee.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

10.1.2 Unless otherwise provided in the Contract Documents, in the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or when it has been rendered harmless, upon written direction of Owner.

10.1.3 Unless otherwise provided in the Contract Documents, the Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

- .1 all persons involved in or affected by the Work;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors or sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, private property, and utilities not designated for removal, relocation or replacement in the course of

construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property for their protection from damage, injury or loss, including but not limited to the Occupational Safety and Health Act (OSHA), as applicable.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 The Contractor shall promptly remedy all damage or loss at its sole cost and expense (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor. Utility locate services provided in the field by the Owner shall not be deemed an act or omission that relieves Contractor of its responsibility hereunder. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 3.5.

10.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency Work shall be determined as provided in Paragraph 4.3, Paragraph 8.3 and Article 7.

10.4 USE OF EXPLOSIVES, DRIVING OR REMOVAL OF PILES, WRECKING, EXCAVATION WORK OR OTHER SIMILAR AND POTENTIALLY DANGEROUS WORK.

10.4.1 When the use of explosives, driving or removal of piles, wrecking, excavation work or other similarly potentially dangerous work is necessary for the prosecution of the Work, the Contractor shall exercise the utmost care so as not to endanger life or property and shall carry on such activities under the supervision of properly qualified personnel. The Contractor shall be fully responsible for, and shall save and hold Owner harmless from, any and all damages, claims, and for the defense of any actions against the Owner resulting from the prosecution of such Work in connection with or arising out of the Construction Contract.

10.4.2 The Contractor shall notify each public utility company or other owner of property

having structures or improvements in proximity to the site of the Work, of his intent to perform potentially dangerous work. Such notice shall be given sufficiently in advance to enable the companies or other owners of property to take such steps as they may deem necessary to protect their property from injury. Such notice shall not relieve the Contractor of responsibility for any damages, claims, or the defense of any actions against the Owner resulting from the performance of such Work in connection with or arising out of the Construction Contract.

10.4.3 All explosives shall be stored in a secure manner and all storage places shall be marked clearly "EXPLOSIVES - KEEP OFF" and shall be in the care of competent watchmen at all times.

10.5 UNDERGROUND UTILITIES

10.5.1 Known Underground Utilities and other underground structures are shown on the Drawings only to the extent such information has been made available to or discovered by the Owner. It is expected that there may be discrepancies and omissions in the location and quantities of actual Underground Utilities and other underground structures and those shown. This information is shown for the convenience of the Contractor, but is not guaranteed to be either correct or complete, and all responsibility for the accuracy and completeness thereof is expressly disclaimed by Owner. The Contractor shall, ahead of excavation, confirm the location of all Underground Utilities and other underground structures so that they will not be accidentally damaged by the construction operation. Contractor shall be responsible for contacting all utility owners concerning location of all above ground utilities and Underground Utilities before proceeding with the Work. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor shall verify actual location, and Contractor remains solely responsible for any claims or damage to Underground Utilities or other facilities or structures caused by excavating. Contractor is responsible for, at no additional cost to the owner, potholing all existing Underground Utilities to be crossed or that may otherwise affect their means and methods for constructing the Project prior to beginning any construction on the Project.

ARTICLE 11

INSURANCE REQUIREMENTS

11.1 CONTRACTOR'S INSURANCE

11.1.1 Workers' Compensation Insurance. The Contractors shall carry, at its own expense, valid Workers' Compensation Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or signed certificate of insurance shall be on file with the Owner at all times.

11.1.1.1 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intention of non-renewal to the Owner.

11.1.1.2 Limits of liability shall be in conformance with the statutory requirements of the Workers' Compensation Laws of the State of Colorado.

11.1.2 Commercial General Liability Insurance. The Contractor shall carry and maintain, at its own expense, Commercial General Liability Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.2.1 The policy shall be appropriately endorsed to give all named parties a minimum of thirty (30) days notice of cancellation or intention to non-renew coverage or any material change or restriction of coverage.

11.1.2.2 Limits of liability shall be a minimum of one million dollars (\$1,000,000) each occurrence; Bodily Injury and Property Damage combined, two million dollars (\$2,000,000) aggregate.

11.1.2.3 The following coverages shall be included in the policy:

- .1 Premises, operations and elevators, including work let or sublet, to cover all claims for bodily injury (including but not limited to death, disease or sickness) and damage or destruction or loss of use of any tangible property.
- .2 Products and completed operations.
- .3 Broad form blanket contractual liability with all exclusions deleted.
- .4 Personal injury liability.
- .5 Explosions, collapse, and underground hazards.
- .6 Broad form property damage endorsement.
- .7 Incidental malpractice.
- .8 Independent contractors.

11.1.2.4 The products and completed operations coverage shall be maintained in effect for a period of six (6) years after the date of final acceptance of the Work.

11.1.3 Comprehensive Automobile Liability Insurance. The Contractor shall carry and maintain, at its own expense, Comprehensive Automobile Liability Insurance. A copy of a certificate of insurance shall be on file with the Owner at all times.

11.1.3.1 The policy shall cover all owned or leased vehicles operated by the insured as well as coverage for all non-owned or hired vehicles used by the insured in the course of his operations.

11.1.3.2 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intent to non-renew to Owner.

11.1.3.3 The limits of liability shall be a minimum of one million dollars (\$1,000,000) per occurrence and five hundred thousand dollars (\$500,000) per person.

11.1.4 Umbrella/Excess Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Umbrella (excess) Liability policy throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.4.1 Policy shall be in excess of all underlying insurance including employer's

liability.

11.1.4.2 Policy shall not contain any exclusions for hazards, or contractual hazards.

11.1.4.3 Limits of liability shall be a minimum of three million five hundred thousand dollars (\$3,500,000) in the aggregate.

11.1.5 Owner's Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Owner's Liability policy in the name of the Owner.

11.1.5.1 Limits of liability shall be a minimum of two million dollars (\$2,000,000) in the aggregate.

11.2 ADDITIONAL NAMED INSURED

11.2.1 The Owner shall be named as an additional insured under the Contractor's Automobile, Commercial General, and Umbrella Liability coverages, and the Commercial General Liability additional insured coverage shall include products and completed operations coverage. The Contractor's Automobile, Commercial General, and Umbrella Liability additional insured coverage shall be primary with respect to claims made by the City.

11.3 BUILDER'S RISK/PROPERTY INSURANCE

11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. Such insurance shall be in a company or companies against which the Owner has no reasonable objection.

This insurance shall include the interests of the Owner, the Contractor, subcontractors and sub-subcontractors in the Work as additional insureds, providing that such insurance is primary with respect to claims made by the additional insureds, and be in the form of "all risk" insurance for physical loss or damage with all exclusions deleted. If not covered under all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in a Request for Payment under paragraph 9.3.2.

11.3.1.1 The form of policy for this coverage shall be "Completed Value". The coverage under this policy shall include contemplated work and work in progress.

11.3.1.2 If by the terms of this insurance any mandatory deductibles are required, or if the Contractor should elect, with the concurrence of the Owner, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim. If separate contractors are added as insureds to be covered by this policy, the separate contractor shall be responsible for payment of appropriate parts of any deductibles in the event claims are paid on their part of the Project.

11.4 GENERAL REQUIREMENTS

11.4.1 The Contractor shall file two certified copies of all policies with the Project Manager before exposure to loss may occur. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable

costs properly attributable thereto.

11.4.2 All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:

- .1 Underwriter shall have no right of recovery or subrogation against the Owner, it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- .2 The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional insured shall not apply to the Owner.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- .4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

11.4.3 Additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All liability insurance and builder's risk/property insurance policies required by this Article shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorneys' fees.

11.4.4 The Contractor shall be solely responsible for ensuring that all subcontractors obtain and maintain in force for the term of this Construction Contract insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

11.4.5 Nothing contained in this Article 11 shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under the Construction Contract. Contractor agrees that he alone shall be completely responsible for procuring and maintaining full insurance coverage to adequately insure against the risk attendant to the performance of this Construction Contract. Any approvals of Contractor's insurance coverages by the Owner or the Project Manager shall not operate to the contrary.

11.4.6 The risk of loss to any property to be provided by Contractor to Owner pursuant to this Construction Contract shall be upon the Contractor until said property has been finally accepted by Owner.

11.4.7 Nothing in this Article 11 shall be deemed or construed as a waiver of any of the protections to which Owner may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

11.4.8 The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of Contractor to provide written notice to the Owner within two (2) days of the cancellation of or substantive change to any of the policies required herein and failure to do so shall constitute a breach of the Contract.**

11.4.9 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies, licensed in the State of Colorado and approved by the Owner and shall be maintained until the Contractor's Work is accepted by the Owner. The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. The Owner may, in writing, specifically indicate its approval or disapproval of each separate policy provided pursuant to the Contract Documents.

11.4.10 All policies under the Contract Documents that are scheduled to expire prior to the time the Contractor's Work is finally accepted by the Owner shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to the Owner for approval.

11.4.11 If any of the policies required under the Contract Documents shall be or at any time become unsatisfactory to the Owner as to form or substance, or if a company issuing any such policy shall be or at any time become unsatisfactory to the Owner, Owner shall so advise Contractor who shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit a certificate of insurance as hereinabove provided.

11.4.12 All liability insurance and builder's risk/property insurance policies required by this Article shall be occurrence-based policies.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If any portion of the Work should be covered contrary to the request of the Project Manager or Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Project Manager, be uncovered for his observation and shall be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

12.1.2 If any other portion of the Work has been covered which the Owner or Project Manager has not specifically requested to observe prior to being covered, the Project Manager or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for the payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct all Work rejected by the Project Manager as incomplete, defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for any additional services made necessary thereby.

12.2.2 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the Date of Final Completion of the Work or designated portion thereof or within one year after

acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work and termination of the Construction Contract. The Owner shall give such notice promptly after discovery of the condition by the Owner.

12.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected or accepted by the Owner.

12.2.4 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.3.

12.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Project Manager, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.6 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused, in whole or in part, by the Contractor's correction or removal of Work which is defective or not in accordance with the requirements of the Contract Documents.

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof, or under law or in equity. The establishment of the time period of one year after the Date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

12.3.1. If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Construction Contract shall be governed by the law of the State of Colorado. Those provisions of law applicable but discretionary because of the Owner's status as a home-rule municipality shall be binding at the Owner's election.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Construction Contract shall assign, sublet, or transfer (by operation of law or otherwise) any interest in the Construction Contract without the prior written consent of the other. The Contractor shall not assign the whole or any part of the Construction Contract or any monies due or to become due thereunder without the prior written consent of the Owner and of the surety on the Contractor's bond. Any assignment without such written consent shall be void. A copy of such consent of surety, together with a copy of the assignment, shall be filed with the Project Manager. In case the Contractor assigns all or part of any monies due or to become due under the Construction Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims and liens of all persons, firms and corporations for services rendered; for the payment of all laborers and mechanics for labor performed; for the payment of all materials and equipment used or furnished and for payment of all materials and equipment used or rented in the performance of the Work called for in the Construction Contract; and for the payment of any liens, claims, or amounts due the Federal, State or local governments or any of their funds. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

13.3 WRITTEN NOTICE

13.3.1 All notices to be given hereunder shall be in writing, and may be given, served, or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by delivering the same in person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in the Construction Contract from and after the fourth day next following the date deposited in the mail, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given shall be sent to or made at the last business address known to the party giving notice.

13.4 CLAIMS FOR DAMAGES

13.4.1 Should either party to the Construction Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within

a reasonable time after the first observance of such injury or damage. All claims by Contractor against Owner that are within the scope of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, shall be subject to, and brought in accordance with, the provisions of said Act.

13.5 PERFORMANCE AND PAYMENT BOND

13.5.1 The Contractor will be required, simultaneously with the execution of the Construction Contract, to furnish separate Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Contract Sum. Said bonds shall be issued by a responsible surety approved by the Owner and shall guarantee the faithful performance of the Construction Contract and the terms and conditions herein contained and the maintenance of the proposed improvements in good repair according to the terms contained in the Construction Contract. Accompanying the bond form shall be a "Power of Attorney" authorizing the attorney in fact to bind the surety company and certified to include the date of the bond. Such bonds shall be on forms provided by the Owner.

13.5.2 The Contractor shall deliver said bonds to the Project Manager no later than the date of execution of the Construction Contract. If the Contractor fails or neglects to deliver the bonds, as specified, he shall be considered to have abandoned the Construction Contract and his bid security will be forfeited.

13.6 RIGHTS AND REMEDIES

13.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents.

13.6.2 No action or failure to act by the Owner, Project Manager or Contractor shall constitute a waiver of any right or duty afforded any of them under the Construction Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13.6.3 In all actions by the Owner to enforce its rights and remedies hereunder, whether at law or equity, the Owner, in addition to all other remedies, shall be entitled to recovery of its reasonable attorneys fees and costs.

13.6.4 The Contractor agrees that the economic loss rule as set forth in the *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the Owner's right to pursue tort remedies in addition to other remedies it may have against the Contractor. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents. Contractor further specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under the Construction Contract.

13.7 TESTS AND INSPECTIONS

13.7.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing

laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Project Manager and the Owner timely notice of its readiness so the Project Manager and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals.

13.7.2 If the Project Manager or public authority having jurisdiction determines that any Work requires additional or special inspection, testing, or approval which paragraph 13.7.1 does not include, the Project Manager may instruct the Contractor to order such additional or special inspection, testing or approval, and the Contractor shall give notice as provided in paragraph 13.7.1. If such additional or special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, the Contractor shall bear all costs of such testing, inspection, and approval procedures, including compensation for any additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

13.7.3 Required certificates of inspection, testing or approval, unless otherwise required by Contract Documents, shall be secured by the Contractor and promptly delivered by him to the Project Manager.

13.7.4 If the Project Manager is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where practicable, at the normal place of testing.

13.7.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid delay in the Work.

13.8 LITIGATION AND WORK PROGRESS

13.8.1 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any litigation proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13.9 EQUAL EMPLOYMENT OPPORTUNITY

13.9.1 In connection with the execution of this Construction Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, handicap, or national origin, if otherwise qualified. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation; and selection for training including apprenticeship.

13.10 COMMERCIAL DRIVER'S LICENSE SUBSTANCE SCREENING

13.10.1 The contractor shall provide written assurance to the City that each driver that provides services requiring a commercial driver's license pursuant to this Construction Contract participates in an alcohol and controlled substances testing program that meets the requirements of the Federal Motor Carrier Safety Regulations found at 49 C.F.R. Part 382.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Construction Contract if the Work is stopped for a continuous period of sixty (60) days through no act or fault of the Contractor or a subcontractor, sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .3 because the Project Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in paragraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment (without cause) within the time stated in the Contract Documents; or
- .4 if repeated suspensions, delays, or interruptions by the Owner as described in paragraph 14.3 constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

14.1.2 If one of the above reasons exists, the Contractor may, upon fourteen (14) days' written notice to the Owner, terminate the Construction Contract, unless this reason is cured prior to the expiration of the notice period. Contractor may recover from the Owner payment for Work properly executed in accordance with Contract Documents (the basis for such payment shall be as provided in the Construction Contract) and payment for costs directly related to work thereafter performed by Contractor in terminating such work, including reasonable demobilization and cancellation charges. The Owner shall not be responsible for damages for loss of anticipated profits on work not performed on account of any termination described in paragraphs 14.1.1 and 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Construction Contract if the Contractor:

- .1 refuses or fails to supply, in a timely manner, enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to subcontractors or suppliers for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the subcontractors or suppliers;
- .3 disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- .4 disregards the instructions of Owner when such instructions are based on the requirements of the Contract Documents;
- .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any

- .6 debtor's act, or to reorganize under bankruptcy or similar law; or otherwise does not fully comply with the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and Contractor's surety, if any, seven (7) days' written notice, (except in cases of emergency as reasonably determined by Owner), terminate the services of the Contractor and may:

- .1 take possession of the site and project and of all materials, equipment, tools, and construction equipment and machinery thereon owned, rented, or leased by the Contractor; and
- .2 finish the Work by whatever method the Owner may deem expedient.

14.2.3 When the Owner terminates the Construction Contract for one of the reasons stated in paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 To the extent the costs of completing the Work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to Contractor to complete the Work except for Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Construction Contract.

14.2.5 In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of the Work or any subcontract or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated, if any. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.2.6 In the event of termination pursuant to paragraph 14.2.5, Owner shall pay as the sole amount due to Contractor in connection with the Construction Contract, (i) sums due for Work properly executed in accordance with Contract Documents to date, including allowable profit and overhead (except retainage sums shall not be paid prior to one hundred twenty (120) days following the date of termination); (ii) reasonable cost of demobilization and cancellation charges; and as additional and special consideration for this provision; (iii) a profit for underperformed work equal to one-half percent (0.5%) of the cost of the Work actually performed to date.

14.2.7 Upon a determination by a court of competent jurisdiction that the termination of Contractor pursuant to paragraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to paragraph 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in paragraph 14.2.6.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 In addition to Owner's right to suspend, delay, or interrupt Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without

cause, suspend, delay, or interrupt any part of the Work or any subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving written notice to Contractor specifying the part of the Work or subcontract to be suspended, delayed, or interrupted and the effective date of such suspension, delay, or interruption. Contractor shall continue to prosecute the part of the Work not suspended, delayed, or interrupted and shall properly protect and secure the part of the Work so suspended, delayed, or interrupted. If any part of the Work or subcontract is so suspended, delayed, or interrupted, Contractor shall be entitled to payment of reasonable standby fees (or at Owner's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been suspended, delayed, or interrupted under the Contract Documents or an equitable adjustment is made or denied under another provision of the Construction Contract. In case of such suspension, delay, or interruption, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the date of Substantial Completion or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.3.2 The rights and remedies of Owner under this Section shall be non-exclusive, and shall be in addition to all the other remedies available to Owner at law or in equity.

Rev. 9/2011



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Westminster Promenade Light Towers - Conversion to LED

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

Authorize the City Manager to execute a contract with Kelly Electrical Inc. in the amount of \$100,656 for the electrical conversion of the Westminster Promenade light towers to Light Emitting Diodes (LED) and authorize a 10-percent contingency in the amount of \$10,065, for a total expenditure not to exceed \$110,721.

Summary Statement

- The Promenade Light Towers are located at the Westminster Promenade between The Westin Westminster Hotel and the Promenade Lake.
- The eight light towers are signature features of the Promenade East and provide both a visual effect and historical information at the column bases.
- When constructed in 2000, the light towers were designed with neon fixtures.
- Since 2007, the light towers have not been fully functional and currently are not operable.
- Staff is proposing to change the light fixtures to LED technology. LED lighting will operate at one tenth the power consumption of neon lights.
- Life expectancy of LED fixtures is over 13 years.
- Options that could reduce this total cost will be reviewed by the City, the Westin Westminster Hotel and the electrical engineer staff utilizing a test mock-up on site.
- Adequate funds for this expense will be available from 2012 General Fund Carryover funds for this project.

Expenditure Required: \$110,721

Source of Funds: 2012 General Fund Carryover

Policy Issue

Should the City move forward and replace the existing neon light tower fixtures at the Westminster Promenade with LED fixtures?

Alternatives

1. The City could choose to not perform the electrical work as outlined and leave the light towers in their current state of disrepair. Staff does not recommend this option as there are health and safety concerns regarding pedestrian lighting in this area.
2. The City could choose to re-install neon lighting at a lower cost of approximately \$75,000. Staff does not recommend this option as the life expectancy of neon lighting is 5.5 years and the yearly power consumption of neon would be 10 times the cost of operating LED fixtures.

Background Information

The eight light towers at the Westminster Promenade are part of the original design and form the iconic anchor for the east termination point at the Westin Westminster Hotel. The glass towers are arranged in a circle around a plaza with mosaic tile art pieces that include Arapahoe Indian designs. The four-sided base of each tower include plaques that describe various facets of Westminster’s human and natural history. These plaques constitute an outdoor museum of history and are illuminated at night by the light towers that also provide the dramatic focal point for the plaza.

When originally constructed in 2000, neon light tubes were used to light each tower. The lights generated ongoing complaints from the Westin Westminster Hotel as they were so bright guests could not keep the light out of their rooms at night. The lighting design was not designed to allow modification in the amount of light intensity to be regulated. With the development of LED lighting systems, they can be installed to allow flexibility in the intensity of the light with the added bonus of having color options for seasonal displays (red and green for the holidays; red, white and blue for the fourth of July; etc). The electrical conversion to LED will not only save in operating costs but also provide much needed pedestrian and ambient lighting in this part of the Westminster Promenade thereby addressing safety concerns expressed by the Westin Hotel.

The following pre-qualified three companies were solicited and expressed interest in bidding on this project:

Kelly Electrical Services, Inc.	\$100,656
Specialized Electric	\$122,148
Radiant Lighting Services, Inc.	No bid

Staff is recommending that the contract for the Westminster Promenade light towers conversion to LED be awarded the low bidder, Kelly Electrical Services, Inc. The bid specification stipulated four different lighting options ranging from \$71,800 to \$100,656 for this lighting project. These options were developed to ensure that adequate light intensity and color options can be evaluated during a test mock-up of one of the light towers prior to construction. This decision will be made by the City, the Westin Westminster Hotel and the electrical engineer based on the specifications of the project. Depending on the option selected, the construction bid will reflect the charge for that specific option.

This project supports the City’s Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Beautiful and Environmentally Sensitive City.”

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: 2013 Hot-In-Place Recycling and Repaving Project

Prepared By: Kurt Muehle Meyer, Pavement Management Coordinator
Dave Cantu, Street Operations Division Manager

Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will best be served by awarding a contract to Cutler Repaving Inc., as the sole source contractor. Authorize the City Manager to execute a contract for 2013 with options for two additional one-year renewals (2014 and 2015) for a Hot-In-Place Recycling and Repaving Project in the amount of \$453,609; and authorize a 5% contingency of \$22,680, for a total project budget of \$476,289.

Summary Statement

- Hot-In-Place Recycling and repaving is a cost effective resurfacing treatment that heats and scarifies the existing pavement to a depth of one inch, adds an asphalt rejuvenator and places an additional one inch of new hot mix asphalt, for a total overlay thickness of two inches, all in a single pass operation.
- Cutler Repaving Inc. is currently the only contractor performing this specialized street resurfacing treatment in Colorado and has completed similar projects over the past 30 years in the Denver metropolitan area. Prices obtained are consistent with those of other Front Range cities.
- The negotiated sole source contract will provide for the resurfacing of approximately 80,000 square yards of arterial roadway on West 104th Avenue from Sheridan Boulevard to U.S. 36 and Church Ranch Boulevard from U.S. 36 to Wadsworth Boulevard.
- As proposed, annual contract renewals for 2014 and 2015 will require agreement by both parties and any unit cost price adjustments will be based on Consumer Price Index for All Urban Consumers.
- Adequate funds are budgeted and available for this expense.

Expenditure Required: \$ 476,289

Source of Funds: General Capital Improvement Fund
- Arterial Roadway Resurfacing

Policy Issue

Should the City accept the negotiated costs with Cutler Repaving Inc. and authorize negotiations for 2014 and 2015 Hot-In-Place Recycling and repaving work?

Alternatives

1. Bid the Hot-In-Place Recycling and repaving work with the annual Asphalt Pavement Rehabilitation Project.
 - Costs would increase significantly due to the fact that both the general contractor and sub-contractor will calculate profit into the project.
 - Cutler Repaving Inc. would ultimately be the sub-contractor performing the work. Cutler Repaving Inc. has been and remains the sole contractor in the metropolitan area for hot-in-place recycling and repaving construction. An advantage would be that only one contract would be necessary, which would reduce administrative time; however, this alternative is not recommended by Staff due to the anticipated additional costs.
2. Resurface the proposed streets with a conventional two inch mill and overlay of hot-mix asphalt (HMA). Staff does not recommend this alternative for the following reasons:
 - With this alternative, the cost would increase by an estimated 23 percent and the added strength of the pavement structure would not be any greater than the proposed hot-in-place-recycling and repaving.
 - The entire two inches of material that is milled off the roadway would be hauled to a hot mix asphalt plant, recycled into hot mix asphalt and sold to others. By using the hot-in-place recycling and repaving process this same material gets rejuvenated, reused and eliminates the need for an additional one inch of new hot mix asphalt.

Background Information

Hot-in-place recycling and repaving is a 6 step process that involves the following:

1. Heating the existing pavement surface
2. Scarifying the heated, softened pavement to a depth of one inch
3. A liquid asphalt rejuvenator is added to restore the viscosity of the aged asphalt
4. The recycled material is mixed and laid to form a leveling course
5. New hot mix asphalt is added
6. Both layers are compacted

All 6 steps are done simultaneously and completed in a single pass. Prior to the repaving process the edges of the street will be milled down to accommodate the one inch of new asphalt.

Cutler Repaving Inc. has previously performed hot-in-place recycling and repaving in Westminster more than 20 years ago. While they have not recently worked in Westminster they have successfully completed this process in many other municipalities in the Denver metropolitan area over the last 30 years.

Street Operations Staff began looking into the feasibility of using hot-in-place recycling and repaving in 2010. City staff visited work sites in the City and County of Denver to watch a demonstration of the process, as well as evaluated roads with similar traffic volumes that had been resurfaced with this process 3 and 5 years prior. In making every effort to ensure success, Cutler Repaving Inc. offered to provide laboratory testing of core samples taken from proposed Westminster roads and evaluate the effectiveness of the process. These laboratory tests showed that this process is compatible with existing materials and would be beneficial to the streets that have been selected to receive hot-in-place recycling and repaving. Staff also talked with other agencies that currently employ this process

to determine if the process is beneficial and what the best course of action to procure these services would be. Of all the agencies that currently use hot-in-place recycling and repaving, some open the work for competitive bidding and some include the work with their asphalt overlay and reconstruction projects. In either event, Cutler Repaving Inc. has been the only contractor to provide bids. Staff has researched and found that at this time Cutler Repaving Inc. is the only contractor capable of meeting specifications for this specialized process in Colorado. Prices obtained from Cutler Repaving Inc. are consistent with those of other Front Range cities and are three percent lower than staff estimates.

The City's computerized pavement management system identified West 104th Avenue from Sheridan Boulevard to U.S. 36 and Church Ranch Boulevard from U.S. 36 to Wadsworth Boulevard, as high priority roadways for 2013. Due to the quantity and severity of pavement distresses present on these roads and the poor ride quality, a two inch asphalt overlay was selected as the most effective type of rehabilitation. In order to place two inches of asphalt on these roads, extensive roto-milling would be needed in order to keep the cross slope of the roadway intact and avoid high edges. For this reason the hot-in-place recycling and repaving process was considered and when it was compared with a two inch mill and overlay, the proposed repaving process was found to result in a 23 percent cost savings or \$194,000 below what was originally planned, i.e.: a full width two inch mill and overlay. The repaving process would also provide the same benefits of a two inch overlay but would require 50 percent less milling and 50 percent less new hot mix asphalt.

In order to achieve overall cost savings, Street Division crews and trucks will haul the 4,400 tons of hot mix asphalt needed for the project. The mix will be purchased utilizing the low bid, Multiple Assembly of Procurement Officials (MAPO) vendor for the appropriate quarter in 2013. Purchase of asphalt and crack seal materials through MAPO low bid vendors was approved by City Council on January 28, 2013, and quantities for this project were included.

The contract sum for renewal periods 2014 and 2015 shall be negotiated and agreed to by both parties. Any adjustment shall not exceed the annual percent of change of the Denver-Boulder-Greeley Consumer Price Index for all Urban Consumers.

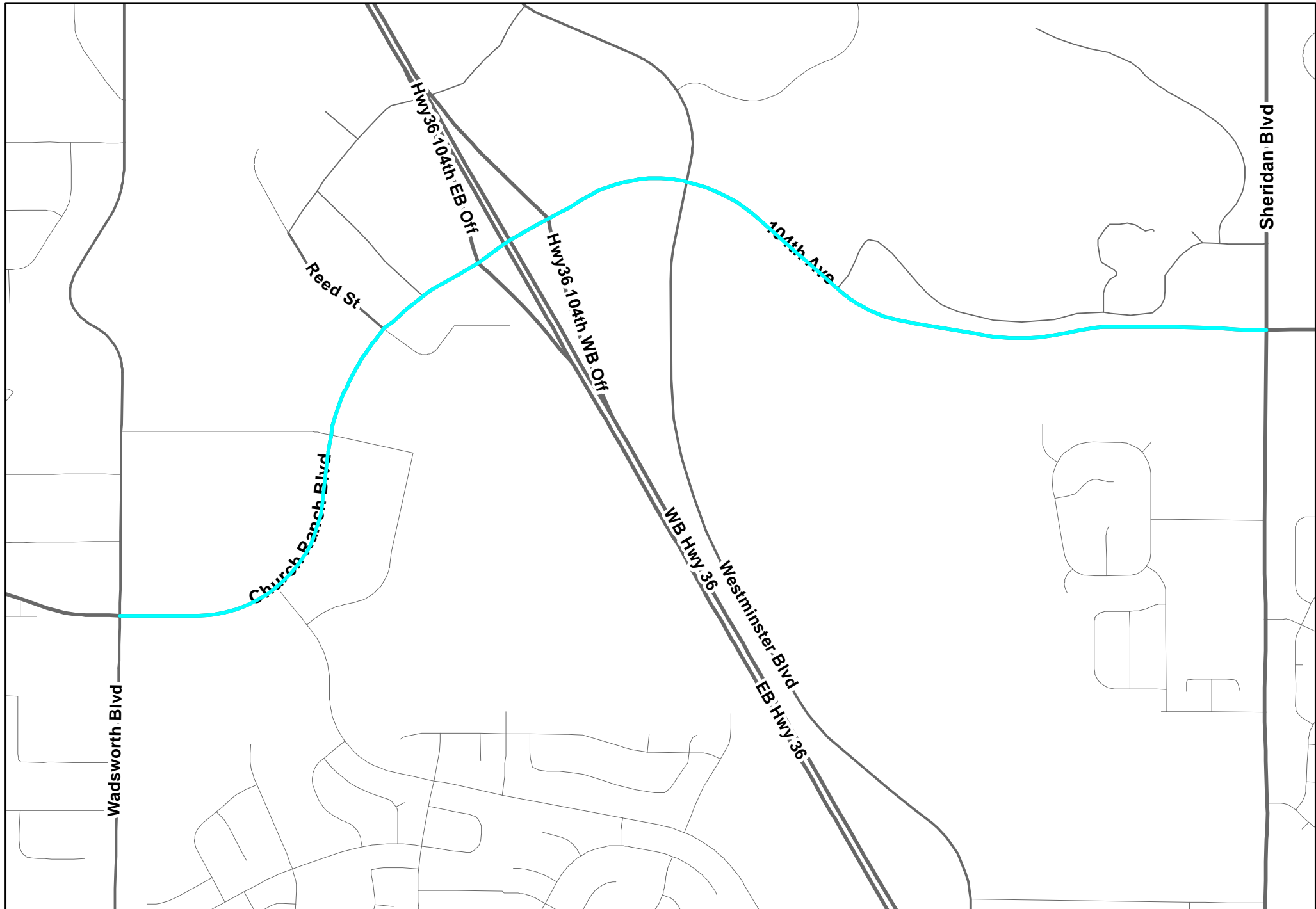
These street improvements have been reviewed and determined to be the most effective utilization of available resources consistent with the City's Pavement Management Process.

The proposed council action supports City Council's goals of Financially Sustainable City Government as well as Beautiful and Environmentally Sensitive City by providing well maintained city infrastructure through timely resurfacing of roadways and energy efficient, environmentally sensitive city operations.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Map





Agenda Item 8 E

Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: 2013 Water Meter and Meter Parts Purchases

Prepared By: Tom Settle, Acting Utilities Operations Manager
Robert L. Booze, Distribution & Collection Superintendent

Recommended City Council Action

Upon recommendation of the City Manager, find that the public interest is best served by authorizing a negotiated purchase from the sole source provider, National Meter & Automation, Inc. for new water meter replacement transponders, chambers and disc assembly purchases in the amount of \$109,014 and cumulative purchases from National Meter & Automation, Inc. in an amount not to exceed \$129,014 for calendar year 2013.

Summary Statement

- The Utilities Operations Division anticipates purchasing meter bodies, transponders, and repair/replacement parts for both small residential meters and 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.
- Throughout the year, additional ancillary purchases for meter parts, etc., beyond the \$109,014 may be necessary. Staff is requesting authorization for the base purchase of \$109,014 plus authorization to make purchases as needed throughout 2013 from National Meter & Automation, Inc. not to exceed a total of \$129,014.
- Adequate funds are budgeted and available for this expense.

Expenditure Required: Not to exceed \$129,014

Source of Funds: Utility Fund – 2013 Utilities Operations Division Budget

Policy Issue

Should City Council authorize the purchase of 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 began a water meter retrofit program. All existing Badger TRACE water meters were replaced or retrofitted with the new ORION transponder by the end of 2010 as these are more effective and reliable than the TRACE transponder. Badger water meters have long been established as the City’s standard water meter. National Meter & 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.

Cost information is listed below:

Categories	Extended Costs
Meter Bodies	\$35,643
Meter Transponders	\$10,195
Fire Hydrant Meter Assembly	\$10,880
Meter Chambers (Disc and Turbo)	\$15,809
Large Replacement Meters	\$28,624
Meter Gaskets	\$595
Valve Assemblies	\$1,690
Misc Meter Parts	\$3,443
Meter Registers	\$2,135
	\$109,014

Staff anticipates purchasing materials throughout 2013 for the base amount of \$109,014 but may have additional needs beyond the base amount. Staff is requesting authority to purchase material up to \$129,014 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. 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 2013 from National Meter & Automation, Inc. are anticipated to total less than \$129,014 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 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



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: 2013 Asphalt Pavement Rehabilitation Project

Prepared By: Rob Dinnel, Street Project Specialist
Dave Cantu, Street Operations Division Manager

Recommended City Council Action

Authorize the City Manager to execute a contract for the 2013 Asphalt Pavement Rehabilitation Project with the low bidder, Asphalt Specialties Company, Inc., in the amount of \$543,415; and authorize a 9% contingency of \$48,907, for a total project budget of \$592,322.

Summary Statement

- Council approved adequate funds for this expense in the 2013 Department of Public Works and Utilities Street Operations Division and Utility Field Operations Division budgets.
- Formal bids were solicited in accordance with city bidding requirements for the 2013 Asphalt Pavement Rehabilitation Project. Requests for proposals were sent to six contractors with five responding.
- The low bidder, Asphalt Specialties Company, Inc., meets all of the City bid requirements and has successfully completed similar Westminster projects over the past 23 years.
- The Asphalt Pavement Rehabilitation Project includes resurfacing of 4.34 lane miles of paved roadway within the city for the Street Operations Division and water main replacement trench patching at 17 planned locations for the Utilities Field Operations Division.

Expenditure Required: \$ 592,322

Source of Funds: General Fund – Street Operations Division Operating Budget - \$258,722
Utility Fund – Utilities Field Operations Division Budget - \$333,600

Policy Issue

Should this bid be awarded to the low bidder, Asphalt Specialties Company, Inc., for the 2013 Pavement Rehabilitation Project?

Alternatives

1. An alternative to this project is to combine the bids for the Concrete Replacement Project and the Asphalt Pavement Rehabilitation Project. This alternative is not recommended because although administrative costs would decrease with only one bid instead of two, bid prices for concrete work or asphalt work would increase because the general contractor's profit margin would be added to the subcontractor's cost, and the contract time would have to be increased.
2. With regard to the resurfacing portion of the project, the City could choose to not resurface some or all of the streets earmarked for hot mix asphalt (HMA) overlay. This alternative is not recommended because this Pavement Rehabilitation strategy, at this time in the proposed streets pavement life has been identified as the most appropriate, cost effective process for these streets to prolong pavement life. Delay will result in further pavement deterioration and higher repair costs at a later date.

Background Information

The Asphalt Pavement Rehabilitation Project includes resurfacing of 4.34 lane miles of paved roadway within the city for the Street Operations Division and water main replacement trench patching at 17 planned locations for the Utilities Field Operations Division.

These street improvements have been reviewed and determined to be the most effective utilization of available resources consistent with the City's Pavement Management Process.

The low bidder, Asphalt Specialties Company, Inc., meets all City bid requirements and had successfully completed numerous roadway projects in Westminster since the early 1990's.

The following sealed bids were received:

1. Asphalt Specialties Company, Inc.	\$543,415
2. Martin Marietta Materials	\$574,645
3. Aggregate Industries Inc.	\$667,657
4. Brannan Sand & Gravel Co	\$674,862
5. APC Construction Co., LLC	\$841,509
6. Premier Paving, Inc.	NO BID
City Staff's Estimate	\$571,426

City Staff's estimated cost of \$571,426 included an increase over 2012 pricing of 6% based on supplier pricing forecasts for 2013, Asphalt Specialties Company Inc.'s actual bid increased by 1.22%. The increase can be attributed to continued instability in oil and fuel costs.

In past years, as part of a cooperative effort with Adams County School Districts #12 and #50, the City has also included pavement rehabilitation bid quantities for various district parking lots. Both districts declined to participate in this year's bid process due to budget constraints. Staff will continue to invite School Districts participation in future years bid processes.

The proposed council action supports City Council's goals of Financially Sustainable City Government Providing Exceptional Services as well as Vibrant Neighborhoods In One Livable Community by providing well maintained city infrastructure through timely resurfacing and reconstruction of roadways.

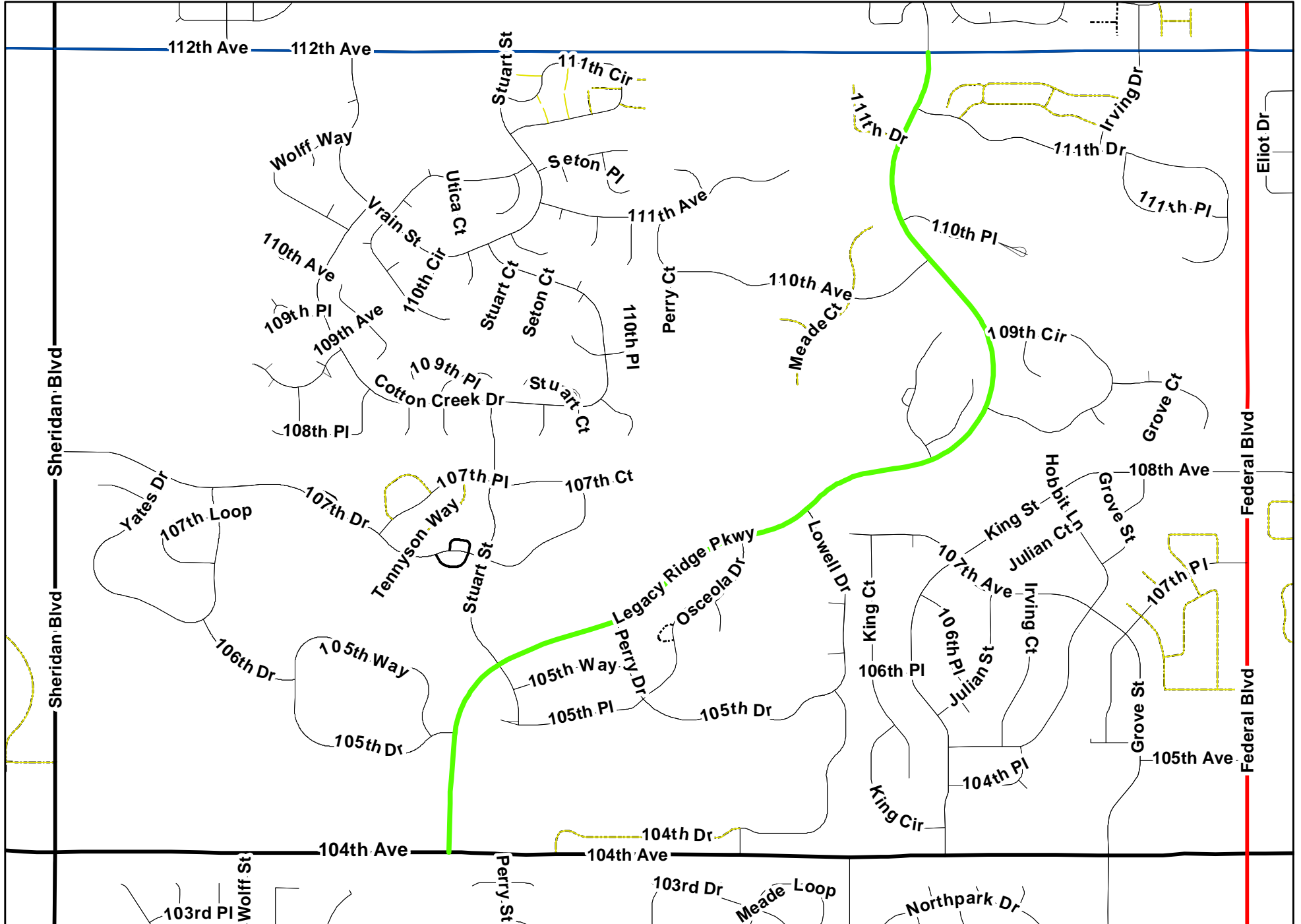
Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Map



2013 Asphalt Pavement Rehabilitation Location List





Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: 2013 Striping and Pavement Marking Project Contract

Prepared By: Rob Dinnel, Street Project Specialist
Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the City Manager to execute a contract for 2013 with options for two additional one-year renewals (2014 and 2015) for Citywide Lane Line Striping and Pavement Markings to the low bidder, RoadSafe Traffic Systems, Inc., in the amount of \$175,254 and authorize a contingency of \$10,000 for a total 2013 project budget of \$185,254.

Summary Statement

- Council approved adequate funds for this expense in the 2013 Department of Public Works and Utilities, Street Operations Division budget.
- As proposed, annual contract renewals for 2014 and 2015 will require agreement by both parties and any unit price cost adjustments will be based on Consumer Price Index for All Urban Consumers.
- The 2013 Striping and Pavement Marking Program consists of restriping of 830,772 square feet of citywide lane lines and replacement of 2,675 square feet of worn, crosswalk pavement markings.
- Formal bids were solicited in accordance with city bidding requirements for the 2013 Striping and Pavement Marking Project. Requests for proposals were sent to four contractors with four responding.
- The low bidder, RoadSafe Traffic Systems, Inc., meets all of the City bid requirements and has successfully completed similar projects in Westminster and in the Denver Metro area over the past sixteen years, doing business as Colorado Strijpe Wright Ltd. and RoadSafe Traffic Systems Inc.

Expenditure Required: \$185,254

Source of Funds: General Fund - Street Operations Division Budget

Policy Issue

Should Council award the bid to the low bidder, RoadSafe Traffic Systems, Inc. (RoadSafe), for striping and pavement marking application as specified in the contract documents for this project and authorize negotiations for 2014 and 2015 Striping and Pavement marking work?

Alternatives

Alternatives to this project include:

1. Reduce citywide restriping to once per year instead of twice per year. Available dollars for asphalt work or other needs would increase by \$60,326.
2. Eliminate application of durable plastic type pavement markings in intersections and apply paint instead. Available dollars for asphalt work or other needs would increase by \$9,100.

Staff does not recommend these alternatives because they would result in an overall increase in actual cost to the City. One rotation of restriping of lane lines each year and use of paint instead of durable plastic type pavement markings is less expensive initially, however, would wear out more quickly requiring additional mobilization and paint applications costing more in the long term.

In addition, quickly worn lane lines and pavement markings present a poor city image and decrease safety on city streets for citizens and businesses.

Background Information

2006 marked the first year of a specific contractual Striping and Pavement Marking Project with two rotations of citywide lane line restriping performed in the spring and fall. This contractual project has been extremely successful and based on the Department cost analysis is more cost effective than performing this work with in-house crews.

The contract sum for renewal periods 2014 and 2015 shall be negotiated and agreed to by both parties. Any unit price cost adjustment shall not exceed the annual percent of change of the Denver-Boulder-Greeley Consumer Price Index for all Urban Consumers.

The following sealed bids were received:	
1. RoadSafe Traffic Systems, Inc.	\$175,254
2. FRCC&B Inc.	\$212,248
3. Highway Technologies, Inc.	\$245,708
4. Kolbe Striping, Inc.	\$381,549
City Staff's Estimate	\$183,581

City Staff's estimated cost included an increase of 6% over 2012 pricing; RoadSafe's actual bid price decreased by less than 1% overall below 2012 pricing.

This contract helps achieve City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services", and "Safe and Secure Community", and "Vibrant Neighborhoods in One Livable Community" by meeting the following objectives: well maintained City infrastructure and facilities, safe citizen travel throughout the City, and maintain and improve neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall

City Manager



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Police Department Cumulative Purchases Over \$50,000 in 2013

Prepared By: Lee Birk, Chief of Police

Recommended City Council Action

Based on recommendation of the City Manager, determine that the public interest will be best served by awarding contracts and approve 2013 expenditures to the following vendors: Precinct Police Products not to exceed \$95,000 and Frontier Radio Communications not to exceed \$200,000.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be approved by City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- Staff has identified Precinct Police Products (Precinct) and Frontier Radio Communications (Frontier) as vendors that will have total cumulative expenditures exceeding \$50,000 for the year 2013.
- Precinct is the primary vendor the Police Department utilizes for the purchase of the majority of uniforms and equipment in the department.
- The Frontier expenditures are related to the annual service and maintenance to the City's existing Harris Corporation radio system, and the audio visual system repairs and installs throughout the City buildings. The expenditure includes the quarterly contract payments and equipment and supplies for service and maintenance.
- Funds were previously appropriated in the 2013 General Fund Budget and are adequate for the purchases.

Expenditure Required: Precinct Police Products - Not to exceed \$95,000
Frontier Radio Communications – Not to exceed \$200,000

Source of Funds: General Fund – Police Department Operating Budget

Policy Issue

Should Council approve the purchase of uniforms and equipment from Precinct that exceed \$50,000 in 2013? Should Council approve the radio system contract with Frontier for maintenance, service and supplies exceeding \$50,000 in 2013?

Alternative

Do not approve the expenditures as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more conservative and prudent approach is to treat the smaller transactions as cumulative larger purchases that are subject to Council approval.

Background Information

The Police Department has identified Precinct Police Products and Frontier Radio Communications as vendors where the total cumulative purchases or expenses will exceed \$50,000 for the year 2013 and requires Council authorization. Staff is seeking approval for the expenditures for the calendar year 2013. Adequate funds are available in the Police Department's 2013 General Fund budget to cover the expenditures.

Precinct Police Products

The Police Department has spent a total of \$15,000 to date with Precinct and estimates that the Department will not exceed a total of \$95,000 for the calendar year 2013.

Precinct and Neves Uniforms and Equipment are two of the suppliers the Department has utilized since Public Safety Warehouse went out of business in 2010. In early 2012, the Police Department solicited quotes from Precinct and Neves. After a thorough review of each vendor's pricing, product availability, and ability to deliver supplies in a timely fashion, it was determined that Precinct, because of their ability to supply all the City's uniform and equipment needs and their ability to act as a "one stop shop," would be the vendor the City would be purchasing the majority of uniforms and equipment from. The sole source designation for Precinct, however, is with the understanding that Neves would be utilized if Precinct could not supply the Police Department with specific uniform or equipment item(s) at a competitive cost and within a reasonable amount of time.

Precinct provides the Department's uniforms, ballistic vests, jackets, insulated coveralls, equipment bags, handcuffs, batons, clipboards, flashlights, and various other uniform supplies and equipment for all Police Department sworn personnel (183 FTE). The purchases also include specialized uniforms and supplies for the SWAT Team, Bike Unit, K9 Unit, Motorcycle Unit, SET, Criminalists, as well as uniforms for the Accident Investigators and Animal Management Officers.

Frontier Radio Communications

The Police Department has spent a total of \$47,000 to date with Frontier and estimates that the Department will not exceed a total of \$200,000 for the calendar year 2013.

In March 2009, City Council approved the sole source vendor contract with Frontier Radio Communications for services pertaining to the Citywide radio system. In addition, Frontier also provides installation, maintenance and repair services for many of the audio visual systems throughout the City. The radio system is administered and managed by the Police Department. However, the funding for the Frontier contract, radio service and maintenance are funded through several department budgets (Police, Fire, Public Works and Utilities, Parks, Recreation and Libraries, and Community Development).

Frontier is the only company in the State of Colorado that is factory certified and can handle the maintenance and repair of the City's radio system because of the system size and complexity. The radio service contract with Frontier provides for a substantial discount on other technical installations and services that Frontier provides to the City, such as the miscellaneous technical audio visual projects that have been completed for multiple facilities in the City.

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. The 2013 purchases with Precinct Police Products and Frontier Communications helps achieve City Council's goals of "Financially Sustainable City Government Providing Exceptional Services" and "Safe and Secure Community."

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Second Reading of Councillor’s Bill No. 11 re Proposed Economic Development Agreement with MSI, LLC

Prepared By: Chris Gray, Economic Development Officer

Recommended City Council Action

Pass Councillor’s Bill No. 11 on second reading authorizing the City Manager to execute and implement an Economic Development Agreement with MSI, LLC.

Summary Statement

- This Councillor’s Bill was passed on first reading on March 18, 2013.
- MSI provides comprehensive homeowner association management services as well as budgeting and consultation services to builders and developers.
- MSI plans to purchase the 20,000 square foot office building at 11102 Benton Street for its headquarters and administrative office. The building is currently vacant. The company favors the Westminster location over those in Arvada, Broomfield and Louisville.
- MSI employs 80 people at an average wage of \$54,000 per year.
- Assistance is based on the City’s desire to attract new employers and to put currently unoccupied office space into service.
- The proposed Economic Development Agreement (EDA) totals \$10,000 which includes \$3,514 in permit fee rebates, \$4,500 in construction use tax rebates and \$1,200 in use tax rebates on equipment, furnishings and fixtures.
- Should MSI decide to move out of Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.

Expenditure Required: Not to exceed \$10,000 (Rebates)

Source of Funds: The EDA with MSI will be funded through revenue received from permit fees, construction use tax, and use tax on equipment, furniture and fixture purchases.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Exhibit A - Agreement

BY AUTHORITY

ORDINANCE NO. **3671**

COUNCILLOR'S BILL NO. **11**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Atchison – Winter

**A BILL
FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT
WITH MSI, LLC**

WHEREAS, the successful attraction and retention of expanding primary businesses in the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

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

WHEREAS, MSI, LLC plans to purchase and occupy the office building at 11102 Benton Street, Westminster, CO; and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with MSI, 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 18th day of March, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of April, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Exhibit "A"
ECONOMIC DEVELOPMENT AGREEMENT
FOR
MSI, LLC

THIS ECONOMIC DEVELOPMENT AGREEMENT is made and entered into this ____ day of April, 2013, between the CITY OF WESTMINSTER (the "City") and MSI LLC, a Colorado Limited Liability Corporation (the "Company").

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

WHEREAS, the Company plans to purchase, furnish and occupy a 20,000 square foot office building at 11102 Benton Street, Westminster, CO, thus providing primary job growth within the City; and

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

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

1. Building Permit Fee Rebates. The City shall rebate to the Company 40% of the building permit fees that are otherwise required under W.M.C. Section 11-10-3 (E) for the remodeling and tenant finish in the building at 11102 Benton Street. This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$3,514.

2. Use Tax Rebate--Construction. The City shall rebate to the Company 40% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on construction materials collected from the Company for the remodeling and tenant finish in the building at 11102 Benton Street, that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The use tax rebate will be approximately \$4,500.

3. Sales and Use Tax Rebate--Furniture and Fixtures. For the period of 3 months prior and 3 months after the Company obtains its Certificate of Occupancy for its new facility at 11102 Benton Street, the City will rebate 40% of the Westminster General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected from the Company on the purchased equipment and furnishings. Rebates will be based on the documentation prescribed by the City and provided by the Company which illustrates purchases or delivery of any such furnishings, fixtures, or equipment that occurred within the City of Westminster and that taxes were paid to and collected by the City. The rebate will be approximately \$1,200.

4. Payments of Rebates. The total rebate is not to exceed \$10,000. The rebates to the Company by the City shall be paid in quarterly installments from revenue actually collected and received by the City in connection with the move by the Company into the new facility. Payments of each quarterly installment shall be paid to the Company by the City within thirty (30) days following the end of each calendar quarter. All payments by the City shall be made electronically to the Company's designated financial institution or other account.

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

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if the Company has not moved into the building at 11102 Benton Street by December 31, 2013 or should the Company not comply with the City regulations or code.

7. Business Termination. In the event the Company ceases business operations within the City at any time prior to December 31, 2018, then the Company shall pay to the City the total amount of fees and taxes that were paid by or for the Company to the City and were subsequently rebated by the City to the Company pursuant to this Agreement.

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

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

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

MSI LLC

CITY OF WESTMINSTER

J. Brent McFall
City Manager

ATTEST:

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Second Reading of Councillor's Bill No 12 re Proposed Economic Development Agreement with The Bedrin Organization for Colorado Casual Furniture

Prepared By: Susan F. Grafton, Economic Development Director

Recommended City Council Action

Pass Councillor's Bill No. 12 on second reading authorizing the City Manager to execute and implement the Economic Development Agreement with The Bedrin Organization for Colorado Casual Furniture.

Summary Statement

- This Councillor's Bill was passed on first reading on March 18, 2013.
- Colorado Casual Furniture will be refinishing and moving into the former Stickleys Furniture location that has been vacant for the past couple of years.
- The proposed assistance is based upon the City's goal to fill vacant space in existing retail centers. The Economic Development Agreement (EDA) consists of a 50% rebate of sales tax from sales at Colorado Casual Furniture through March 31, 2016.
- The estimated \$150,000 assistance will be generated from sales tax paid by Colorado Casual Furniture.
- Should Colorado Casual Furniture cease operations within three years The Bedrin Organization shall reimburse the City of any amounts rebated.
- Provisions of the rebate will be conditioned on replacement of dead trees and landscaping on the portion of Brookhill V owned by The Bedrin Organization.

Expenditure Required: Approximately \$150,000 (Rebates)

Source of Funds: The EDA with The Bedrin Organization will be funded through sales tax generated by Colorado Casual Furniture.

Respectfully submitted

J. Brent McFall
City Manager

Attachments Ordinance
Exhibit A - Agreement

BY AUTHORITY

ORDINANCE NO. **3672**

COUNCILLOR'S BILL NO. **12**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Briggs - Lindsey

A BILL

FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT WITH
THE BEDRIN ORGANIZATION FOR THE COLORADO CASUAL FURNITURE STORE

WHEREAS, the successful attraction of new business that fill vacant space in existing retail centers in the City of Westminster provides increased revenue for citizen services and is therefore an important public purpose; and

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

WHEREAS, The Bedrin Organization plans to lease space in Brookhill V in Westminster to Colorado Casual Furniture; and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with The Bedrin Organization 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 18th day of March, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of April, 2013.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

**ECONOMIC DEVELOPMENT AGREEMENT
WITH THE BEDRIN ORGANIZATION
FOR THE COLORADO CASUAL FURNITURE STORE**

THIS AGREEMENT is made and entered into this day of April, 2013, between the CITY OF WESTMINSTER (the "City"), and THE BEDRIN ORGANIZATION; a New Jersey LLC.

WHEREAS, the City wishes to provide certain assistance to The Bedrin Organization to facilitate the location of a Colorado Casual Furniture store in the Brookhill V Shopping Center; and

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

In consideration of the mutual promises set forth below the City and The Bedrin Organization agree as follows:

1. Sales Tax Rebate. The City shall rebate to The Bedrin Organization 50% of the sales tax collected from Colorado Casual Furniture for the period of time commencing on the date of issuance of a Certificate of Occupancy for the new store, and ending on March 31, 2016 ("Termination Date"). Such rebate shall be payable exclusively from sales tax revenue collected by the City from Colorado Casual Furniture and attributable to the imposition of the City's 3.0% general sales tax (excluding the City's .25% open space tax and .6% public safety tax). The sales tax rebate shall not continue past the Termination Date and shall be administered as follows:

- (a) Sales Tax Rebate Amount. Any rebates provided by the City to The Bedrin Organization pursuant to this agreement will be from the sales tax paid to the City by Colorado Casual Furniture. The City shall rebate to The Bedrin Organization 50% of the sales tax generated.
- (b) Payment. The sales tax rebate amount will be paid to The Bedrin Organization in quarterly payments, made within 30 days after the end of each quarter. The sales tax rebate payment will be submitted electronically to The Bedrin Organization designated financial institution.
- (c) End of Sales Tax Rebate. The sales tax rebate shall end on the Termination Date.

2. Landscaping. All dead landscaping on the portion of Brookhill V owned by The Bedrin Organization shall be replaced by June 30, 2013. Failure to do so will result in the termination of this agreement.

3. Entire Agreement. This instrument shall constitute the entire agreement between the City and The Bedrin Organization concerning the Colorado Casual Furniture store 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.

4. Termination. This Economic Development Agreement shall terminate and become void and of no force or effect upon the City if Colorado Casual Furniture has not moved into their new space in Brookhill V on or before April 30, 2013; or, should The Bedrin Organization or Colorado Casual Furniture fail to comply with any City code and/or approval process.

5. Business Termination. In the event that Colorado Casual Furniture ceases business operations in the City within three years after the new operations commence, The Bedrin Organization shall reimburse the City for any amounts rebated to or otherwise provided to The Bedrin Organization pursuant to this Agreement, unless the City approves a successor to the initial approved user within 12 months of the closing of Colorado Casual Furniture, which is substantially similar in quality and sales tax production as the approved user.

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

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

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

THE BEDRIN ORGANIZATION,
A NEW JERSEY LLC

CITY OF WESTMINSTER

Gerald Bedrin,
Managing Member

J. Brent McFall
City Manager

ATTEST:

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.



Agenda Item 8 K

Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Second Reading of Councillor’s Bill No. 13 re Jessica Ridgeway Memorial Park Supplemental Appropriation

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Pass Councillor’s Bill No. 13 on second reading authorizing a supplemental appropriation in the amount of \$125,000 reflecting the City’s receipt of a Jefferson County Open Space Grant and Jefferson County Schools for Jessica Ridgeway Memorial Park.

Summary Statement

- City Council action is requested to pass the attached Councillor’s Bill on second reading, which appropriates grant funds provided by Jefferson County Open Space and Jefferson County Schools for the renovation of the Jessica Ridgeway Memorial Park. City Council requested Jefferson County Open Space to provide a special grant for redevelopment of the park December 14, 2012. On December 19, 2012, an award in the amount of \$100,000 from the Jefferson County Board of Commissioners was granted to the City of Westminster. Jefferson County Schools also awarded the City a grant of \$25,000 for the Jessica Ridgeway Memorial Park.
- Many of the elements within the renovated park will reflect Jessica’s favorite things. A new track ride, playground, shelter, a ribbon sculpture, additional trees and flower beds will all be tied together with her favorite color purple.
- Staff is finalizing the site plan and renovation details for the park and will be ordering the custom play equipment upon approval of the second reading of the supplemental appropriation. Construction for the park is scheduled to start in late May with completion in late August or early September.
- This Councillor’s Bill was passed on first reading March 18, 2013.

Expenditure Required: \$125,000

Source of Funds: \$100,000 Jefferson County Open Space Grant
\$25,000 Jefferson County Schools Grant

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO. **3673**

COUNCILLOR'S BILL NO. **13**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Major – Kaiser

A BILL

**FOR AN ORDINANCE INCREASING THE 2013 BUDGET OF THE GENERAL CAPITAL
IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM
THE 2013 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2013 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3655 is hereby increased by \$125,000. This appropriation is due to the receipt of a Jefferson County Open Space Grant and a donation from the Jefferson County Schools.

Section 2. The \$125,000 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 D-H dated March 18, 2013, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$125,000</u>
Total	<u>\$125,000</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 18th day of March, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 8th day of April, 2013.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Second Reading of Councillor’s Bill No. 14 re 2012 4th Quarter Budget Supplemental Appropriation

Prepared By: Karen Barlow, Accountant

Recommended City Council Action

Pass Councillor’s Bill No. 14 on second reading, providing for a supplemental appropriation of funds to the 2012 budget of the General, Water, Legacy Ridge, Heritage at Westmoor, Fleet Maintenance, General Capital Outlay Replacement (GCORF), Sales & Use Tax, Parks Open Space & Trails (POST), General Capital Improvement (GCIF), and Community Development Block Grant (CDBG) Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor’s Bill on second reading, authorizing a supplemental appropriation to the 2012 Budget of the General, Water, Legacy Ridge, Heritage at Westmoor, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, General Capital Improvement, and Community Development Block Grant Funds.
 - General Fund amendments total: \$2,140,164
 - Water Fund amendments total: \$ 4,249
 - Legacy Ridge Fund amendments total: \$ 90,302
 - Heritage at Westmoor Fund amendments total: \$ 42,600
 - Fleet Maintenance Fund amendments total: \$ 131,022
 - General Capital Outlay Replacement Fund amendments total: \$ 997,985
 - Sales & Use Tax Fund amendments total: \$3,560,337
 - Parks, Open Space & Trails Fund amendments total: \$ 14,090
 - General Capital Improvement Fund amendments total: \$ 312,417
 - Community Development Block Grant Fund amendments total: \$ 5,765
- This Councillor’s Bill was approved on first reading on March 25, 2013.

Expenditure Required: \$7,298,931

Source of Funds: The funding sources for these budgetary adjustments include lease proceeds, permit & conference center fees, reimbursements, grants, program revenue, miscellaneous, interest earnings, carryover, sales & use taxes, rent, accommodations taxes, and transfers.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. **3674**

COUNCILLOR'S BILL NO. **14**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Briggs - Kaiser

A BILL

FOR AN ORDINANCE AMENDING THE 2012 BUDGETS OF THE GENERAL, WATER, LEGACY RIDGE, HERITAGE AT WESTMOOR, FLEET MAINTENANCE, GENERAL CAPITAL OUTLAY REPLACEMENT, SALES & USE TAX, PARKS OPEN SPACE & TRAILS, GENERAL CAPITAL IMPROVEMENT, AND COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the General, Water, Legacy Ridge, Heritage at Westmoor, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, General Capital Improvement, and Community Development Block Grant Funds initially appropriated by Ordinance No. 3550 is hereby increased in aggregate by \$7,298,931. This appropriation is due to the receipt of funds from lease proceeds, permit & conference center fees, reimbursements, grants, program revenue, miscellaneous, interest earnings, carryover, sales & use taxes, rent, accommodations taxes, and transfers.

Section 2. The \$7,298,931 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A dated March 25, 2013 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$2,140,164
Water Fund	4,249
Legacy Ridge Fund	90,302
Heritage at Westmoor Fund	42,600
Fleet Maintenance Fund	131,022
General Capital Outlay Replacement Fund	997,985
Sales & Use Tax Fund	3,560,337
Parks, Open Space & Trails Fund	14,090
General Capital Improvement Fund	312,417
Community Development Block Grant Fund	<u>5,765</u>
Total	<u>\$7,298,931</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 25th day of March, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of April, 2013.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
April 8, 2013



SUBJECT: Resolution No. 14 re Traffic Signal Maintenance Intergovernmental Agreement with the Colorado Department of Transportation

Prepared By: Greg Olson, Transportation Systems Coordinator

Recommended City Council Action

Adopt Resolution No. 14 authorizing the City Manager to execute an Intergovernmental Agreement with the Colorado Department of Transportation regarding traffic signal maintenance for a five-year period.

Summary Statement

- The City of Westminster and the Colorado Department of Transportation (CDOT) entered into an initial agreement in June 1988 that addressed the maintenance of traffic signals on a portion of the State Highway System (SHS) located within the City. In March 2008, City Council authorized the execution of a five year agreement with CDOT that allowed the City to maintain a total of eleven traffic signals on the SHS.
- The City of Westminster desires to continue with the maintenance of traffic signals on Sheridan Boulevard from 70th Avenue to the interchange at U.S. 36. These intersections are connected to the City's Computerized Signal System that allows City Staff to closely monitor traffic signal operations near critical retail centers on Sheridan Boulevard. The estimated cost of the maintenance of these signals is paid by CDOT.
- CDOT requires that resolutions adopted by the City Council accompany all agreements between the City and CDOT. The attached resolution establishes the City's intent to maintain the traffic signals on the State Highway System.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City enter into an Intergovernmental Agreement with CDOT for the maintenance of eleven traffic signals on Sheridan Boulevard from 70th Avenue to the interchange at US 36?

Alternative

The alternative would be to not enter into an agreement with CDOT to maintain the traffic signals on Sheridan Boulevard and, thus, require that CDOT be responsible for this traffic signal maintenance and operation. This alternative is not recommended as this would result in the loss of flexibility for City Staff to monitor and adjust the traffic signal timing on the Sheridan Boulevard corridor, which is the primary access to some major retail centers in the City.

Background Information

In 1987, the City implemented a computerized traffic signal system that provided Staff the capability to monitor the signalized intersections adjacent to the Westminster Mall area. The implementation of the computerized signal system was the impetus for the City to pursue the maintenance and operation of select traffic signals on the State Highway System (SHS). The signalized intersections on the computerized signal system communicate directly to a personal computer in City Hall. City Staff has the ability to download and upload signal timing plans as well as to monitor the operation of the traffic signals. The City's initial computerized signal system monitored 18 signalized intersections. Since that time, the system has been expanded to arterial street corridors throughout the City and now includes 97 intersections.

The City and CDOT entered into an agreement in June 1988 that addressed the maintenance of traffic signals on a portion of the State Highway System (SHS) within the City. The City had been maintaining and operating the seven traffic signals on Sheridan Boulevard (State Highway 95) from 80th Avenue north to the interchange at U.S. 36. In March of 2008, City Council authorized the inclusion of four more City maintained traffic signals on Sheridan Boulevard from 70th to 76th Avenues for a total of eleven traffic signals maintained on the SHS listed as follows:

- West 70th Avenue and Sheridan Boulevard
- West 72nd Avenue and Sheridan Boulevard
- West 73rd Avenue and Sheridan Boulevard
- West 76th Avenue and Sheridan Boulevard
- West 80th Avenue and Sheridan Boulevard
- West 81st Avenue and Sheridan Boulevard
- West 84th Avenue and Sheridan Boulevard
- West 87th Avenue (Turnpike Drive) and Sheridan Boulevard
- West 88th Avenue and Sheridan Boulevard
- U.S. 36 South Ramp and Sheridan Boulevard
- U.S. 36 North Ramp and Sheridan Boulevard

CDOT has an established funding source that allows the State to reimburse cities and counties for the cost of signal maintenance for signalized locations on the SHS. City Staff has calculated the average cost of maintaining a traffic signal, taking into consideration the established monthly charge, the extra work performed by the City's signal maintenance contractor and the monthly energy charge paid to Xcel Energy. The current average monthly cost per intersection is \$330. The attached agreement establishes a provision wherein CDOT will reimburse the City for the signal maintenance cost on a monthly basis at a cost of \$330 per intersection for a period of five years. In addition, the attached agreement provides a mechanism for the City to modify the monthly reimbursement cost should any cost increases occur. The

funds paid to the City by CDOT for the subject signal maintenance will be placed into the proper operational budget account to cover the cost of maintaining the traffic signals.

The City's maintenance of these traffic signals on the SHS fulfills the City Council's goal of promoting a Strong, Balanced Local Economy through the development of a transportation system that provides access to shopping and employment centers.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Intergovernmental Agreement

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 2013

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE MAINTENANCE OF TRAFFIC SIGNALS ON THE STATE HIGHWAY SYSTEM

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

WHEREAS, the City of Westminster is vitally interested in improving traffic flow on Sheridan Boulevard (State Highway 95); and

WHEREAS, the City desires to maintain traffic signals on State Highway 95 at the following locations:

West 70th Avenue and Sheridan Boulevard
West 72nd Avenue and Sheridan Boulevard
West 73rd Avenue and Sheridan Boulevard
West 76th Avenue and Sheridan Boulevard
West 80th Avenue and Sheridan Boulevard
West 81st Avenue and Sheridan Boulevard
West 84th Avenue and Sheridan Boulevard
West 87th Avenue (Turnpike Drive) and Sheridan Boulevard
West 88th Avenue and Sheridan Boulevard
U.S. 36 South Ramp and Sheridan Boulevard
U.S. 36 North Ramp and Sheridan Boulevard

WHEREAS, the Colorado Department of Transportation ("CDOT") shall reimburse the City of Westminster \$330.00 per month per signal for signal maintenance costs.

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

1. The Contract between the City and CDOT pertaining to traffic signal maintenance for certain signalized intersections on the State Highway System, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved.

2. The City Manager is hereby authorized to execute and the City Clerk to attest to the attached Contract.

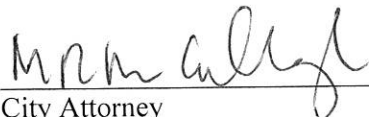
PASSED AND ADOPTED this 8th day of April, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk



City Attorney

CONTRACT

THIS CONTRACT made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and CITY OF WESTMINSTER, 4800 West 92nd Avenue, Westminster, Colorado 80031, CDOT Vendor #: 2000053, hereinafter referred to as the “Local Agency” (or “Contractor” in th Special Provisions).

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function 2300, GL Acct. 4541000010, WBS Element or Cost Center R658M-010, (Contract Encumbrance Amount: \$0.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Section 43-2-135(1)(i) C.R.S., as amended, requires the State to install, operate, maintain and control, at State expense, all traffic control devices on the state highway system within cities and incorporated towns; and;
4. The parties desire to enter this Contract for the Contractor to provide some or all of the certain maintenance services on state highways that are the responsibility of the State under applicable law, and for the State to pay the Contractor a reasonable negotiated fixed rate for such services;
5. The parties also intend that the Contractor shall remain responsible to perform any services and duties on state highways that are the responsibility of the Contractor under applicable law, at its own cost;
6. The State and the Contractor have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144 C.R.S., as amended, and in applicable ordinance or resolution duly passed and adopted by the Contractor, to enter into contract with the Contractor for the purpose of maintenance of traffic control devices on the state highway system as hereinafter set forth; and
7. The Contractor has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

All of the specific location(s) and type(s) of traffic control device(s) to be operated and maintained by the Contractor pursuant to this contract are described in **Exhibit A**, attached hereto and incorporated herein. Such services and highways are further detailed in Section 5.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 23 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibits C and D (Contract Modification Tools)
5. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on July 1, 2014, whichever is later. The term of this contract shall be for **a term of FIVE (5) years**. Provided, however, that the State's financial obligation for each subsequent, consecutive fiscal year of that term after the first fiscal year shall be subject to and contingent upon funds for each subsequent year being appropriated, budgeted, and otherwise made available therefor.

Section 4. Project Funding and Payment Provisions

A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

B. Subject to the terms of this Contract, for the satisfactory performance of the maintenance services on the Highways, as described in Section 5, the State shall pay the Contractor on a lump sum basis, payable in monthly installments, upon receipt of the Contractor's statements, as provided herein.

1. The State shall pay the Contractor for the satisfactory operation and maintenance of traffic control devices under this contract at the rates described in **Exhibit C**, which is attached hereto and made a part hereof. Provided, however, that the total charges to be paid by the State during each fiscal year beginning July 1 and ending June 30 of the following year shall not exceed a maximum amount of \$43,560.00 without the benefit of a supplemental agreement executed prior to any such excess charges being incurred. The maximum contract total shall not exceed the cumulative five-year total of \$217,800.00. Contractor billings and State payments for each of the traffic control devices listed in **Exhibit B** shall be on a "lump sum" basis, in accordance with the rates described in **Exhibit C**, subject to the maximum amount described above. The Contractor will bill the State monthly and the State will pay such bills within 60 days.

2. The statements submitted by the Contractor for which payment is requested shall

contain an adequate description of the type(s) and the quantity(ies) of the maintenance services performed, the date(s) of that performance, and on which specific section of the Highways such services were performed, in accord with standard Contractor billing standards.

3. If the Contractor fails to satisfactorily perform the maintenance for a segment of the Highways (or portion thereof), or if the statement submitted by the Contractor does not adequately document the payment requested, after notice thereof from the State, the State may deduct and retain a proportionate amount from the monthly payment, based on the above rate, for that segment or portion.

Section 5. State and Local Agency Commitments

A. The Contractor shall perform the "highway maintenance services" for the certain State Highway System segments described herein. Such services and highways are detailed in Section 1 (or **Exhibit A**).

B. The Contractor shall operate and maintain the specific traffic control devices, and at the particular locations, all as listed on **Exhibit A** ("the Work"), in a manner that is consistent with current public safety standards on state highways within its jurisdictional limits, and in conformance with applicable portions of the "Manual on Uniform Traffic Control Devices" and the "Colorado Supplement" thereto, which are referred to collectively as the "Manual" and which are incorporated herein by reference as terms and conditions of this Contract. The Contractor shall provide all personnel, equipment, and other services necessary to satisfactorily perform such operation and maintenance.

C. The State shall have the option to add or delete, at any time during the term of this Contract, one or more specific traffic control devices to the list shown in **Exhibit A** and therefore amend the Work to be performed by the Contractor under this Contract. The State may amend **Exhibit A** by written notice to the Contractor using an Option Letter substantially equivalent to **Exhibit D**.

D. The Contractor may propose, in writing, other potential specific traffic control devices to be operated and maintained by the Contractor during the term of this contract, based on the same rates that had been initially agreed to by the Contractor in **Exhibit C**. If the State determines in writing that operation and maintenance of those other devices by the Contractor is appropriate, and is desirable to the State, and if the State agrees to add such devices to this contract, then the State shall, by written Option Letter issued to the Contractor in a form substantially equivalent to **Exhibit D**, add such devices to this contract.

E. The Contractor shall perform all maintenance services on an annual basis. The Contractor's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or his representative, shall determine the then current applicable maintenance standards for the maintenance services. Any standards/directions provided by the State's representative to the Contractor concerning the maintenance services shall be in writing. The Contractor shall contact the State Region office and obtain those standards before the Contractor performs such services.

F. The Contractor shall perform the maintenance services in a satisfactory manner and in accordance with the terms of this Contract. The State reserves the right to determine the proper quantity and quality of the maintenance services performed by the Contractor, as well as the adequacy of such services, under this Contract. The State may withhold payment, if necessary, until Contractor performs the maintenance services to the State's satisfaction. The State will notify the Contractor in writing of any deficiency in the maintenance services. The Contractor shall commence corrective action within 24 hours of receiving actual or constructive notice of such deficiency: a) from the State; b) from its own observation; or c) by any other means. In the event the Contractor, for any reason, does not or cannot correct the deficiency within 24 hours, the State reserves the right to correct the deficiency and to deduct the actual cost of such work from the subsequent payments to the Contractor, or to bill the Contractor for such work.

G. Performance Measures shall be accounted for within the duration of this contract and will be associated with signal/electrical maintenance. These Measures shall be addressed quarterly and for every quarter of the contract. Performance records shall be kept by the Contractor and a copy sent to the CDOT Project Manager listed in this contract. The Contractor shall submit performance documentation to the CDOT Project Manager semi-annually along with the payment requests every July and January. Performance measures shall be conducted on all devices listed in **Exhibit A**.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and FHWA to inspect the project and to inspect, review and audit the project records.

Section 7. Termination Provisions

This contract may be terminated as follows:

This Contract may be terminated by either party, but only at the end of the State fiscal year (June 30), and only upon written notice thereof sent by registered, prepaid mail and received by the non-terminating party not later than 30 calendar days before the end of that fiscal year. In that event, the State shall be responsible to pay the Contractor only for that portion of the traffic control device maintenance services actually and satisfactorily performed up to the effective date of that termination, and the Contractor shall be responsible to provide such services up to that date, and the parties shall have no other obligations or liabilities resulting from that termination.

Section 8. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 6, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:
Alazar Tesfaye
CDOT Region 6
Traffic Operations Engineer
2000 South Holly Street
Denver, Colorado 80222
(303) 757-9511

If to the Local Agency:
Mike Normandin
Traffic Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031
(303) 430-2143

Section 10. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 12. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 14. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 15. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 16. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 17. Modification and Amendment

A. This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

B. Either party may suggest renegotiation of the terms of this Contract, provided that the Contract shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this Contract, the renegotiated terms shall not be effective until this Contract is amended/modified accordingly in writing. Provided, however, that the rates will be modified only if the party requesting the rate change documents, in accord with then applicable cost accounting principles and standards (including sections 24-107-101, et seq., C.R.S. and implementing regulations), that the requested increase/decrease is based on and results from (and is proportionate to) an increase/decrease in the "allowable costs" of performing the Work.

Section 18. Option Letters

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. **These options are limited to the specific scenarios listed below.** The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

Option 1 – Level of service change within current term due to unexpected overmatch in an

overbid situation only. In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding.

The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit F**), which will bring the maximum amount payable under this contract to the amount indicated in Exhibit C-1 attached to the executed Option Letter (future changes to Exhibit C shall be labeled as C-2, C-3, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

Option 2 – Option to add overlapping phase without increasing contract dollars. The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit F**. If the State exercises this option, the contract will be considered to include this option provision.

Option 3 - To update funding (increases and/or decreases) with a new Exhibit C. This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc).

The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in Exhibit C- 1, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit F**. If the State exercises this option, the contract will be considered to include this option provision.

Section 19. Disputes

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

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

Section 20. Does not supercede other agreements

This Contract is not intended to supercede or affect in any way any other agreement (if any) that is currently in effect between the State and the Contractor for other "maintenance services" on State Highway rights-of-way within the jurisdiction of the Contractor. Also, the Contractor shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Contractor is required by applicable law to perform.

Section 21. Subcontractors

The Contractor may subcontract for any part of the performance required under this Contract, subject to the Contractor first obtaining approval from the State for any particular subcontractor. The State understands that the Contractor may intend to perform some or all of the services required under this Contract through a subcontractor. The Contractor agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

Section 22. Contract Management System

[This section shall apply when the Effective Date is on or after July 1, 2009 and the maximum amount payable to Contractor hereunder is \$100,000 or higher]

By entering into this Contract, Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

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

Should the final performance evaluation determine that Contractor demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Insert Name of your Dept here, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the

final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (ii) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

Section 23. Special Provisions

These Special Provisions apply to all contracts except where noted in *italics*.

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the

performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:
JOHN W. HICKENLOOPER, GOVERNOR

CITY OF WESTMINSTER _____
Legal Name of Contracting Entity

By _____
Executive Director
Department of Transportation

2000053 _____
CDOT Vendor Number

Signature of Authorized Officer

LEGAL REVIEW:
JOHN W. SUTHERS
ATTORNEY GENERAL

Print Name & Title of Authorized Officer

By _____

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

STATE CONTROLLER:
DAVID J. MCDERMOTT, CPA

By _____

Date _____

Exhibit A – Scope of Work

State Highway Traffic Signal Listing

- The City shall maintain the traffic signals and associated stop bars and crosswalks at the locations listed below.
- Any reconstruction, modification, or improvement initiated by the City or performed as a result of a City project shall be included in the maintenance provided by the City.
- Any reconstruction, modification, or improvement initiated by the State or performed as a result of a State project shall be paid for separately by the State.
- The City shall perform inspections of each location, in all directions, and submit documentation to CDOT by April 10th and October 10th for each year of this contract. Inspection shall include, but not limited to:
 - Each signal lens is operating and visible
 - Signal timing is operating as programmed
 - Controller and cabinet are clean and in good repair
 - Communication to signal is connected and operating
 - Vehicle detection is operating properly
 - All luminaries attached to the signal are operating
- Any defects, in the items listed above, found at these intersections shall be remedied immediately. Defects and remediation shall be documented and kept on file at the City and made available to CDOT upon request. Any defects not remedied shall incur a price reduction to the next month's compensation of \$330.00 per signal.
- The City shall perform an annual inspection which shall include: the visual inspection of signal caissons, bolts, bolt tightening, steel, welds, attachment hardware; backup power testing; and signal conflict monitor testing. Documentation on this inspection shall be submitted to CDOT by October 10th of each year of this contract. Any deficiencies found in bolt tightening and attachment hardware shall be corrected by the City immediately. Structural defects discovered by the City or CDOT shall be repaired using methods that are acceptable to the City and CDOT. If CDOT is requiring pole or mast arm replacement, that work shall be the responsibility of CDOT. Any deficiencies of this nature shall be documented and brought to the attention of the City and CDOT project manager for correction by the appropriate agency. All other minor structural defects shall be the responsibility of the City.

TRAFFIC SIGNALS MAINTAINED BY THE CITY OF WESTMINSTER
LOCATIONS

Maintenance of traffic signals includes painting of crosswalks and stop bars.

SH 95 (Sheridan Blvd.) at:

- 70th Avenue
- 72nd Avenue
- 73rd Avenue
- 76th Avenue
- 80th Avenue
- 81st Place
- 84th Avenue
- 88th Avenue
- US 36 North Ramp
- US 36 South Ramp
- 87th Avenue/Turnpike Drive

Number of Signals on SH 95 – 11 Signal

Exhibit B – Resolution

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

Exhibit C – Rate Schedule

Traffic Control Device Rate Schedule

11 Signals at \$330.00.00/signal/month	\$ 3,630.00 per month
Total Maximum Annual Cost	\$ 43,560.00 per year

Exhibit D – Option Letter

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

*NOTE: This option is limited to the specific contract scenarios listed below
AND cannot be used in place of exercising a formal amendment.*

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
--------------	---------------------------	--------------------------	-----------------------

Vendor name: _____

A. SUBJECT: *(Choose applicable options listed below AND in section B and delete the rest)*

1. Option to renew (for an additional term) applies to Highway and Signal maintenance contracts ONLY; this renewal cannot be used to make any change to the original scope of work;
2. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
3. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
4. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Options #1):

In accordance with Paragraph(s) _____ of contract routing number *(insert FY, Agency code, & CLIN routing #)*, between the State of Colorado, Department of Transportation, and *(insert contractor's name)* the state hereby exercises the option for an additional term of *(insert performance period here)* at a cost/price specified in Paragraph/Section/Provision _____ of the original contract, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph _____ of the original contract.

(Insert the following language for use with Option #2):

In accordance with the terms of the original contract *(insert FY, Agency code & CLIN routing #)* between the State of Colorado, Department of Transportation and *(insert contractor's name here)*, the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The contract is now increased by *(indicate additional dollars here)* specified in Paragraph/Section/Provision _____ of the original contract.

(Insert the following language for use with Option #3):

In accordance with the terms of the original contract *(insert FY, Agency code & CLIN routing #)* between the State of Colorado, Department of Transportation and *(insert contractor's name here)*, the State hereby exercises the option to add an overlapping phase in *(indicate Fiscal Year here)* that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*. Total funds for this contract remain the same *(indicate total dollars here)* as referenced in Paragraph/Section/Provision/Exhibit _____ of the original contract.

(Insert the following language for use with Option #4):

In accordance with the terms of the original contract *(insert FY, Agency code & CLIN routing #)* between the State of Colorado, Department of Transportation and *(insert contractor's name here)*, the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local

agency overmatch funds. The contract is now (*select one: increased and/or decreased*) by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original contract. A new Exhibit C-1 is made part of the original contract and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

(The following language must be included on all options):

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ *amount of change*) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____).

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**State Controller
David J. McDermott, CPA**

By: _____

Date: _____

Updated: June 12, 2008