WESTMINSTER

April 11, 2011
7:00 P.M.

CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) 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**
   - A. Amendment to Minutes of March 21, 2011
   - B. Minutes of March 28, 2011
4. **Report of City Officials**
   - A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
   - A. Employee Service Awards
   - B. Paw It Forward Days Proclamation
   - C. Arbor Day/Earth Day/Tree City USA Proclamation
   - D. Community Pride Day 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. Federal Boulevard Waterline Project Contract
   - B. Lowell Boulevard Water Main Replacement Engineering Contract
   - C. West 144th Avenue Recirculation Pump Station Construction Contract
   - D. Minor and Emergency Home Repair Program Contract
   - E. 2011 Striping and Pavement Marking Project Contract Renewal
   - F. Westminster Station Infrastructure – Contract for Design Services
   - G. Swim and Fitness Center Locker Room Renovations Construction Manager/General Contractor Contract
   - H. Ambulance Billing Service Agreement
   - I. Delinquent Ambulance Bill Collection Service Agreement
   - J. 7225 Bradburn Boulevard Acquisition Agreement
   - K. City of Brighton Water Agreements – Two Amendments
   - L. RTD FasTracks Eagle P3 Project Utility Relocation Agreement
   - M. Memorandum of Understanding with RTD re the Addition of Westminster Center Station
   - N. Second Reading of Councillor's Bill No. 11 re 2010 4th Quarter Budget Supplemental Appropriation
   - O. Second Reading of Councillor's Bill No. 12 re Amend WMC Title XIII, Chapter 1 re Use of City Park Regulations

9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Miscellaneous Business and Executive Session**
    A. City Council
    B. Executive Session
        - Consultation with the City's legal counsel concerning status of the Westminster Mall Company litigation and settlement discussions and authority, pursuant to WMC 1-30-3(B), 1-11-3(C)(3), (C)(7) and (C)(8) and CRS 24-6-402(4)(b) and (e).
13. **Adjournment**

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GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

A. The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.

B. Any person wishing to speak other than the applicant will be required to fill out a "Request to Speak or Request to have Name Entered into the Record" form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.

C. The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.

D. The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.

E. When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.

F. City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;

G. The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);

H. Staff presents any additional clarification necessary and states the Planning Commission recommendation;

I. All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.

J. Final comments/rebuttal received from property owner;

K. Final comments from City Staff and Staff recommendation.

L. Public hearing is closed.

M. If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MARCH 21, 2011 AT 7:00 P.M.

Clerk's Note: These previously approved minutes are presented again for purposes of considering an amendment to correct comments offered by Bill McCann under Citizen Communication.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of February 28, 2011, as written. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that celebration of the City's 100th Birthday would be on April 4 starting at 5:30 p.m. at City Hall. Centennial celebration activities were scheduled throughout the year, however, April 4 marked the 100th anniversary of the special election at which the Westminster electorate voted to incorporate. Everyone was invited to attend and to enjoy a piece of the City's birthday cake.

Mr. McFall also announced that after tonight's meeting, the City Council would conduct a post-meeting study session to consider the potential dissolution of the Northwest Comprehensive Plan followed by an executive session to obtain Council direction regarding a proposed Economic Development Agreement with Metalcraft Industries pursuant to Westminster Municipal Code Sections 1-11-3(C)(4) and (7) and Colorado Revised Statutes §24-6-402(4)(e).

COUNCIL REPORTS

Councillor Major reported that he, Councillor Lindsey, Mayor McNally, and Matt Lutkus, Deputy City Manager, had attended the National League of Cities Conference in Washington, DC last week. While there, they had met with six of Colorado's seven federal legislators, heard First Lady Michelle Obama address the conference, attended numerous workshops and sessions geared toward topics of joint interest to all local elected officials in the nation, and interacted with local elected officials. The message repeated throughout was of looming federal funding cuts. Westminster elected officials urged federal legislators to be discerning about budget cuts and to preserve funding to local governments that creates jobs.

CITIZEN COMMUNICATION

Jack and Julie Leger, 2563 West 108th Place, asked that the City prepare an agreement that would allow the Legers to continue to improve and maintain the Farmer's Highline Canal easement abutting the back of their property. They had not been aware that the City owned the easement, and they had no desire to claim adverse ownership based on their maintenance and improvement along the ditch bank. Council asked that staff contact the Legers to determine if an agreement could be reached.

Susan Kochevar, 10021 Nelson Street, was pleased by Council's decisions to remove discussion of "pay as you throw" trash disposal services from the Environmental Advisory Board Recycling Study Subcommittee's

consideration and to focus on evaluating existing drop-off locations and on educating the community about recycling. She described other recycling opportunities she was able to afford in addition to the waste disposal services for which she contracted.

Bill McCann, 10210 West 102nd Avenue, ~~advocated recycling and~~ ***a user of drop-off recycle bins,*** suggested the first step in educating citizens about opportunities should be to ensure that information describing what could and could not be recycled was consistent in all information sources. Currently, there were discrepancies between the City's website and signage at drop-off locations.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to submit a grant application to the State Historical Fund in the approximate amount of $238,109 to combine with a proposed City cash match of $79,370 to complete rehabilitation work on the Shoenberg Farm Milk & Ice House; authorize the City Manager to execute a $69,962 contract with the low bidder, CoCal Landscaping, for the 128th Avenue and Huron Street Landscape Construction Project and authorize a construction contingency in the amount of $7,000 for a total project budget of $76,962; based on the City Manager's recommendation, find that the public interest was best served by authorizing the City Manager to execute a $180,000 contract with CH2M Hill, Inc for an engineering study to update the City's 2005 Solids Management Master Plan and authorize a 10% project contingency of $18,000 for a total expenditure of $198,000; based on the City Manager's recommendation, find that the public interest was best served by authorizing the City Manager to execute a $291,332 contract with Carollo Engineers, Inc. to provide engineering design services for the 87th Avenue and Wadsworth Boulevard Lift Station Replacement Project and authorize a 10% contingency in the amount of $29,133 for a total expenditure of $320,465; authorize payment of $141,966.08 to Intergraph Corporation for the 2011 annual Software Maintenance Contract for the integrated Fire and Police Computer Aided Dispatch, Police Records Management System, Fire Records Management System, and Mobile computer application systems; authorize Staff to proceed with the scheduled 2011 upgrade of the Tele-Works system through Tele-Works Incorporated in an amount not to exceed $142,000 and also authorize Staff to purchase a building permit integration component from Accela in an amount not to exceed $22,000; and final passage of Councillor's Bill No. 8 on second reading appropriating funds received from Great Outdoors Colorado in the amount of $771,000 for the Westminster Hills Open Space acquisition grant.

There was no request to remove an item for individual consideration, and Mayor Pro Tem Dittman moved, seconded by Councillor Kaiser, to approve the consent agenda as presented. The motion carried.

COUNCILLOR'S BILL NO. 11 AUTHORIZING 4TH QUARTER 2010 SUPPLEMENTAL APPROPRIATIONS

Upon a motion by Councillor Winter, seconded by Councillor Major, the Council voted unanimously on roll call vote to pass Councillor's Bill No. 11 on first reading providing for supplemental appropriation of funds to the 2010 budget of the General, Utility, General Capital Outlay Replacement, Parks Open Space Trails, and General Capital Improvement Funds.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Kaiser and seconded by Dittman to adjourn. The motion carried and the meeting adjourned at 7:15 P.M.

ATTEST: _____ _____

City Clerk Mayor

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MARCH 28, 2011 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 Chris Dittman, and Councillors Bob Briggs, Mark Kaiser, Mary Lindsey, Scott Major, and Faith Winter were present at roll call. J. Brent McFall, City Manager, Hilary Graham, Assistant City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of March 21, 2011, as written. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall acknowledged and congratulated several young people in the audience who were present with their families and friends to be recognized by City Council for the Metropolitan Mayors' and Commissioners' Youth Award.

The City Manager announced that the City's 100th Birthday would be celebrated on April 4 starting at 5:30 p.m. at City Hall. Birthday cake would be served and everyone was invited to join in the festivities.

In conclusion, Mr. McFall reported that after tonight's City Council meeting, the Westminster Economic Development Authority Board of Directors would conduct a special meeting and convene an executive session afterward. The purpose of the executive session was to obtain direction from the Authority Board regarding a proposed Economic Development Agreement with Kohl's Department Store pursuant to Colorado Revised Statutes §24-6-402(4)(e).

COUNCIL REPORTS

Councillor Briggs reported that the next Centennial Lecture Series would be at West View Recreation Center on March 31 beginning at 6:45 p.m. This lecture would focus on historic events between 1950 and 1975. Admission was free but tickets were needed. He encouraged everyone to attend and advised how to obtain tickets.

Councillor Winter invited everyone to bring their questions, suggestions, and concerns to the MAC the morning of March 31 and participate in dialogue with the Mayor and City Council at the Mayor/Council Breakfast.

Mayor McNally reported that she had joined Mayors throughout the region to deliver Meals on Wheels recently. She personally delivered 15 meals and reported how rewarding it had been to see appreciation reflected in smiles from those on her route.

Councillor Lindsey reported that the Jefferson County Economic Development Council had recently recognized LGS Corporation, Ball Corporation, and Scottrade, all Westminster businesses, for the jobs they created within the community.

METRO MAYORS' AND COMMISSIONERS' NOMINEES RECOGNIZED

The Mayor and City Council joined together to present certificates of achievement to 20 youth selected for local recognition of the Metropolitan Mayors' and Commissioners' Youth Award (MMCYA). The recipients and their families and friends had been privately recognized by the Council at a reception preceding the Council meeting. The MMCYA recognized young people whose contributions and achievements might otherwise be overlooked. The award honored youth who had overcome personal adversity, created positive change in a difficult environment, or had made strides beyond their limitations. Receiving recognition were Alyssa Black, Thomas Celaya, Stephen Chavez, Valerie Cruz, Adam DeAnda, Jerit Greenberg, Chloe Harrison, Viridiana Hernandez, Madeline Huffer, Tawney Knecht, Paulina Leporowska, Briana Morgan, Jordan Nicks, Dominic Panicucci, Just'us Reid, Kirsten Rog, Ryan Seberg, Eddie Thomas, Jared Vetter and Brianna Young.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the February 2011 Financial Report; authorize the City Manager to enter into short-term water leases not to exceed a total of 4,000 acre-feet of water surplus to the City's needs in 2011; award the bid for two tandem-axle cab and chassis trucks, based on the 2010 State of Colorado Bid Award, to Transwest Trucks for one model Freightliner M2-112V Plow Truck and one Freightliner Coronado SD Tractor Truck in the amount of $238,820, and based on the Fleet Manager's recommendation, find that the public interest would best be served by accepting the sole source proposal from O.J. Watson Co., Inc., for the purchase and installation of one dump body and snow removal equipment in the amount of $96,025 to be installed on the plow truck; authorize the transfer of $217,000 from the Open Space Bond Funds to the Broomfield-Westminster Open Space Foundation for costs related to implementation of the Metzger Farm Master Plan; authorize the City Manager to execute a $49,926.40 contract with low bidder, CoCal Landscape Services, Inc, for construction of landscape improvements to Huron Street at the Big Dry Creek Wastewater Treatment Facility and authorize a $5,000 construction contingency for a total authorization of $54,926.40; and based on the City Manager's recommendation, find that the public interest would be best served by authorizing the City Manager to execute a $110,399 contract with Black & Veatch Corporation for design of modifications to the Big Dry Creek Wastewater Treatment Facility solids processing facilities and authorize a 10% contingency of $11,040 for a total project budget of $121,439.

No member of Council requested to remove an item for individual consideration, and it was moved by Councillor Major, seconded by Mayor Pro Tem Dittman, to approve the consent agenda as presented. The motion carried.

RESOLUTION NO. 9 MAKING APPOINTMENTS TO FILL VACANCIES ON BOARDS & COMMISSIONS

Councillor Kaiser moved, seconded by Councillor Lindsey, to adopt Resolution No. 9 making appointments to fill vacancies on the Environmental Advisory Board, the Historic Landmark Board, the Parks, Recreation and Libraries Advisory Board, the Planning Commission, and the Special Permit and License Board. The motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 12 AMENDING WMC TO ADOPT P & R FACILITY USE REGULATIONS

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Major, the Council voted unanimously on roll call vote to pass on first reading Councillor's Bill No. 12 to establish a process for the adoption of regulations controlling the public's use of City park and recreation facilities.

RESOLUTION NO. 10 TO TERMINATE 1997A & 1997B REVENUE BONDS COOPERATION AGREEMENT

It was moved by Councillor Briggs and seconded by Councillor Winter to adopt Resolution No. 10 approving the termination of the 1997 Cooperation Agreement between the City of Westminster and the Westminster Economic Development Authority dated December 15, 1997 and forgiving any amounts owed under that agreement. The motion carried unanimously at roll call.

RESOLUTION NO. 11 RE 1ST AMENDMENT TO JUNE 16, 2009 COOPERATION AGREEMENT

Councillor Lindsey moved to adopt Resolution No. 11 approving the First Amendment to the Cooperation Agreement between the City of Westminster and the Westminster Economic Development Authority dated June 16, 2009 and authorize the City Manager to execute the Amendment. The motion was seconded by Councillor Kaiser and, at roll call, passed unanimously.

RESOLUTION NO. 12 RE 1ST AMENDMENT TO MAY 1, 2009 COOPERATION AGREEMENT

Councillor Lindsey moved, seconded by Mayor Pro Tem Dittman, to adopt Resolution No. 12 approving the First Amendment to the Cooperation Agreement between the City of Westminster and the Westminster Economic Development Authority dated May 1, 2009 and to authorize the City Manager to execute the Amendments. The motion passed with all Council members voting affirmatively.

RESOLUTION NO. 13 RE 1ST AMENDMENT TO SEPT. 15, 2009 COOPERATION AGREEMENT

Councillor Lindsey moved to adopt Resolution No. 13 approving the First Amendment to the Cooperation Agreement between the City of Westminster and the Westminster Economic Development Authority dated September 15, 2009 and authorize the City Manager to execute the Amendment. Councillor Major seconded the motion, which passed unanimously on roll call vote.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Kaiser and seconded by Major to adjourn. The motion carried and the meeting adjourned at 7:24 P.M.

ATTEST: _____ _____
City Clerk Mayor

WESTMINSTER

Agenda Item 6 A

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Presentation of Employee Service Awards

Prepared By: Dee Martin, Human Resources Administrator

Recommended City Council Action

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

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.

- In the second grouping of 2011, employees with 20, 25, and 30 years of service will be celebrated tonight.

    - Councillor Briggs will present the 20-year certificate and pin
    - Mayor McNally will present the 25-year certificates, pins and checks
    - Councillor Kaiser will present the 30-year certificates and pins

Expenditure Required: $10,000

Source of Funds:

General Fund	
-General Services	$2,500
-Parks, Recreation & Libraries	$2,500
-Police	$2,500
Utility Fund	
-Public Works & Utilities	$2,500

Policy Issue

None identified

Alternative

None identified

Background Information

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

Vern West	Fire Engineer	Fire Department

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

Patricia Davis	Guest Relations Clerk	Parks, Recreation & Libraries
Mike Happe	Water Resources & Treatment Mgr	Public Works & Utilities
Barb Lamanna	Victim Services Coordinator	Police
Debbie Mitchell	Human Resources Manager	General Services

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

Ralph Dopheide	Plant Operator	Public Works & Utilities
Nick Hartney	Senior Police Officer	Police
Jeff Jones	Commander	Police
Vaughn Pepper	Senior Police Officer	Police
Ralph Prokopy	Parks Specialist	Parks, Recreation & Libraries

On March 23, 2011, the City Manager hosted an employee awards luncheon. During that time, one employee received their 15-year service pin, seven employees received their 10-year service pin, and seven employees received their 5-year service pin. Recognition was also given to those celebrating their 20th, 25th, and 30th anniversaries. This was the second luncheon in 2011 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the second luncheon was 390 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens.

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

Respectfully submitted,

J. Brent McFall
City Manager

WESTMINSTER

Agenda Item 6 B

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Paw It Forward Days Proclamation

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Mayor McNally to present the proclamation for Paw It Forward Days in the City of Westminster.

Summary Statement

- The K9 c.a.r.e.s. Victim Support organization supports victims of crime and personal tragedy through a combination of victim advocacy and animal-assisted therapy.

- The heart of the program serves law enforcement and the criminal justice system, but the organization also promotes well being throughout the community by taking registered therapy canines on visits to domestic violence shelters, child advocacy centers, hospitals, and community events.

- Accepting the proclamation will be Carolyn Corbett, the founder of K9 c.a.r.e.s. Victim Support, and her registered therapy dog, Caitee, as well as Jennifer Mendoza with Biloxi and Susan Fecko with Bo.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Canine therapy teams work with local law enforcement agencies and the criminal justice system to positively impact the lives of victims of crime and personal tragedy. Modeled after the Pay It Forward concept of random acts of kindness, K9 therapy teams "Paw It Forward" by unconditionally visiting all types of people throughout the community to provide comfort and improve quality of life. To honor National Library Week, Remembrance of Columbine High School, National Victim Rights Week, and National Pay-It-Forward Day, K9 c.a.r.e.s. Victim Support will "Paw Forward" random acts of kindness in their best community service efforts throughout Westminster and the Denver Metro area from April 13th through the 28th.

This action supports City Council's Strategic Goal of a Safe and Secure Community by enriching Police Department Victim Advocate services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, the *Pay It Forward* novel, written by Catherine Ryan Hyde in 2000, has inspired the creation of a movie, a non-profit foundation, and a movement that has been vital in inspiring many thousands of good deeds all over the world; and

WHEREAS, the aim of the Pay It Forward concept is to promote community spirit through intentional random acts of kindness; and

WHEREAS, K9 c.a.r.e.s. Victim Support, a Westminster non-profit organization, models the Pay It Forward concept by supporting victims of crime and personal tragedy through a combination of victim advocacy and animal assisted therapy; and

WHEREAS, While K9 c.a.r.e.s. Victim Support primarily serves law enforcement and the criminal justice system, it also serves the community by taking registered therapy canines to visit local libraries, domestic violence shelters for women and children, child advocacy centers, hospitals, community events and more; and

WHEREAS, K9 c.a.r.e.s. Victim Support lives a Paw-It-Forward lifestyle by unconditionally visiting all types of people in various situations to lighten their hearts and brighten their days.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and staff, to hereby proclaim April 13 to 28, 2011 to be

PAW IT FORWARD DAYS

Signed this 11th day of April, 2011.

_____

Nancy McNally, Mayor

WESTMINSTER

Agenda Item 6 C

Agenda Memorandum

City Council Meeting
April 11, 2011

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

Prepared By: John Kasza, City Forester
Carey Rangel, Environmental Analyst

Recommended City Council Action

Councillor Lindsey is requested to present a proclamation to City Forester John Kasza and Environmental Analyst Carey Rangel proclaiming April 16, 2011, as Arbor Day and Earth Day in the City of Westminster, and accept the Tree City USA Award as presented by a member of the Colorado State Forest Service.

Summary Statement

- 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 26th consecutive year that the City has received the Tree City USA Award.

- Councillor Lindsey is requested to present the City's Arbor Day and Earth Day proclamation to City Forester John Kasza and Environmental Analyst Carey Rangel.

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 to many foreign countries.

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

1. A Tree Board or Department (The City's board consists of John Kasza, Rich Dahl, Bill Walenczak, and Rod Larsen.)
2. A community tree ordinance, (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 to raise awareness of and encourage citizen participation in activities that impact the balance of life and the Earth. For the City of Westminster, April 16, 2011, is established as Earth Day to coincide with the observance of Arbor Day. Each year, a different theme is chosen and for 2011 the theme is "A Billion Acts of Green" in recognition of the power of millions of individual actions.

The events scheduled for Arbor Day and Earth Day are as follows:

Arbor Day and Earth Day Celebration: Saturday, April 16, 2011

Park Service Division Staff will distribute bare-root Pyramidal English Oak, Shadblow Serviceberry, and Austrian Pine trees, educational literature, and wood chip mulch. There will be a small tree sale, and a drawing will be held for a free 1.25 inch caliper 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 second year with the purchase of 300 trees. During the Third Annual Green Expo, residents can talk to businesses in the area that can provide citizens with resources on how to live greener. Additionally, members of the Environmental Advisory Board and Green Team will be on hand to collect plastic bags for recycling, give away reusable grocery bags and provide information on living green, recycling, household hazardous waste, and storm water protection. Because the attendees are community-involved and aware of needs in the community, Volunteer Services will also host an open house for local non-profit and outreach organizations to showcase their volunteer opportunities during the event.

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 call 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; and

WHEREAS, Annually a national theme is chosen for all to focus their attention on April 22; and

WHEREAS, The year 2011 Earth Day theme is "A Billion Acts of Green;"

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 16, 2011,

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 well-being of present and future generations; and further urge all citizens to become aware of water quality impacts.

Signed this 11th day of April, 2011.

_____

Nancy McNally, Mayor

WESTMINSTER

Agenda Item 6 D

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Proclamation re Community Pride Day

Prepared By: Richard Dahl, Park Services Manager
Patti Wright, Open Space Volunteer Coordinator

Recommended City Council Action

Councillor Major is requested to present a proclamation to Open Space Volunteer Coordinator Patti Wright proclaiming May 7, 2011, as Community Pride Day in the City of Westminster.

Summary Statement

- For several years, the City of Westminster and Hyland Hills Park and Recreation District have partnered for Community Pride Day, the largest annual volunteer trash cleanup in Westminster.

- Community Pride Day activities will include litter pickup in right-of-ways, greenbelts, trails, parks, and open space sites throughout the City and District. This cleanup program fosters residents' commitment to a cleaner community and attracts volunteers from scout troops, homeowners associations, schools, civic organizations, businesses, families, and church groups.

- The event will conclude at Westminster City Hall with a barbeque sponsored by the City of Westminster, Hyland Hills Park and Recreation District, and the Westminster Rotary Club, with assistance from the Westminster Youth Advisory Panel. Food, entertainment, music, door prizes, and fire engine rides are featured at the barbeque.

Expenditure Required: $3,000

Source of Funds: General Fund - Parks, Recreation, and Libraries Operating Budget

Policy Issue

None identified

Alternative

None identified

Background Information

Community Pride Day was established several years ago in recognition of the Keep America Beautiful anti-litter campaign. This popular volunteer cleanup event has grown from a few hundred volunteers to over 1,600 volunteers last year.

On May 7, 2011, volunteers will begin cleaning up along designated routes at approximately 8 a.m. After completion of their cleanup, volunteers meet at Westminster City Hall to celebrate their hard work with food, entertainment, and prizes. The barbecue's entertainment includes music and games provided by Bryce Jackman. Hotdogs and hamburgers will be hot off the barbecue grill at City Hall, courtesy of the Westminster Rotary Club chefs, along with soda pop, chips, and dessert. Partnership with the Westminster Rotary Club and donations by area merchants are instrumental in providing a quality event for the volunteers.

Mayor Nancy McNally is requested to read the Community Pride Day proclamation and recognize sponsors. During the barbecue, the Westminster Fire Department will offer antique fire engine rides. The Westminster Youth Advisory Panel is also volunteering at the barbecue to help make it a success.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Proclamation

WHEREAS, Keep America Beautiful, a national nonprofit organization, strives to empower individuals to take greater responsibility for enhancing their community environments, and therefore sponsors the Great American Cleanup; and

WHEREAS, The City of Westminster and Hyland Hills Park and Recreation District have joined together to mobilize citizens to take action in their communities and to support the nation's largest volunteer beautification and improvement project; and

WHEREAS, The goal of Community Pride Day is to bring together youth, government, businesses, families, neighborhoods, and community leaders to help clean up the City and Hyland Hills Park and Recreation District and share pride in our community; and

WHEREAS, Westminster and Hyland Hills Park and Recreation District have organized a cleanup program with sponsors and donations from the community; and

WHEREAS, The caring citizen-volunteers of our communities are ready and willing to do their part to engage in cleanup activities and demonstrate their civic pride and individual responsibility.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim May 7, 2011,

COMMUNITY PRIDE DAY

in the City of Westminster and call upon all citizens and civic organizations to recognize and support the efforts of the volunteers and citizens who take pride in keeping Westminster and Hyland Hills Park and Recreation District clean places to live.

Signed this 11th day of April, 2011.

_____

Nancy McNally, Mayor

WESTMINSTER

Agenda Item 8 A

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Federal Boulevard Waterline Project

Prepared By: Stephanie Bleiker, Senior Engineer, Utilities Planning and Engineering
Steve Grooters, Senior Projects Engineer, Utilities Planning and Engineering

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder T. Lowell & Sons, LLC in the amount of $354,000 for construction of a new waterline in Federal Boulevard and a 10 percent contingency in the amount of $35,400, for a total construction budget of $389,400.

Summary Statement

- Utility engineering staff routinely monitors and models the condition and adequacy of the City's water distribution system. As part of these efforts, Staff identified improvements to the potable water distribution system to improve pressure, flow and reliability within the system. Included was a new pipeline along Federal Boulevard from West 107th Place to West 108th Avenue.
- The new waterline will be open-cut construction located primarily in Federal Boulevard, a CDOT owned roadway and will consist of approximately 700-feet of new 24-inch waterline.
- The new waterline will improve the reliability of the distribution system for residents in the northeast part of the City by connecting two currently isolated parts of the distribution system. An additional benefit of the new waterline is that it will provide a redundant pipeline to help fill the two Wandering View potable water storage tanks, thereby increasing reliability in the City's potable water storage system.
- The new waterline was designed so that it can readily be extended to the north on Federal Boulevard in the future to accommodate growth in the northern portions of the City.
- The City solicited bids for the project from seven qualified contractors and received five bids on March 10, 2011. T. Lowell & Sons, LLC presented the lowest qualified bid in the amount of $354,000.
- Construction will begin summer 2011 and is being scheduled to avoid potential traffic control conflicts with other City construction projects located in the Meadowlark subdivision.
- Adequate funds were included in the Utility Fund Capital Improvement Budget and are available for this expense.

Expenditure Required: $389,400

Source of Funds: Utility Fund Capital Improvement
– Federal Boulevard and Wandering View Project account

Policy Issue

Should the City execute a contract with the low bidder, T. Lowell & Sons, LLC for construction of new water infrastructure?

Alternatives

1. City Council could choose to construct the new waterline project at a later date. However, this is not recommended as it would delay improvements to the water distribution system that are needed now and could impact service to City customers.

2. City Council could also choose to award the contract to another bidder; however, this would increase the project cost since the low bidder is responsible and qualified to perform this work.

Background Information

Utility engineering staff routinely monitors and models the condition and adequacy of the City's water distribution system. Such monitoring and modeling allows Staff to anticipate needs and improvements before they develop into critical problems. As part of these ongoing evaluations, Staff identified the need to improve the network of the potable distribution system in the general vicinity of Federal Boulevard and West 108th Avenue. This portion of the distribution system lies in Pressure Zone 1 and operates with two relatively isolated networks of waterline. Water monitoring and modeling indicated that connecting these two legs of the system with a transmission line (24-inch pipe) would increase the reliability of the system to meet current and future customer demands. The new pipeline is proposed in Federal Boulevard and will improve the performance of the potable water distribution system for customers in the areas of West 108th Avenue and farther north in the City. In addition, the new waterline will provide the City with a redundant pipeline to fill the Wandering View potable water storage tanks.

The new pipeline proposed as part of this project is 700-feet of 24-inch pipe extending along Federal Boulevard from West 107th Place to an existing waterline located north of West 108th Avenue. Hydraulic modeling indicates there may be a need to extend the 24-inch waterline to the north on Federal Boulevard in the future. Therefore, the new pipeline has been designed to readily accept new connections and extensions should they be needed to accommodate future water demands. See the attached map for a layout of the proposed waterline in this area.

Staff solicited bids from seven contractors and received five qualified bids on March 10, 2011. T. Lowell, LLC was the successful low bidder, with a bid approximately four percent below the engineering estimate. They have successfully performed similar work for the City in the past, and their bid was responsive and reasonable. For these reasons, Staff recommends executing a construction contract with T. Lowell, LLC. The following is a summary of the bids received:

Contractor	Base Bid Amount
T. Lowell, LLC	$354,000
Ricor	$354,967
BTC	$401,323
American West	$428,171
R& D Pipeline	$452,871
Brannon	No Bid Received
Velocity Constructors	No Bid Received
Engineering Estimate	$369,410

The requested expenditure for this project is the low bid amount of $354,000 combined with a ten percent contingency of $35,400 for a total request of $389,400. Sufficient monies are available in the Federal Boulevard and Wandering View capital account to fund this project.

Construction will commence in summer 2011 and is being scheduled to avoid potential traffic control conflicts with another capital improvements project currently under construction in the Meadowlark subdivision. The Federal Boulevard Waterline Project is anticipated to be completed` by September 30, 2011.

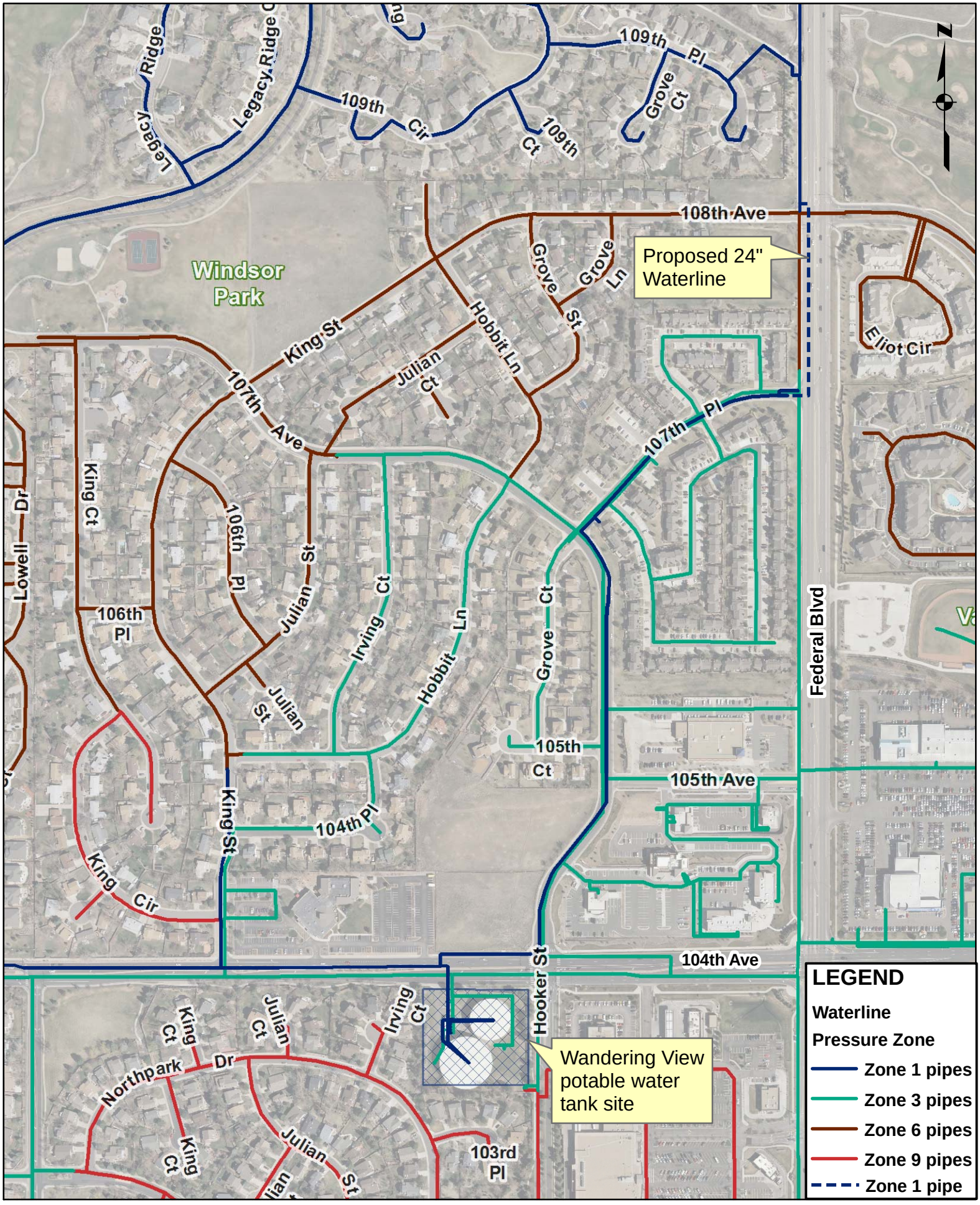
The completion of the Federal Boulevard Waterline Project will assist the City in meeting City Council's Strategic Plan goals of providing a "Safe and Secure Community" and "Vibrant Neighborhoods In One Livable Community." With upgrades made to the potable water distribution system, residents will receive more reliable water services with reduced risk of system failures.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Federal Boulevard Waterline Project Site Map

Federal Boulevard Waterline Project



WESTMINSTER

Agenda Item 8 B

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Lowell Boulevard Water Main Replacement Engineering Contract

Prepared By: Michael C. Wong, Senior Engineer, Utilities Planning and Engineering
Steve Grooters, Senior Projects Engineer, Utilities Planning and Engineering

Recommended City Council Action

1. Based on the recommendation of the City Manager, find that public interest will best be served by authorizing the City Manager to execute a contract for engineering design services with Burns and McDonnell Company, Inc. in the amount of $79,519 for the Lowell Boulevard Water Main Replacement Project and authorize a 10 percent contingency of $7,951 for a total project budget of $87,470, and

2. Authorize the transfer of $87,470 from the Southern Pressure Zone One Water Pipeline Capital Improvement Account into a new Lowell Boulevard Water Main Capital Improvement Account.

Summary Statement

- This project involves replacement of approximately 1,250 feet of 12-inch water main in Lowell Boulevard from Shaw Boulevard to Chestnut Lane.
- The existing water main is a 50-year old cast iron pipe that has been prone to breaks, leaks and corrosion. Replacing this main is necessary to reduce the risk of main breaks, service interruptions and the resulting street excavation/repair activities.
- The attached map shows the project location and waterline information on the existing distribution system.
- The pipeline is located in an area that is heavily congested with underground utilities. Included in the project is an analysis of potential pipeline replacement technologies that avoid open-cutting of the roadway and the resulting risk of damage to other below grade utilities. This complicates the design of the pipeline and supports the need for a highly qualified engineering firm to implement the design.
- Of four proposals received for design services, Staff believes Burns and McDonnell Company, Inc. (Burns and McDonnell) provides the best value to the City.
- Burns and McDonnell has a history of successful projects of similar size and scope, including several waterline projects for the City. Burns and McDonnell's experience with Westminster waterline work and knowledge of the City's specifications should streamline design and result in a quality end product.

- Staff recommends awarding the contract to Burns and McDonnell based on their competitive pricing, proposed scope of work, familiarity with the City's infrastructure and the successful experience of their proposed project team.
- This contract includes engineering services to be provided through the design, bidding and construction administration phases. Design is expected to be completed by the end of August 2011 with construction beginning in September.
- Replacement of this water line has recently been identified as an immediate need. Staff requests the creation of a new capital account and the transfer of savings in the amount of $87,470 from the completed Southern Pressure Zone One project towards the design component of this project.

Expenditure Required: $87,470

Source of Funds: Utility Fund Capital Improvement – Lowell Boulevard Water Main Replacement Account, Southern Pressure Zone One Capital Account

Policy Issues

1. Should the City execute a contract with Burns & McDonnell for the design services for the Lowell Boulevard Water Replacement-Shaw Boulevard to Chestnut Lane?

2. Should City Council authorize the transfer of savings from a completed project to fund this project?

Alternatives

The City could choose the following alternatives:

1. City Council could decline to approve the contract and place the project on hold. However, the existing water main is in poor condition and has had multiple breaks in the past 5 years. Delaying the project is not recommended since it could result in increased maintenance and repair expenses, possible service impacts to the residents and/or damage to streets or other infrastructure.

2. City Council could choose to award the contract to one of the other consultants that submitted proposals; however, this is not recommended as Staff believes that Burns and McDonnell provides the best value for this project. They have a familiarity with the City's infrastructure, standards and specifications that will streamline key project tasks.

3. City Council could choose not to authorize the transfer of funds to finance construction of this project. Without transferring capital budget savings from another project into a new project account, this project will not be funded. Transfer funds in the amount of $87,470 are available from savings in the completed South Pressure Zone 1 Water Pipeline project, and the Lowell Boulevard project is the highest priority use of these funds.

Staff does not recommend any of these alternatives.

Background Information

The City owns and operates the 12-inch water main located in Lowell Boulevard. The water main was constructed in 1958 and is a part of the connection between the Sunset Ridge Subdivision and the Gregory Hill High Services Pump Station. The water main is constructed of gray iron with mechanical joints and portions of the pipeline have reached the end of its useful design life. In particular, a segment between Shaw Boulevard and Chestnut Lane has had multiple waterline breaks in the past five years. Due to its age and poor condition, this section of the 12-inch water main is being temporarily isolated from the system until replacement of the pipeline is completed. A project map is attached for reference.

Replacement of this segment of waterline is complicated by the fact that Lowell Boulevard is heavily congested with underground utilities including water lines, sewer lines, multiple fiber optic cables, etc. To replace the 12-inch water main by traditional open cut method would require expensive utility relocation and street pavement restoration. In addition, open cut construction would increase the risk of damage to adjacent utilities and inconveniences to area residents due to relatively longer traffic detours and street closures. For these reasons, this project will investigate and implement (if possible) alternatives to traditional open cut construction such as pipe bursting, trenchless cure-in-place lining, or other install-in-place liner technology. Overall, it is the intent of this project to facilitate the work in a way that minimizes both project costs and impacts to the neighborhood during construction.

Due to the specialized nature of this project and the corresponding engineering expertise required, Staff sent a Request for Proposals (RFP) to six engineering firms who specialized in this type of pipeline design. Four proposals were received on March 10, 2011. Burns and McDonnell was selected for this work based on their response to the following criteria as outlined in the Request for Proposals:

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

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

Burns & McDonnell	$139 to $186/hr
McLaughlin Water Engineers	$ 91 to $132/hr
The Engineering Company	$ 82 to $150/hr
J&T Consulting, Inc	$ 75 to $ 95/hr

Engineering fees from the proposals received ranged from $37,477 to $79,519 with Burns and McDonnell being the highest and most complete bid submitted. However, the other firms submitted relatively lower-cost approaches inconsistent with the project goals and/or a scope that was incomplete (i.e., proposing a limited geotechnical investigation, limited review of trenchless technologies, limited services related to locating existing utilities, etc.). These lower cost approaches had higher risk to the City in terms of avoiding damage to existing utilities/streets and contractor claims during construction. Of the firms that proposed, the Burns and McDonnell approach and team experience were the best and most qualified for the project and their level of effort and fee competitive for the desired project scope of work. In Staff's opinion, retaining Burns and McDonnell will result in a better end product.

Burns and McDonnell's proposed fee with contingency is for design services only and accounts for approximately 16% of the estimated project cost of $500,000 for the new pipeline. Taking into account the relatively complex predesign and utility location phases required for the project, this fee is in line with the effort anticipated for the project. Following successful completion of design, Staff intends to negotiate a subsequent contract for engineering services during construction. Costs for construction management services are estimated to be approximately 10% of the project cost. The design is anticipated to be completed in August 2011 and construction completion by the end of 2011.

Staff requests the use of savings in the amount of $87,470 from the completed Southern Pressure Zone One project towards the design component of this project. Savings in the Southern Pressure Zone One Water Pipeline Capital account are sufficient to fully fund this design contract. Staff will request funding from the same account for the Construction Management Services and Construction portion of this project at the time of the request for award of the construction contract.

The Lowell Boulevard Water Main Replacement Project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods In One Livable Community" by contributing to the objectives of well-maintained City infrastructure and facilities and providing water service with reduced risk of system failures.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Lowell Boulevard Water Main Replacement Location Map

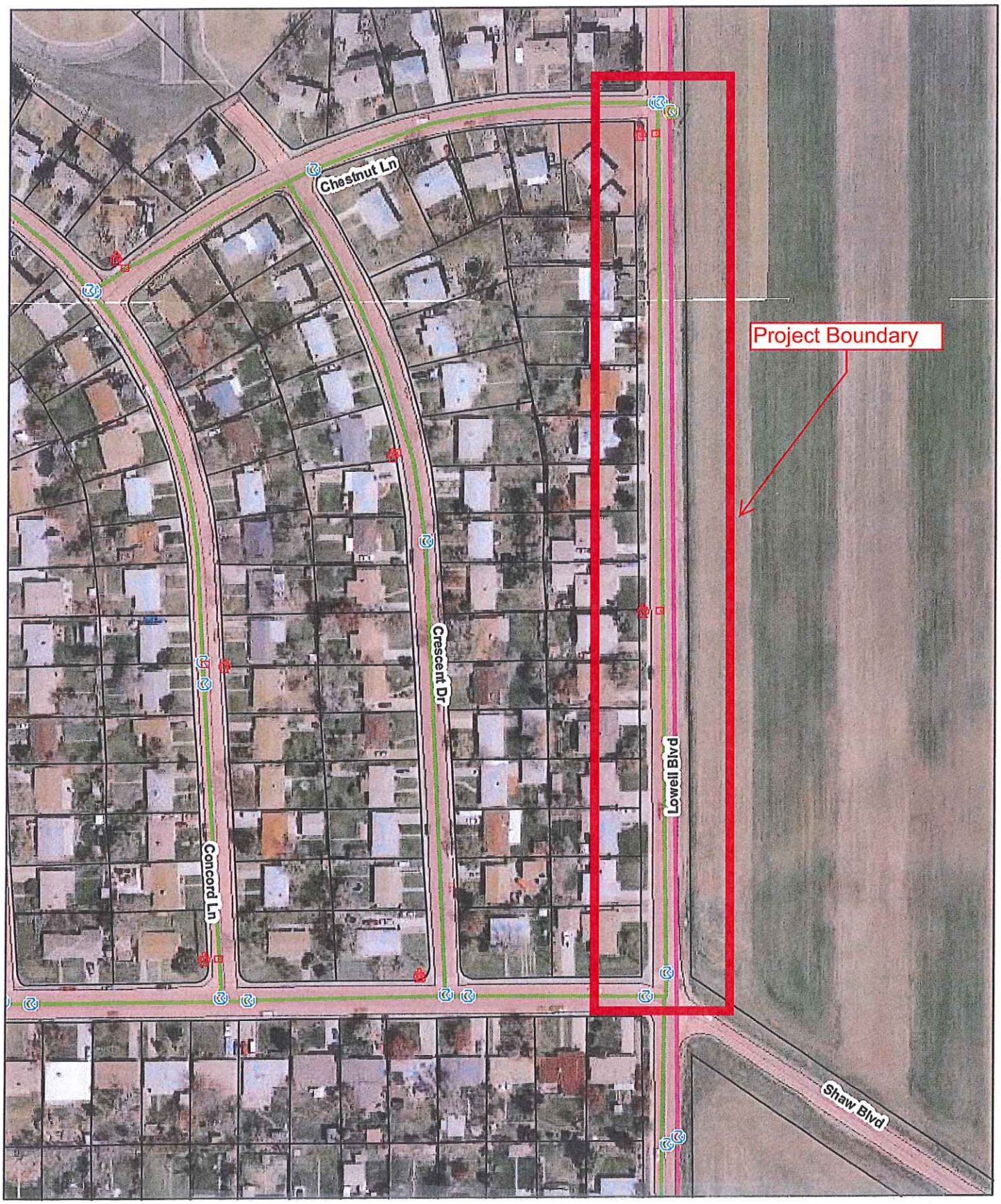


Exhibit C to Request for Proposal

N
W E
S

Location Map of Lowell Blvd Water Main: Shaw Blvd to Chestnut Lane r_Basic_93.mxd

1 inch = 150 feet

0 75 150 300 450 600 Feet

WESTMINSTER

Agenda Item 8 C

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: West 144th Avenue Recirculation Pump Station Construction Contract

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

Recommended City Council Action

Authorize the City Manager to enter into a contract with the low bidder, Ricor, Inc., in the amount of $51,475 for construction of the West 144th Avenue Recirculation Pump Station and authorize a 10 percent construction contingency in the amount of $5,148 for a total construction budget of $56,623.

Summary Statement

- This project includes constructing a small recirculation pump station for installation on the existing 4-inch diameter waterline along 144th Avenue near Pecos Street.
- The waterline currently has a dead end that increases the potential for stagnant water and subsequent water quality degradation.
- A new pump station will force water circulation in this area and improve water quality in the distribution system.
- The attached map shows the project location and waterline information on the existing distribution system.
- The City solicited bids for the project from seven qualified contractors and received three bids on March 10, 2011. Ricor, Inc. presented the lowest qualified bid in the amount of $51,475.
- Adequate funds were included in the 2011 Utility Fund Capital Improvement Budget and are available for this expense.

Expenditure Required: $56,623

Source of Funds: Utility Fund CIP
– Electrical/Mechanical Pump Station Improvements Account

Policy Issue

Should Council proceed with awarding the construction contract to Ricor, Inc.?

Alternatives

1. The City could choose to construct the recirculation pump at a later date. However, due to risk of water quality issues occurring from stagnant water in this portion of the potable distribution system, Staff recommends the recirculation pump station construction at this time.

2. The City could choose to award the contract to another bidder. This would unnecessarily increase the project costs since the low bidder is responsible and qualified to perform this work.

Background Information

Waterlines installed in 144th Avenue were sized to serve current and anticipated future customers. As with all modern pipe systems, the waterlines were installed with piping loops to promote circulation and high pressure/flow for fire protection. The system included a provision for installation of a recirculation pump (if proven necessary) to help maintain good circulation and water quality in this portion of the distribution system. Overall, the current demand for water in this portion of the City has been relatively limited, which has resulted in the increased potential for stagnant water and subsequent water quality degradation. For this reason, installation of a recirculation pump is warranted.

The recirculation pump required for this project is relatively small and is designed to be installed on the waterline, below grade, and within City right of way. Decorative artificial rock covers will be used to hide the portions of the pump and control panel that are required to be above ground. When customer water demands increase along the West 144th Avenue waterline, the recirculation equipment will be decommissioned for potential use elsewhere in the City's distribution system.

J & T Consulting provided the engineering design and pump equipment specifications for this project under a July 26, 2010 contract. J & T Consulting will also provide construction management services for this project under that same contract.

The City sent a Request for Bids to seven qualified contractors on February 17, 2011, and received three bids on March 10, 2011. The following is a summary of the bids received:

Contractor Name	Bid Amount
Ricor, Inc.	$ 51,475
J2 Contracting, Inc.	$ 63,495
American West Construction, Inc.	$ 71,485
Engineer's Opinion of Probable Cost	$ 47,250

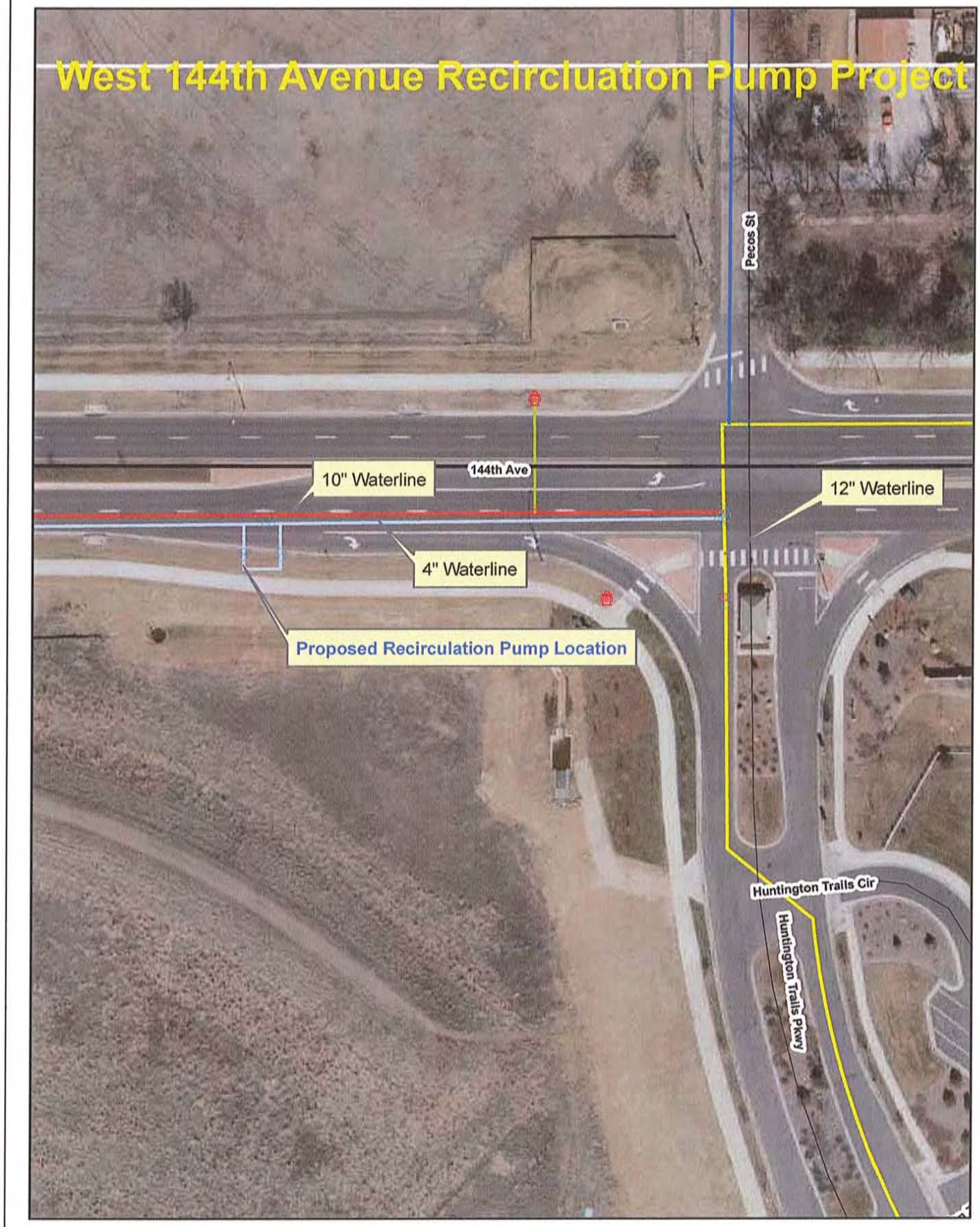
After review of all bids received, Ricor, Inc.'s bid was determined to be responsive and the dollar amount reasonable for the scope of the work. Rico, Inc. has successfully completed other water and sewer line replacement projects for the City and is qualified to complete this project. For reference, their bid varies from the engineer's estimate by less than 10 percent, which supports the notion that the bids were competitive. For these reasons, Staff recommends executing a contract with Ricor, Inc. in the amount of $51,475 for construction of this project, as well as a 10 percent contingency in the amount of $5,148 for a total project budget of $56,623. Construction will commence following award of the contract with completion anticipated by June 30, 2011.

This project helps achieve two of the City Council's Strategic Plan Goals: 1) Achieving a "Financially Sustainable City Government" by contribution to the objective of well-maintained and operated City facilities and 2) Contributing to a "Beautiful and Environmentally Sensitive City" by enhancing the reliability of the City's water distribution system.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: West 144th Avenue Recirculation Pump Station Site Map



City of Westminster

Feet

0 40 80 120 160

N W E S

WESTMINSTER

Agenda Item 8 D

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Minor and Emergency Home Repair Program Contract

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Authorize the City Manager to enter into a contract, in substantially the same form as attached, with Brothers Redevelopment Inc. to administer the Emergency and Minor Home Repair Program.

Summary Statement

- The City Council authorized an assignment of $50,000 in Community Development Block Grant (CDBG) funds in both 2010 and 2011 for the purpose of creating an Emergency and Minor Home Repair program for income eligible households.
- Given the use of CDBG funds, program participation is limited to households earning low to moderate incomes, which equates to 80% or less of the Area Median Income as defined by HUD.
- The City, having limited capacity to administer the program, issued a Request for Qualifications (RFQ) from entities with the capacity to administer the program on behalf of the City.
- Four prospective partners were identified and sent the RFQ including:
    - Adams County Community Development (ADCO);
    - Brothers Redevelopment Inc.(BRI);
    - H&F Services, Inc.; and,
    - Rebuilding Together of Metro Denver.
- The City received three responses to the RFQ, with Adams County Community Development being the only entity not to submit a response.
- Upon review of the qualification statements, Staff determined that BRI had the necessary administrative and labor capacity, and CDBG related rehabilitation expertise and knowledge as compared to the other two prospects.
- Staff is recommending that the City enter into a contract with BRI to administer the City's program for the funding years 2010 and 2011.

Expenditure Required: $100,000

Source of Funds: 2010 CDBG - $50,000; 2011 CDBG - $50,000

Policy Issue
Should the City enter into contract with an outside agency to administer a City program and expend City CDBG funds?

Alternative
The City could choose to administer the program directly with its current Staff. Staff recommends Council not pursue this alternative because the City's staffing capacity and rehabilitation expertise is very limited which could compromise the success of the program and put the City in poor standing with HUD.

Background Information
The City receives an allocation of federal CDBG dollars on an annual basis to fund projects or programs that are of benefit to low to moderate income populations. The City receives about $600,000 annually of which about $480,000 is available for projects and programs. The remaining portion of the allocation is used to cover administrative costs. The City also receives about $220,000 in federal HOME dollars through Adams County (ADCO) of which about $200,000 is made available for housing related endeavors serving low to moderate income populations. Housing rehabilitation is an eligible activity for use of both the CDBG and HOME funds.

Over the last 12 years, the City chose not to use its CDBG allocation to fund housing rehabilitation but rather use a portion of its HOME allocation to provide such funding. Since ADCO has received the funds from the federal government on behalf of the City, the City contracted with ADCO to administer the rehabilitation program. While the HOME dollars have helped fund rehabilitation, the regulatory requirements effectively hampered the City's ability to provide a source of rehabilitation funds that could quickly be expended in a cost effective manner to meet eligible residents emergency or minor home repair needs. The HOME program has the potential to drive up the cost of a minor repair significantly given HUD's requirement that home deficiencies other than the immediate emergency/minor repair are required to be addressed as part of the rehabilitation. Unlike HOME funds, the CDBG funds can be more readily used to remedy immediate situations detrimental to the health, safety and welfare of the occupants without creating a financial burden.

Given a high level of inquiry from Westminster residents regarding emergency and minor home repair over the last several years, City Council assigned $50,000 of CDBG funds in 2010 and 2011 for the purposes of creating an emergency and minor home repair program. While the City has the funds to create the program, Staff is limited in its ability to administer and operate the program. However, there are a number of outside entities that have experience in such programming that have working relationships with other local governments operating similar programs. Accordingly, City staff identified four potential sources of support and sent an RFQ for each. The RFQ was sent to the following entities for their consideration:

- Adams County Community Development;
- Brothers Redevelopment Inc. (BRI);
- H&F Services, Inc.; and,
- Rebuilding Together of Metro Denver.

Although ADCO currently administers the City's HOME Housing Rehabilitation Program, it chose not to respond to the RFQ. The other three candidates did submit their qualification statements. Upon thorough review and analysis of the qualifications and direct interviews, Staff believes BRI has the best capability and track record to administer and operate the City's program.

BRI is a well known and respected 501(C) 3 non-profit organization which is committed to affordable and livable housing and community revitalization and stewardship. BRI is best known for its housing foreclosure counseling and assistance and its Paint-A-Thon that serves hundreds of seniors annually. BRI also owns several senior based apartments including East Bay at Hidden Lake at 68th Avenue and Lowell Boulevard. And, more particular to the City's housing rehabilitation interests, BRI operates a housing

rehabilitation program of its own along with contractual relationships with Thornton, Sheridan and Northglenn. BRI has extensive experience administering federal funds (including CDBG) through its rehabilitation program and also has in-house rehabilitation personnel that do most of the work. In instances requiring expertise (i.e. electrical, plumbing, etc.), BRI has a stable of pre-qualified specialists under contract. Another benefit to partnering with BRI is the opportunity to piggy back with other services they provide that can keep costs down and expand the range of house improvements as identified and needed. For example, a senior household needing a new water heater may be eligible for and added to the Paint-A-Thon list.

The contract as proposed includes the following provisions:

- BRI would be responsible for identifying, qualifying, and making improvements to owner occupied homes where households meet HUD imposed eligibility requirements. All households earning 80% or less of Area Median Income (AMI) would be eligible to apply for a grant not to exceed $5,000 in City CDBG funds. BRI may supplement any City grant with other resources should the cost exceed $5,000. BRI may request authorization from the City to exceed the $5,000 limit in extremely severe cases where there is an impeding threat to the health of the household. Income eligibility allowances currently in effect are as follows:
    - Single Person Household……..$42,500
    - 2 Person Household……..$48,600
    - 3 Person Household……..$54,650
    - 4 Person Household……..$60,700
    - 5 Person Household……..$65,600
    - 6 Person Household……..$70,450

  These allowances are subject to change upon issuance of notice from HUD and would be adjusted accordingly.
- BRI would be paid an administrative fee based on actual time spent on each eligible project and would operate in accordance with the Scope of Work and Federal Requirements attached as exhibits and made part of the contractual agreement. The administrative fee shall not exceed $1,000 per the contract, but it is estimated that the average administrative cost will be in the range of $500. Labor costs involved in the actual rehabilitation work are covered within the $5,000 grant limit.
- BRI is responsible for taking inquiries and processing applications from prospective grantees. BRI will gather all required documentation to determine eligibility, ensure HUD regulatory compliance, confer and coordinate with City staff regarding final authorization to proceed with work. BRI staff will also conduct an on-site visit to establish the scope of improvements, monitor progress of the improvements, and verify and accept the completion of work.

Staff is recommending that BRI be granted a contract of $100,000 for the CDBG funding years 2010 and 2011.

The proposed program is in accordance with the City's Strategic Plan Goal of ensuring a "Safe and Secure Community" whereby financially challenged residents will be provided a means of accessing resources to make essential repairs to their homes thereby protecting the health and safety of the household. The program further promotes the goal of "Vibrant Neighborhoods and Commercial Areas" by maintaining the livability and structural integrity of residential properties and minimizing the potential for abandonment which can become a blighting factor on the neighborhood.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Proposed Contract

Form: Services Contract (Non-Construction)

AGREEMENT TO FURNISH PROFESSIONAL AND CONSULTING SERVICES
TO THE CITY OF WESTMINSTER
FOR THE
WESTMINSTER EMERGENCY AND MINOR HOME REPAIR PROGRAM

THIS AGREEMENT, made and entered into this 11th day of April, 2011, between the **CITY OF WESTMINSTER**, hereinafter called the "City," and **BROTHERS REDEVELOPMENT, INC**., 2250 Eaton Street, Garden Level, Suite B, Denver, CO 80214, a non-profit corporation organized pursuant to the laws of the State of Colorado hereinafter called the "Consultant," is as follows:

WHEREAS, the City has received Community Development Block Grant funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383 as modified; and

WHEREAS, the City seeks to create a minor and emergency home repair program using the Community Development Block Grant (CDBG) funds in accordance with Federal requirements; and

WHEREAS, the Consultant has the requisite expertise and experience to perform the required work for the program; and

WHEREAS, the City desires to engage the Consultant to render the professional services described in this Agreement and the Consultant is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in City Charter and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the City and the Consultant agree as follows:

I. THE PROJECT

The Project consists of operating and administering the City of Westminster Emergency and Minor Home Repair Program.

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical Services as described in Exhibit A, attached hereto and incorporated herein by this reference, and in accordance with Supplementary General Conditions as described in Exhibit B.

III. ADDITIONAL SERVICES

When authorized by the City, the Consultant agrees to furnish or obtain from others, additional professional services in connection with the Project due to changes in the scope of the Project or its design, subject to mutual agreement as to additional compensation for additional services.

IV. CONSULTANT'S FEE

In consideration for the completion of the Project by Consultant, the City shall pay Consultant the billable hourly rates plus approved reimbursable expenses in accordance with the Budget and Payment in Exhibit "A" attached hereto and incorporated by reference herein. The City's maximum liability under this Agreement shall not exceed One Hundred Thousand and 00/100 Dollars ($100,000.00) without a written amendment executed by the Parties. Detailed monthly invoices shall be rendered by Consultant, and shall be due and payable thirty (30) calendar days after date of receipt. Invoices shall be itemized, shall include hourly breakdowns for all personnel, and shall show an itemization of other charges. Invoices shall also include a summary of the initial Agreement amount, amendments, total Agreement amount, and current billing and payment summaries. The maximum liability specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder. The City reserves the right to withhold final payment until such time as the Project is complete. No work shall be performed without notice to proceed from the City.

V. COMMENCEMENT & COMPLETION OF SERVICES

The Consultant understands and agrees that time is an essential requirement of this Agreement. The Services shall be completed as soon as good practice and due diligence will permit. In any event, the Services to any individual grant recipient shall commence only upon receiving authorization to proceed from the City and be completed within the following timeframes. On a case-by-case basis, City will allow for exceptions for exterior projects that are seasonal in nature or that may be delayed due to inclement weather.

- Emergency Repairs – To be completed within 14 days of receiving notice to proceed from City;
- Minor Home Repairs – To be completed within 45 days of receiving notice to proceed from City.

VI. TERMINATION

This Agreement shall terminate at such time as the work in Section II is completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all work previously authorized and completed prior to the date of termination plus any Services the City deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing the Services included in this Agreement, whether completed or in progress.

VII. INSURANCE

During the course of the Services, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Professional Liability Insurance in the minimum amount of $1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D.1. below, Automobile Liability of $500,000 per person/$1,000,000 per occurrence, and Commercial General Liability of $1,000,000 per person/$1,000,000 per occurrence. The City shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the City, and these coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney

fees. The Consultant shall provide certificates of insurance to the City indicating compliance with this paragraph.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

IX. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Services, the Consultant shall act as an independent contractor and not as agent of the City except to the extent the Consultant is specifically authorized to act as agent of the City.

B. Books and Records. The Consultant's books and records with respect to the Services and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Services.

C. Ownership of Drawings. All plans, drawings, specifications and the like relating to the Services shall be the joint property of the City and Consultant. Upon completion of the Services, or at such other time as the City may require, the Consultant shall deliver to the City a complete corrected set of drawings and such additional copies thereof as the City may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the City for any loss, damages or costs incurred by the City for the repair, replacement or correction of any part of the Project which is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for all professional

liability claims, damages, losses and expenses, the Consultant shall indemnify, defend, and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the City and its agents and employees from and against all professional liability claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph D.2. The City may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the City on account of such injuries.

In any and all claims against the City or any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the respective Project representatives of the City and the Consultant who will be designated by the parties promptly upon commencement of the Services.

All other notices and communications in writing required or permitted hereunder shall be delivered personally to the respective representatives of the City and the Consultant set forth below or shall be mailed by registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. Notices hereunder shall be effective three (3) days after mailing.

F. Assignment. The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of the City; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or

litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000) shall not serve as a limitation on the City's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Services for the Project.

J. Subcontracting. Except subcontractors clearly identified and accepted in the Consultant's Proposal, Consultant may employ subcontractors to perform the Services only with City's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

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

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

M. Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall notify the subcontractor and the City within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Consultant certifies that at the time of bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that the Consultant will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO COMMUNITY DEVELOPMENT DEPARTMENT, ATTENTION: TONY CHACON.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

BROTHERS REDEVELOPMENT, INC.

By:_____

Printed Name: Mary Ann Shing

Title: President

Address:

2250 Eaton Street
Garden Level Suite B
Denver, Colorado 80214

ATTEST:

_____

Title: _____

CITY OF WESTMINSTER

By: _____

Printed Name: J. Brent McFall

Title: City Manager

Address:

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM

By:_____
City Attorney

Rev. 2/09

EXHIBIT "A"
SCOPE OF WORK

Westminster Minor & Emergency Home Improvement Program

The City seeks to provide a minor & emergency home improvement program funded by a portion of its Community Development Block Grant (CDBG) from the U.S. Department of Housing and Urban Development (HUD).

Programs Description

The City's minor and emergency home repair program is intended to assist owner occupied, low income households in making repairs deemed essential to preserving the health, safety and welfare of the occupants. Depending on the nature of the work, the majority of repairs will be completed by the Consultant's staff or contractors. When possible, volunteers are used for special event volunteer based projects that do not require a high level of technical knowledge or expertise. The program generally provides for the following to income eligible households as administered by Brothers Redevelopment, Inc.

- One-source program providing up to $5,000 grants per household for minor and emergency home repairs.
- Access to BRI's annual Paint-A-Thon program.
- Coordination with other service providers to optimize improvements relative to budget.
- Volunteers assistance for services, including house painting.
- Quick response to repairs dependent on magnitude of needed repair(s).
- Annually funded, on-going program.
- Funding and services available year round.

Project Goals:

The primary goal of minor & emergency home improvement program is to improve the health, safety, and sanitary conditions of homes owned by low income homeowners within the corporate limits of the City of Westminster that do not have the financial ability to make the needed improvements themselves. Up to $5,000 of eligible minor and emergency home repairs are made free of charge to owner-occupied, income qualified households. By virtue of this financial support essential maintenance and improvements can be made thereby ensuring continued occupancy by the household and protection against irreversible deterioration and/or abandonment contributing to blighted community conditions.

A secondary goal of the program is to foster, through the volunteer based events, a sense of community among the City citizens as they work together to improve the housing conditions of a citizen in need. These volunteer based events are community based initiatives in which church groups, businesses, civic organizations, and other interested parties come together to improve the health, safety, and sanitary conditions of affordable homes owned by low and moderate income homeowners.

Amount Available Per Home:

In 2011, the maximum funding amount provided by the City for repairs per residential unit shall not exceed $5,000. Residents may receive assistance multiple times until they reach this cap (or as many times as allowed per the specific Consultant program guidelines). Applicants may appeal to the City for a higher level of funding for extraordinary circumstances, on a case-by-case basis, and if warranted.

Households shall only receive funds to cover the actual cost of the improvements, but not to exceed $5,000. For example, If the work order is approved for a furnace repair/replacement at a cost of $1,500 the City would only pay $1,500. The household would not be entitled to receive the difference between the $5,000 maximum and $1,500 actually expended. However, the household would be eligible to apply for an additional $3,500 in improvements at a future date. BRI will keep a list of projects along with remaining eligibility.

Qualifications and Eligibility:

In order to qualify for the Program, applications must go through two approval phases: Program and Work Scope Qualifications.

Program Qualifications
Applicants must meet the following criteria and provide supporting documentation with their completed application to determine "Qualified Income Status:"

- HUD Income Limits for low income residents for those households earning no more than eighty percent (80%) of area median family income (please refer to HUD's Area Median Income tables). Currently the 2010 household income limits are as follows:

  - Single Person Household……..$42,500
  - 2 Person Household……..$48,600
  - 3 Person Household……..$54,650
  - 4 Person Household……..$60,700
  - 5 Person Household……..$65,600
  - 6 Person Household……..$70,450

  (These numbers subject to change based on HUD schedule issued annually)

- Live in and own the residential unit proposed for repair.
- Real or Personal Property (i.e. mobile home) is eligible.
- The property is free and clear of property tax liens.
- The household is current on all City utility or tax payments.
- The applicant is a resident of the City of Westminster.
- The applicant is a legal resident of the United States.
- Specific requirements as required by the Consultant as applicable.

City staff will refer any inquiries to BRI. BRI will be responsible for coordinating and conducting intake of the applicant. BRI will consult with the City to confirm City residency and financial "standing" of the applicant relative to payment of City taxes and utilities. Upon confirmation of residency, BRI will complete income eligibility screening process including collection of supporting documentation. BRI will make determination on final approval, and upon approval, shall proceed with development of the work scope for making improvements to residential unit.

Work Scope Qualifications
Upon approval of eligibility, the Consultant will perform an on-site visit to determine the work scope. Per CDBG requirements, work related to minor or emergency repairs must address the health, safety and sanitary conditions of the home. Repair costs are limited to up to $5,000 of City funds per household unless otherwise authorized by the City. BRI may supplement the City funds from other sources, as applicable and solely at their discretion, that could take the project cost above $5,000.

Following an evaluation of the work required, BRI will make recommendation to City prior to finalizing final work scope. BRI will then prepare final work scope and present it to the City for final approval. The City will give BRI written authorization to proceed with the repairs in accordance with the authorized work scope. BRI shall secure a signature authorization for all work that may be transmitted via fax or PDF attached to email. The scope and signature approvals will be kept with the applicant file as supporting documentation.

Eligibility of Improvements

General Allowances

Eligible minor repair activities associated with scheduled and/or emergency repairs may include, but are not limited to, the following:

- Painting homes
- Building handicapped ramps (ADA approved)
- Bathroom and doorway modifications to accommodate disabled citizens
- Flooring repair
- Electrical repairs
- Plumbing repairs
- Energy efficiency upgrades
- Air conditioner/swamp cooler installation (if deemed medically necessary as directed by MD w/ letter). Portable units are not eligible.
- Existing individual window (if it poses a safety hazard or energy efficiency loss)
- Safety improvements
- Work outside of the home such as gutter replacement
- Removal of dead trees or trimming of limbs determined to be hazardous to the general public or pose a significant threat to the structural integrity of the residential unit.
- Water heater or furnace repair or replacement
- Other similar work, as authorized

Activities excluded from the program include, but are not limited to, the following:

- Interior remodeling not required for health, safety and welfare and considered purely aesthetic improvements
- Roofing replacement/Repair
- Structural additions
- Exterior siding or façade improvements
- New windows for the entire home
- Water softening systems
- Carpeting, tile and wood flooring
- Appliances (e.g. dishwasher, refrigerator, stove, washer/dryer) and appurtenances not considered permanent house fixtures such as lamps, space heaters, window-mounted air conditioning units, and similar devices.

Restrictions on Improvements for Residential Units Over 50 Years Old

Homes having been constructed less than 50 years may be improved without limitation within the parameters set forth in paragraph above. For projects on buildings fifty years old or older, work will not be performed on these properties and buildings unless the work is described as exempt below. For work on homes that are more than 50 years old, all work must be justified in writing as falling under the specific exemptions provided below. This written documentation is required by the City in order to file its annual report with the State Historic Preservation Office and shall include the project address, the date of construction, nature of the work completed by BRI and referencing the appropriate exempted activity as detailed below.

For purposes of this section, In-kind replacement is defined as installation of a new element that duplicates the material, dimensions, configuration and detailing of the original element. The duplication may take into account technical advances in materials and design while maintaining or exceeding the durability, appearance and function of the original element, while also meeting required energy conservation standards and/or in accordance with mandated health and safety requirements (i.e. lead hazard mitigation or building code egress requirements).

In the event of discovery of historic or prehistoric archaeological resources during ground-disturbing activities, work should stop immediately and the contractor must call the City's historic preservation staff, who will consult with the State Historic Preservation Officer.

Site Work Exemptions:

- Installation or repair of retaining walls, driveways, curbs and gutters, and parking areas. However, repair of existing rock retaining walls is not an exempt undertaking;
- Installation or in-kind repair/replacement of brick or stone sidewalks and alleys;
- In-kind repair/replacement of site improvements, including, but not limited to fences, retaining walls, landscaping and steps not attached to any building;
- Installation, repair or replacement of gas, sanitary and storm sewer, water, electrical, cable or underground utilities within previously developed land and public rights-of-way;
- Installation, repair or replacement of park and playground equipment, excluding buildings; and
- Installation of temporary construction-related structures such as scaffolding, screening, fences, protective walkways or dust hazard containment enclosures.

Exterior Rehabilitation Exemptions:

- Installation of exterior storm windows and storm doors, provided they conform to the shape and size of the historic windows and doors, and that the meeting rails of storm windows coincide with that of existing sash;
- Removal of exterior paint by non-destructive means, provided that the removal method on buildings and components is consistent with provisions of HUD Office of Healthy Homes and Lead Hazard Control (24 C.F.R. Part 35) and EPA's Lead-Based Paint Renovation, Repair and Painting Program—RRP (40 C.F.R. Part 745).
- Application of exterior paint and caulking, other than on previously unpainted masonry;
- All lead paint abatement or mitigation that does not involve removal or alteration of exterior features and/or windows;

- Repair or partial in-kind replacement (or adding of matching, in-kind elements for safety/code requirements) of existing porch elements such as columns, flooring, floor joists, ceilings, railings, balusters and balustrades, and lattice;
- Maintenance, repair and in-kind replacement to code of roof shingles, roof cladding and sheeting, gutters, soffits, and downspouts with no change in roof pitch or configuration;
- Weatherizing of historic doors and windows, including caulking, insulation and weather stripping of existing frames, and installation of clear glass in existing sashes, including retrofitting for energy efficient, sealed, double, low-e glazing.
- Placement and installation of exterior HVAC mechanical units, vents and exterior electrical and plumbing modifications not on the front elevation;
- Installation, replacement, or repair of basement bulkhead doors.
- Installation of additional decorative or security lights as long as the installation does not damage historic material;
- Securing or mothballing a property by boarding over window and door openings, making temporary roof repairs, and/or ventilating the building.

Interior Rehabilitation Exemptions:

- Installation, replacement or repair of plumbing (including non-historic bath and kitchen fixtures, cabinetry and appliances), HVAC systems and units, electrical and fire protection systems, provided no structural alterations are involved;
- Repair or partial in-kind replacement of historical interior surface treatment, such as floors, walls, ceilings, plaster and woodwork. If covering historic features, such as wood floors, carpet and other flooring shall be installed in a reversible manner, either through tacking or with an underlayment so historic floors shall not be irreversibly damaged;
- Blown-in insulation in ceilings, attic spaces or interior insulation of basement or crawlspace areas (blown-in insulation in exterior walls is prohibited without authorization of SHPO;
- Restroom improvements for handicapped access, including doorways, provided the work is contained within the existing restroom walls;
- Installation or repair of concrete basement floor in an existing basement;
- Structural repairs to sustain the existing structure that does not alter the existing building configuration;
- Lead, asbestos or other hazardous material abatement, remediation or mitigation that does not involve removal or alteration of interior historic features.

Denial of an Application

The City staff may deny an application for any of the following reasons:

1. Does not meet eligibility requirements as stated above.
2. The residential unit, and/or building within which the unit is located, has been deemed “unsafe” due to hazardous conditions which may include but are not limited to unsanitary and crowded conditions, unsafe roofs or entry ways, severe structural problems, or any other safety related or code issues.
3. Work that exceeds the scope of the program either in cost or that falls under “major” home repair.

In such cases, written documentation will be provided to support the denial.

Process and Responsibilities

Following are the Program responsibilities for the City of Westminster and BRI respectively.

Description	**Responsible Entity**	
	CITY	**BRI**
Create/update program guidelines, applications and supporting documentation.	X	X
Conduct public outreach to inform citizens, churches, community groups, and businesses about the availability of funding and technical assistance for volunteer-based home improvement funding.	X	X
Identify potential homeowner/participants – homeowners can nominate themselves or can be nominated by family, friends, caregivers, churches, community groups, service organizations, etc.	X	
Receive applications for assistance and screen homeowners for income eligibility.		X
Confirm Residency and financial standing of applicant	X	
Program Qualification – 1st Approval. Initially approve applications in accordance with program requirements.		X
Conduct environmental review and approval (Attached for your reference a Site Specific just for your review, not to be included with agreement).	X	
Inspect home for needed repairs and determine whether repairs are within the funding parameters of the program and who can complete the work (staff, contractors, or volunteers).		X
Create work scope including cost estimate for materials and labor and forward to The City Staff. Or forward subcontractor estimates for skilled or emergency repairs.		X
Work Scope Qualification – 2nd Approval. Authorize repairs to be performed on each home to ensure compliance with CDBG regulations.	X	X

Recruit individuals and/or groups for volunteer based events.		X
Apply to The City Building Division for necessary permits and inspections.		X
Coordinate and oversee all events and work performed by volunteers.		X
Coordinate and oversee all work performed by subcontractors.		X
Purchase materials for use in repairs.		X
Comply with federal lead-based paint regulations.		X
Complete home repairs in accordance with The City approved list of eligible activities. With the completion of the worked performed obtain applicant signature as final signoff,		X
Submit invoices to City staff for reimbursement for sub-contractors, materials purchased, hours worked, and other associated fees paid.		X
Provide monthly and end of the year reports to City staff.		X
Provide before and after pictures (based upon a small random sample) of repairs that are larger in nature.		X
Periodic review of the ongoing programs to insure that they meet City's current goals and needs.	X	X
Update City Council on impact of program.	X	

Reporting Requirements:

The consultant will be responsible for submitting the following reports to the City.

- Monthly invoices are due the 1st of every month for projects completed in the previous month. Invoices should include a list of work performed and pictures (before and after) to confirm work completion.
- End of the year reports and copies of complete files shall be submitted by the end of January.

Budget and Payment Schedule:

- City funds will be used to purchase materials, pay for licensed contracted labor and/or services that cannot be carried out by volunteers, or for emergency repairs.

- The City shall provide up to $1,000 of its funds to BRI as an "Administrative Fee" for each application processed. Actual payment shall be based on an hourly basis for services rendered in accordance with the following employee hourly rates:

    - Volunteer Department Coordinator $35.00
    - Home Maintenance and Repair Supervisor $35.00
    - Program Coordinator $35.00
    - Apprentice/Seasonal Laborer $25.00

- The Administrative Fee shall be collected by BRI in addition to the cost of repair or improvement to the residential unit.
- Funding amounts per home are determined to accommodate the actual needs identified during the program. Repair costs are limited to $5,000 per household unless otherwise authorized by the City.
- Upon completion of part or all of the described services to the satisfaction of the City, the Consultant will be reimbursed for services and materials paid within the Contract period for the programs.
- Payments will be made upon the submission of invoices and other required reporting by Consultant, which shall include relevant backup documentation. The City shall not be obligated to make payment less than 30 days from date of invoice.

EXHIBIT "B"

SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I

FEDERAL REQUIREMENTS

The following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Agreement

A. "The City" means City of Westminster or a person authorized to act on its behalf.

B. "Consultant" means the entity who has entered into an Agreement with The City under which the entity will receive federal funds under the Community Development Block Grant Program. "subconsultant" means any person or entity who enters into an agreement or contract with Consultant.

C. "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

D. "Construction Contract or Agreement" means a Contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Housing and Community Development Act of 1974. This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 CFR 570 et seq., and 24 CFR 85 et seq. as may be determined as applicable.

Sec. 102. Uniform Administrative Requirements. The contractor shall comply with the provisions of 24 CRF Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," as follows:

Part 85.20 Standards for Financial Management Systems
Part 85.22 Allowable Costs citing OMB Circular A-87 requirements
Part 85.25 Program Income
Part 85.30 Budget/Program revisions
Part 85.31, 32, 33 Changes in Real Property, Equipment and Supplies
Part 85.43 Enforcement/Termination for Cause
Part 85.50 Close-Out

This Agreement is subject to the requirements of U.S. Office of Management and Budget (OMB) Circular Nos. A-87, A-110, A-122, A-128, and A-133, and applicable sections of 24 CFR Parts 84 and 95 as they relate to the acceptance and use of Federal funds and applicable regulations at 24 CFR Part 44 containing audit requirements for units of local government receiving federal assistance.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 CFR Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Consultant shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, disability, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that Consultant and the United States are beneficiaries of and entitled to enforce such covenant. Consultant agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, disability, sex, or national origin. Consultant agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. Consultant will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 CFR Section 570.607), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion, disability or sex under any program or activity funded in whole or in part under Title I of the Act, and Section 504 of the rehabilitation Act of 1973 (29 U.S.C. 794) which prohibits discrimination based on handicap.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 CFR Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, disability, sex or national origin in the sale or rental of housing built with federal assistance.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and regulations at 24 CFR Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

Sec. 109. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this Contract is subject to the requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. Consultant agrees to send to each labor organization or representative of workers with which Consultant has a collective bargaining Agreement or other understanding, if any, a notice advising the labor organization or workers' representative Consultant's commitments under this Section 3 clause, and will post copies of this notice in conspicuous places at the Work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the Work shall begin.

D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. Consultant will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 110. **Relocation Assistance and Property Acquisition Requirements**. If Consultant is a department, agency or instrumentality of a State or of a political subdivision of the State, then this Agreement is subject to the relocation and acquisition requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42, and 24 CFR 570.606.

Sec. 111. **Conflict of Interest**.

A. Conflicts Prohibited.

1. Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, Consultants, officers, or elected or appointed officials of Consultant or of the City who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or Agreements for goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2. Consultant's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3. No employee, officer or agent of Consultant shall perform or provide part-time services for compensation, monetary or otherwise, to a Consultant or other subcontractor that has been retained by Consultant under this Agreement.

4. In the event of a real or apparent conflict of interest, the person involved shall submit to Consultant and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 CFR 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by The City and/or HUD, The City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

B. Interest of Certain Federal Officials. No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Sec. 112. **Political Activity Prohibited Under the Hatch Act**. None of the services to be provided by the Contractor shall be used for any partisan political activity or to further the election or defeat of any candidate for public office. The Contractor shall adhere to the provisions of the Hatch Act (5 U.S.C. 1501 *et seq.*), which limits political activities by employees whose principal employment is in connection with an activity, which is financed in whole or in part by federal funds.

Sec. 113. **Lobbying Prohibited**. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 113(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION. Section 319, P.L. 101-121. Any Contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Sec. 114. **Copyrights**. If this Agreement results in a book or other copyright material, the author is free to copyright the Work, but HUD and The City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted, in furtherance of this Agreement.

Sec. 115. **Patents**. Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 116. **Program Income**. Unless otherwise specified in Part I of this Agreement, all program income as defined by HUD at 24 CFR Part 570.500(a) shall be returned to the City. Any program income on hand when this Agreement expires, or received after this Agreement expires shall be paid to The City.

ARTICLE II
DISBURSEMENTS AND ACCOUNTING

Sec. 201. **Eligible and Ineligible Costs**. Costs under this Agreement are governed by OMB Circular A-87 or A-122 as applicable. All costs incurred Consultant using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (A) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved

budget; (B) Be no more liberal than policies, procedures and practices applied uniformly to activities of The City, both Federally assisted and non-Federally assisted; (C) Not be allocable to or included as a cost of any other Federally financed program; (D) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (E) Be fully documented.

The following costs or expenditures by Consultant are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. **Documentation of Costs**. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. **Charges Against Project Account**.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of Consultant, and written approval from the Planning and Development Office.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to Consultant are subject to correction in accordance with the audit findings of the City or HUD. Consultant shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, Consultant shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by Consultant at the termination of the Agreement for any cause shall be returned to the City within the time specified the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

Sec. 204. **Method of Payment and Disbursements**. Consultant must submit properly executed invoices and requests for payment to the City. The City agrees to establish a payment procedure that will provide funds in a timely manner, and which will include, among other things, the requirement for retainage to be withheld by the City in accordance with State statutes. Consultant agrees to disburse funds within seventy-two (72) hours of receiving payment from The City.

Sec. 205. **Travel Expenses**. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses the City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. **Designation of Depository**. Consultant shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. Consultant is encouraged to use minority or female-owned banks.

Sec. 207. **Refunds**. Consultant agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to Consultant.

Sec. 208. **Examination of Records**. Consultant agrees that the Comptroller General of the United States, the U.S. Department of Housing and Urban Development, the City, or any of their duly authorized representatives shall, until the expiration of seven (7) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement.

Sec. 209. If Community Development Block Grant funds are being provided to primarily religious organizations, it must be in accordance with HUD's guidance on **Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants, Final Rule**, as published in the **Federal Register (Vol. 68, No. 189)** on September 30, 2003, on Pages 56396-56408, effective October 30, 2003.

ARTICLE III
CONSTRUCTION CONTRACTS AND LABOR STANDARDS

Sec. 301. **Lead-Based Paint Hazards**. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 CFR Part 570.608. Consultant is responsible for the inspections and certifications required.

Sec. 302. **Davis-Bacon Act**. Except for the rehabilitation of residential property that contains not less than eight (8) units, Consultant and all subcontractors hired under contracts for more than $2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-5, and applicable regulations of the Department of Labor under 29 CFR Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010.

Sec. 303. **Contract Work Hours and Safety Standards Act**. All federally assisted construction contracts of more than $2,000.00 and all other contracts employing mechanics or laborers of more than $2,500.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 et seq.) and Department of Labor regulations (29 CFR 5), requiring that wages be paid at not less than one and one-half times the basic wage rates for all hours worked in excess of forty in a work week. No mechanic or laborer shall be required to work under conditions which are unsanitary, hazardous or dangerous to health and safety.

Sec. 304. **Anti-Kickback Act**. If this Agreement involves construction or repair, then it is subject to the Copeland "Anti-Kickback" Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 CFR Part 5), prohibiting and prescribing penalties for "kickbacks" of wages. Wages must be paid at least once a week in accordance with the requirements of 29 CFR 5.5.

Sec. 305. **Equal Employment Opportunity Under Executive Order No. 11246, as Amended**. If this Agreement involves a federally assisted construction project in excess of $10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 CFR Part 130, and the Department of Labor Regulations at 41 CFR Chapter 60.

Consultant agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 CFR Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if Consultant is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

Consultant agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

"During the performance of this Agreement, Consultant agrees as follows:

1. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, disability, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all employment is without regard to race, color, religion, disability, sex or national origin.

3. Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Consultant will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

5. Consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and Consultant may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

7. Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, Consultant may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

Consultant agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

Consultant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, Consultant agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to Consultant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from Consultant; and refer the case to the Department of Justice for appropriate legal proceedings."

Sec. 306. The American with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq*.), which prohibits discrimination against disabled individuals in private and public employment, public accommodations, public transportation, government services, and telecommunications. The contractor shall include this requirement in agreements with subrecipients and applicable provisions of the Architectural Barriers Act (42 U.S.C. 4151-4157).

Sec. 307 **Regulations at 41 CFR 60-250**, implementing the Vietnam Veterans Act, which requires affirmative action obligations of contractors and subcontractors for disabled veterans and veterans of the Vietnam era.

Sec. 308 **Drug-Free Workplace Requirements**. In carrying out this agreement, the contractor agrees to comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and to certify that contractor will comply with drug-free workplace requirements in accordance with the Act and with HUD rules found at 24 CFR part 24, subpart F.

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. **Environmental Clearance**. No funds under this Agreement may be obligated or spent for acquisition or construction until the Consultant has received written environmental clearance from the City. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. **Compliance with Clean Air and Water Acts.** If this Agreement provides assistance in excess of $100,000, then Consultant and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. **Additional Environmental and Historic Conditions**. This Agreement is also subject to the following statutes, executive orders and regulations, when Consultant is so instructed by The City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 CFR Part 58) and the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 CFR Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

ARTICLE V

TERMINATION

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development; as such, funds or any part thereof are subject to being properly appropriated by the Westminster City Council. If funds are not properly appropriated by the Westminster City Council, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever Consultant materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default of any obligation or condition, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to Consultant's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. **Termination for Convenience**. Consultant and the City may terminate this Agreement by agreeing upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated.

Sec. 504. **Payment After Termination**. Consultant shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. **Reversion of Assets**. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under Consultant's control that was acquired or improved with more than $25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 CFR 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

ARTICLE VI

MISCELLANEOUS

Sec. 601. **Personnel**. Consultant represents that it has or will secure all personnel required in performing its services under this Agreement. All services required Consultant will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. **Subject to Local Laws**. This Agreement shall be construed and enforced in accordance with Colorado law and the Westminster City Code. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the County of Adams, Colorado.

Sec. 603. **Contractual Relationship**. Consultant shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of Consultant shall be that of an independent contractor.

Sec. 604. **When Rights and Remedies Not Waived**. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of Consultant, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. **Assignment**. Consultant shall not assign this Agreement without the prior written consent of the City.

Sec. 606. **Patented Devices, Materials, and Processes**. If Consultant employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. Consultant shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented

design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. **No Third Party Beneficiary Rights**. The City is not obligated or liable to any party other than Consultant.

Sec. 608. **Titles and Subheadings**. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 609. **Notices**. All notices shall be given by certified mail. Notices to the City shall be separately addressed to the Contract Manager. Either of the parties may designate in writing substitute addresses or persons to receive notices.

Sec. 610. **Published Information and Announcements**. Consultant agrees to coordinate with the City to assure that the activity financed in whole or in part by this agreement is properly referenced by Consultant in press releases, brochures, annual reports, speeches and other published information and announcements.

EXHIBIT "C"

CONSULTANT'S PERSONNEL AND SUBCONSULTANTS LISTING

PERSONNEL

Mary Ann Shing, President

Jason Stutzman, Volunteer Department Coordinator

Jason McCullough, Home Maintenance and Repair Supervisor

Rhonda Hill, Program Coordinator

SUBCONTRACTORS*

Cady Plumbing

McBride Lighting & Electrical

Day & Night Mechanical Solutions

Bob's Heating & AC

*BRI, Inc. reserves the right to add or delete subcontractors with written approval of the City of Westminster.

WESTMINSTER

Agenda Item 8 E

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: 2011 Striping and Pavement Marking Project Contract Renewal

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

Recommended City Council Action

Authorize the City Manager to execute a renewal of the current striping and pavement marking project contract with RoadSafe Traffic Systems for the 2011 calendar year in the amount of $165,193 and authorize a contingency of $8,260 (5%) for a total project budget of $173,453.

Summary Statement

- City Council approved funds for this expense in the 2011 Department of Public Works and Utilities, Street Operations Division budget for annual restriping of 807,419 square feet of Lane Lines and the placement of 2,600 square feet of Thermoplastic Pavement markings citywide.

- On April 12, 2010, City Council approved the current Striping and Pavement Marking project contract with RoadSafe Traffic Systems with an option of annual contract renewals for 2011 and 2012.

- Staff met with RoadSafe Traffic Systems concerning contract renewal, 2011 quantities and unit price increases. The contractor requested a 7.6% increase and substantiated industry cost increases of traffic paint. No other unit prices were increased.

- Given the positive experience working with RoadSafe Traffic Systems, RoadSafe substantiation of cost increase and given the fact that 2011 unit pricing is still 1% lower than the 2010 second low bidder items; Staff recommends extension of the current contract for one additional year.

Expenditure Required: $173,453

Source of Funds: General Fund- Street Operations Division Operating Budget

Policy Issue

Should the City extend the current Striping and Pavement Marking Project contract with RoadSafe Traffic Systems, for striping and pavement marking application as specified in the contract documents for this project?

Alternative

The City could choose to prepare bid documents and advertise the 2011 Striping and Pavement Marking Project contract for competitive bid submittals. Staff does not recommend this alternative based on the following reasons. The 2010 Striping and Pavement Marking Project contract was bid competitively and approved with renewal options for 2011 and 2012. RoadSafe Traffic Systems provided a very competitive bid in 2010 and substantiated 2011 industry increases for traffic paint. 2011 pricing is 1% lower than the 2010 second low bid prices. Another round of bidding is highly unlikely to result in any savings to the City and could possibly increase City costs.

Background Information

Formal bids were solicited in accordance with the City bidding requirements for the 2010 Striping and Pavement Marking Project. RoadSafe Traffic Systems was the successful low bidder of three contractors responding and was awarded the bid.

The contract documents for the 2010 Striping and Pavement Marking Project included a clause to allow the renewal of the contract for two additional one-year periods (2011/2012), if beneficial to both parties. 2011 is the first renewal year for the Striping and Pavement Marking Project.

Annual unit price cost adjustments, if any, were to be based on the Consumer Price Index for Urban Consumers which amounted to 2%. However, when Staff met with the contractor to discuss contract renewal issues, the contractor requested a 7.6% increase above 2010 unit prices to cover industry specific cost escalations outside of his control. Staff required the contractor to provide specific documentation detailing changes in fixed cost associated with the required work. In determining if continuance of the contract was beneficial to both parties, Staff verified the contractor submittals substantiating cost increases in paint. No other unit prices were increased. In addition, 2011 pricing is still 1% lower than the 2010 second low bidder.

The proposed Council action supports City Council's Strategic Plan Goals of "Financially Sustainable City Government, Safe and Secure Community and Vibrant Neighborhoods and Commercial Areas" by meeting the following objectives:

- Well maintained City infrastructure and facilities
- Safe citizen travel throughout the City of Westminster
- Maintain and improve neighborhood infrastructure and housing

Respectfully submitted,

J. Brent McFall
City Manager

WESTMINSTER

Agenda Item 8 F

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Westminster Station Infrastructure—Contract for Design Services

Prepared By: Stephen Baumann, Assistant City Engineer

Recommended City Council Action
Authorize the City Manager to execute a contract with Martin/Martin, Inc, in the amount of $226,680 to provide design engineering services for infrastructure improvements related to the proposed Westminster commuter rail station at 70th Avenue and Irving Street; authorize expenditures for the contract along with $5,000 for activities preparatory to right-of-way acquisition and $11,600 for project contingencies for a total authorization of $243,280.

Summary Statement

- The Regional Transportation District's FasTracks project will design and build the initial segment of the Northwest Rail Corridor commuter rail facilities to approximately 70th Avenue and Irving Street so that the station will open by early 2016. This station in south Westminster is expected to be a catalyst for mixed-use, transit-oriented development (TOD) in the area. To optimize that prospect, the City staff and RTD staff have agreed in concept that the City will design and build the first phase of infrastructure that will support the new station but will also be compatible with the evolving TOD plan.
- The first phase of the infrastructure will include design of street improvements necessary to access the proposed station, utility installations, a bus transfer facility, and a pedestrian plaza that will serve commuters using the station as well as being an attractive community area for the future TOD neighborhood. Given the inter-connected nature of these facilities with the RTD track and station improvements, the design efforts of the City and RTD must be closely coordinated and are intended to be completed by the end of 2011.
- A request for engineering and urban design services generated seven proposals, and three firms from that group were interviewed. All three firms are well-qualified but the proposal package received from Martin/Martin, Inc was judged by City staff to offer the best combination of experience with similar projects, familiarity with the City's vision for the TOD area and the greatest value. City staff is recommending that the contract for design services for the first phase infrastructure for the South Westminster Station be awarded to Martin/Martin, Inc. in the amount of $226,680. Add to that $5000 for preliminary activities related to right-of-way acquisition and a project contingency of $11,600 and the total requested authorization is $243,280.

Expenditure Required: $243,280

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

Policy Issue

Should the City award a contract to Martin/Martin, Inc for the design of the initial infrastructure needed to support the proposed Westminster commuter rail station in south Westminster?

Alternative

City Council could award the contract to one of the other firms that proposed on the project. While those firms are qualified to take on the assignment, Martin/Martin is equally qualified and has provided a proposal that shows a very good understanding of the City's overall concept for the TOD area. In addition, their fee proposal was lowest of the three short-listed firms. Staff recommends award of the contract to Martin/Martin, Inc.

Background Information

The Regional Transportation District's (RTD) FasTracks project will build commuter rail facilities to serve a transit station in Westminster at approximately 70th Avenue and Irving Street. This segment of the FasTracks project is part of the Northwest Rail Corridor plan, and is contingent on RTD's receipt of a Federal Transit Administration "New Starts" program grant. RTD is very confident that the grant will be confirmed in May/June of 2011 and is pressing ahead with their design of the project. At least in the near term, Westminster Station will be the end of the line. Service is expected to start in early 2016.

RTD's plan for parking and access to the station, developed in 2009, was not very compatible with the City's long-term plan for redevelopment of the area into a mixed-use, transit-oriented development (TOD). Under the terms of a pending intergovernmental agreement between the City and RTD, a first phase of infrastructure (access, utilities and a parking structure) needed to support RTD's station will be designed and installed by the City using funding that RTD would have otherwise spent on their plan for that infrastructure. The IGA includes the requirement that the City begin design engineering for these facilities immediately and finish that task by the end of 2011 so as to coordinate with the parallel efforts of RTD's concessionaire, Denver Transit Partners. As alluded to above, there is a small risk that the City will incur expenses for the initial design effort prior to the confirmation of the Federal Transit Administration grant to RTD, but the draft IGA has firm deadlines for progress on the design of the City's portion of the infrastructure that cannot be met unless the City begins the design process immediately.

The City's concepts for future streets and utilities in the TOD area and the pedestrian plazas that will serve commuters using the station will need to be implemented in stages. A first phase will be designed and built in the same approximate time frame as RTD's track and station construction and will necessitate the services of engineering and urban design professionals. The first phase improvements will include utilities to serve the station, access for commuters, temporary drop-off facilities for RTD buses and a plaza that fits with RTD's proposed station. A significant part of the design scope of work will consist of coordinating with RTD and their contractors since the improvements abut/overlap. Although a parking structure is a part of the first phase improvements, the design of that facility will be the subject of a separate contract to be pursued in 2012.

Following the advertisement of the project to engineering and urban design professionals, proposals were received from seven firms. All of these firms appeared to meet the basic requirements for the assignment, but the three firms shown below (with their preliminary proposed fee ranges) were short-listed for closer consideration based on their understanding and approach to the assignment, their experience with similar projects and their overall ability to respond according to the proposed schedule.

Huitt-Zollars, Inc.	$384,000 to $432,000
Martin/Martin, Inc.	$210,000 to $240,000
S E H, Inc	$360,000 to $423,000

An interview with the engineering project manager and the urban design architect from each of the firms was conducted, and the firm of Martin/Martin, Inc was selected as the best fit for the assignment. Martin/Martin has experience with RTD and transit-oriented-development projects, including City Center Englewood and Broomfield's Arista development. They are presently conducting a feasibility study of the TOD area for the City to determine potential for financing drainage infrastructure in the redeveloped TOD and as a result, are very familiar with the area. They were also responsible for the design engineering on much of the infrastructure for the Westminster Promenade. City staff has a long working relationship with Martin/Martin and is confident that they can perform the assignment according to the City's plan and the timeframe to which RTD and the City are committed.

Staff is recommending award of the contract for design services for phase one of the infrastructure for the Westminster Station to Martin/Martin, Inc at a contract amount of $226,680. In addition to the funds needed for the contract, $5,000 for preliminary right-of-way activities (e.g., title commitments) and a project contingency of $11,600 are requested, for a total authorization of $243,280.

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

Respectfully submitted,

J. Brent McFall
City Manager

WESTMINSTER

Agenda Item 8 G

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Swim and Fitness Center Locker Room Renovations Construction Manager/General Contractor Contract

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Authorize the City Manager to enter into a contract with Dohn Construction, Inc. to provide Construction Manager/General Contractor services for the Swim and Fitness Center locker room renovation with a preconstruction fee of $6,250 and estimated construction fees not to exceed $130,865.

Summary Statement

- On March 2010, Council approved a contract with Sink Combs Dethlefs for conceptual master plan design and construction documents for the Swim and Fitness Center locker room renovation.
- In July of 2010, Staff received City Council's approval to submit a grant request to Adams County Open Space to help fund the renovation of the Swim and Fitness Center. Staff presented the grant request to the Adams County Open Space Board on August 26, 2010, and the City was awarded $205,000 for the water play feature on November 17, 2010.
- Additional services with Sink Combs Dethlefs were approved by City Council on January 24, 2011, to include detailed design and construction documents and administration of the sauna, hot tub, steam room area, life guard areas, family changing room, party area, and splash pad feature.
- In early 2011, Staff, working with Sink Combs Dethlefs, determined that a Construction Manager/General Contractor (CM/GC) contract would be the best suited delivery method for this project.
- Proposals were sought from six qualified construction companies, and Dohn Construction, Inc. was determined to be qualified and low bid for this project.
- Staff will request approval from City Council for a Contract Amendment with a Guaranteed Maximum Price (GMP) for this project in late June 2011.
- The total project costs, including design through construction, will be $1,938,633.

Expenditure Required: $130,865

Source of Funds: General Capital Improvement Fund
- Swim and Fitness Center Renovation Project

Policy Issue
Should the City proceed with a CM/GC contract for the Swim and Fitness Center locker room renovation?

Alternatives
1. City Council could reject Staff's recommendation to use a CM/GC project delivery method and have Staff pursue a design/bid/build delivery method. Staff does not recommend this, as the CM/GC allows Staff to bring in the contractor at an earlier stage to provide constructability reviews, value engineering, and a fast-tracked project with an earlier completion.
2. City Council could suspend the project. Staff does not recommend this alternative due to the many commitments from a variety of funding sources and the projected escalation of costs if the project is delayed.

Background Information
Staff has been working with the project architect, Sink Combs Dethlefs, on the design of the Swim and Fitness Center locker room renovation design since 2010. As the direction of the project began to be more defined and preliminary cost estimates were completed, Staff began to discuss the benefits of a CM/GC method for project delivery. This method was chosen because it brings the contractor into the project earlier in the design process, which allows for the integration of value engineering, and constructability and means/methods review throughout the final design stages. The CM/GC method also enables the project to be fast tracked allowing for an earlier completion and fully reopened to the public and generating revenue sooner.

CM/GC proposals were sought from six construction firms experienced in aquatics projects. Four firms submitted proposals and on March 22, 2011, all four firms were interviewed. Through the interview process, Staff determined Dohn Construction, Inc. to be qualified for this project because of their detailed schedule, experience with occupied recreational pool facilities and remodels and proposed construction team. The contractor bid comparisons are as follows:

Firm Name	Preconstruction Services	Total Estimated Construction Fees
Dohn Construction, Inc.	$6,250	8.7% or $130,865
Saunders Construction, Inc.	$6,000	11.9% or $173,040
GH Phipps	$0	11% or $172,633
Adolfson and Peterson Construction	$5,000	15% or $221,688

Staff anticipates finalizing the project budget and final design by June 2011, and will come to Council to amend this contract to include a Guaranteed Maximum Price for construction and construction fees. Construction is anticipated to begin on August 1, 2011, and to be completed within a six-month construction period.

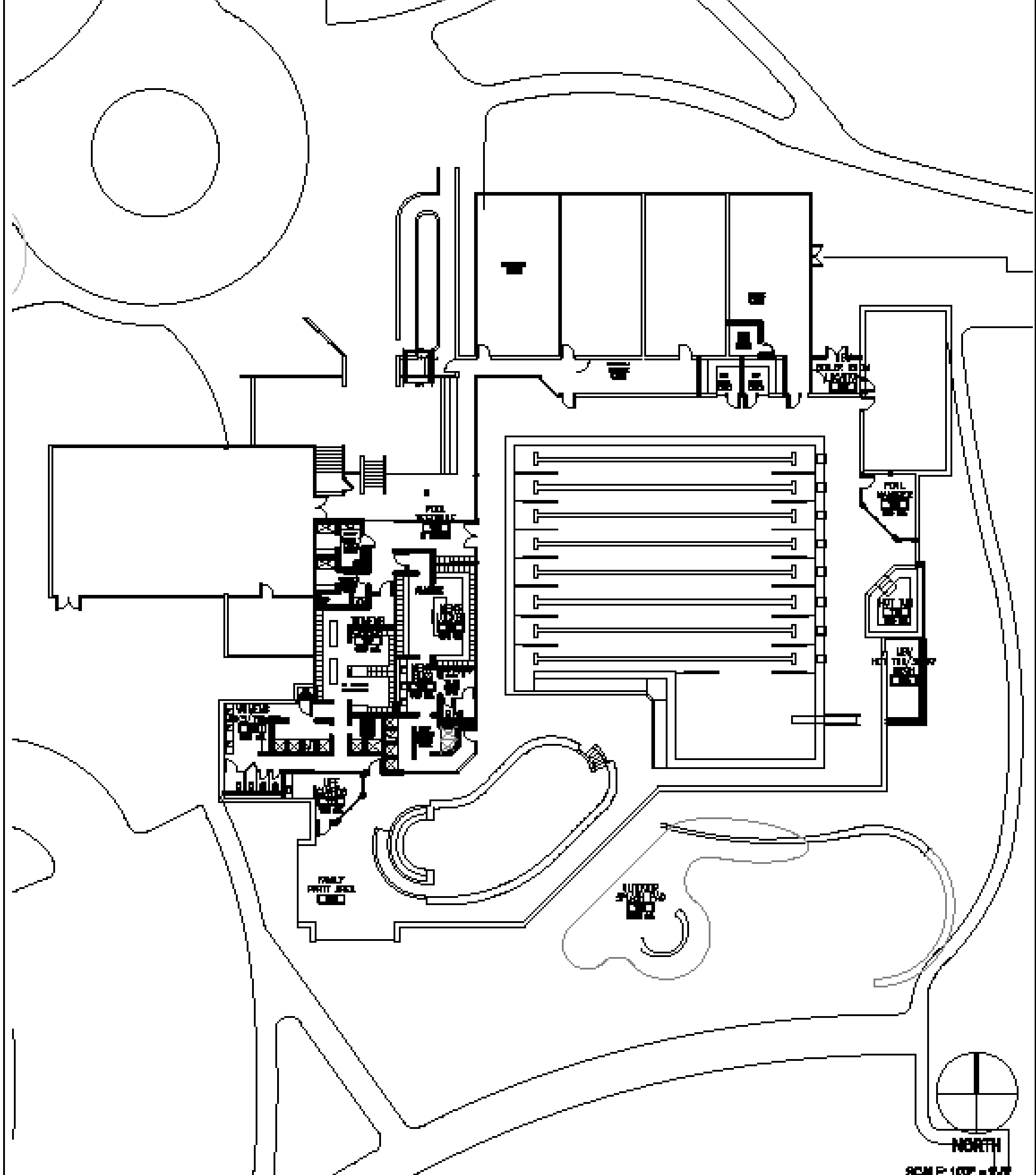
This project supports the City Council Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Diagram

EXHIBIT D



SINK COMBS DETHLEFS

A Professional Corporation for Architecture

Denver, Colorado

Overall Renovation Plan

Westminster Swim & Fit Center - Renovation

W. 76th Ave Westminster Colorado

CMGC RFP
Drg. Dt. /A-4
2/14/2011
Project No. 1004
Not for Constr

WESTMINSTER

Agenda Item 8 H

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Ambulance Billing Service Agreement

Prepared By: Richard Spahn, EMS Coordinator

Recommended City Council Action

Based on a report from the City Manager, City Council finds that the public interest would be best served by amending the agreement between Westminster Fire Department and Healthcare Professional Billing, and authorizes the City Manager to execute the agreement with Healthcare Professional Billing to provide ambulance billing service for one (1) year.

Summary Statement

- Ambulance transport billing is very specialized and requires knowledge of insurance industry procedures/guidelines, and state and federal insurance regulations.
- On April 13, 2009 City Council authorized the City Manager to continue a series of one year agreements with Healthcare Professional Billing (HPB) to provide ambulance billing services for the Fire Department.
- Staff conducted a survey of fees paid for ambulance billing services. The survey showed that eleven fire departments pay 6-9% with an average fee of 7.16% for ambulance billing services.
- The City pays HPB a 5% fee for all revenues collected.
- HPB collected over $2 million in ambulance revenues for the City of Westminster in 2010 with a collection rate of 72.1% as compared to area fire departments which averaged 49%. HPB was paid $100,334 for this service from the 2010 Fire Department Operating Budget.
- Staff projects over $2 million collected in ambulance revenue in 2011 and estimates HPB fees at around $110,000. An exact amount is unknown until the end of the billing year.
- The City has the option within 60 days notice to contract with another vendor if service or costs associated with Healthcare Professional Billing are out of line.

Expenditure Required: Approximately $110,000

Source of Funds: 2011 General Fund - Fire Department Operating Budget

Policy Issue

Should the City contract with Healthcare Professional Billing in 2011?

Alternative

1. Direct Staff to conduct a formal bid process. Staff does not recommend this alternative based on the findings of the survey showing that the current vendor remains the lowest cost alternative available.

2. Direct Staff to perform ambulance billing in-house. Staff does not recommend this alternative due to the need to hire additional FTE's and the complexity of medical billing.

Background Information

In coordination with the City Purchasing Agent, staff conducted a survey of ambulance billing fees paid by other Denver metro fire based ambulance services. The survey was conducted of 12 metro fire agencies and found costs ranging from 6-9% of collected fees among the departments that responded. Fees charged by HPB to Westminster remain lower than other vendors and even lower than what HPB charges other agencies, as noted in the following table:

Department	Billing Agency	Billing Fee
Cunningham Fire	WIBS	9%
Englewood Fire	Medibanc (ADPI)	7.5%
Federal Heights Fire	EMS Billing Service	7.5%
Littleton Fire	Medibanc (ADPI)	7.25 %
Mountain View Fire	Healthcare Professional Billing	6%-8%
North Metro Fire	Healthcare Professional Billing	6%
North Washington Fire	EMS Billing Service	7.5 %
Sable Altura	Healthcare Professional Billing	6%-8%
South West Adams County Fire	Healthcare Professional Billing	6%
South Metro Fire Authority	WIBS	6.5%
Thornton Fire	EMS Billing Service	7.5%
West Metro Fire	Bills Internally	N/A
	Average	7.16%
Westminster Fire	Healthcare Professional Billing	5%

The Fire Department has utilized Healthcare Professional Billing for over 12 years and has been very satisfied with the service rendered. End of the year collection ratio for ambulance billing in 2010 was 72.1%, which is higher than the average for similar services in the metro area. Staff intends to continue to monitor the market for ambulance billing services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Healthcare Professional Billing Agreement

Healthcare Professional Billing
Billing Services Agreement

This Billing Services Agreement ("Agreement") is entered into as of **April 11, 2011**, by and between Healthcare Professional Billing Corp. ("Healthcare Professional Billing") and ***the City of Westminster*** (the "Provider").

WHEREAS, Healthcare Professional Billing is in the business of providing financial and medical management services, including client billing and collection services, to duly qualified providers of medical care; and

WHEREAS, the Provider is a duly qualified provider of emergent and non-emergent ambulance transport, and EMT and paramedic medical services (collectively, "medical service") in the State of Colorado through a licensed physician advisor; and

WHEREAS, the Provider desires to contract with Healthcare Professional Billing to provide billing and collection services in connection with the medical services provided by the Provider;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein, the parties agree as follows:

1. Healthcare Professional Billing's Obligations

Healthcare Professional Billing agrees to perform and provide to the Provider the following billing and collection services in connection with the medical services provided by the Provider.

1.1 Billing and Collection Services: Healthcare Professional billing shall establish, supervise, direct and maintain a suitable billing and collection system for billing patients and/or their respective insurance carriers for medical services provided by the Provider to such patients, and sending follow-up notices on delinquent accounts (collectively the "Services"). The Services shall include, but are not limited to, the following:

A. Preparing and forwarding itemized bills to patients of the Provider on a monthly basis from information compiled by the District and sent to Healthcare Professional Billing as set forth below.

B. Where appropriate, obtaining, preparing and submitting the appropriate claim form to patients' insurance carriers for medical services, and continuing follow-up until said claim is processed.

C. Where appropriate, appealing incorrect insurance payments and/or denials.

D. Preparing and submitting the appropriate forms to Medicaid for charges to patients that are eligible for such billing.

E. Accounting for and tracking all payments received from patients, their insurance carriers, or Medicare and Medicaid, and depositing all funds received and accounted for on behalf of the Provider in bank accounts at a bank or banks approved by and in the name of the Provider.

F. Prepare and provide monthly reports of funds received and outstanding account balances to the Provider, including accounts that have outstanding past due amounts.

G. Tracking the payment history of each account and issuing monthly reminder notices to accounts thirty (30) days or more past due. Healthcare Professional Billing shall comply with all federal and state laws relating to the collection of the debt of another. Healthcare Professional Billing shall have no responsibility for collection of an account once the Provider has turned the account over to a collection agency. With the Provider's approval, Healthcare Professional Billing shall transfer an account to a collection agency designated by the Provider if Healthcare Professional Billing has not received payment, or insurance information necessary for billing, within 15 days of the date of mailing or delivering the third collection notice.

Healthcare Professional Billing shall base all billings on information provided by the Provider. A "month" shall be deemed to be the period from the first day of the month to the last day of such month. Healthcare Professional Billing shall bill information received after the last day of the month in the following month.

2. Provider's Obligations:

2.1 In General: The Provider shall obtain provider and/or supplier numbers for Medicare, Medicaid and other third-party insurance carriers and all necessary federal and state authorizations, and shall forward the information to Healthcare Professional Billing as necessary to aid in the billing and collection of patient accounts.

A. The Provider shall prepare all raw data regarding charges to each patient account and will forward the compiled information to Healthcare Professional Billing in a timely manner.

B. The Provider shall complete or assist its patients to complete, as appropriate, patient information forms including the assignment agreement and any other documentation necessary to permit Healthcare Professional Billing to undertake the billing and collection functions described in the Agreement and shall cooperate as necessary with Healthcare Professional Billing to enable Healthcare Professional Billing to efficiently provide its billing and collection services.

C. The Provider shall forward all receipts and/or monies for medical services to Healthcare Professional Billing, to be credited to the patients' accounts and deposited by Healthcare Professional Billing in the Provider's account.

2.2 Indemnification:

A. The Provider. The Provider hereby agrees to indemnify, hold harmless, and defend Healthcare Professional Billing from and against any and all liabilities, losses, damages, claims, lawsuits, causes of action, and expenses associated therewith (including reasonable attorney's fees in defending against any such claim or suit) caused or asserted to have been caused, directly or indirectly, by or as a result of the performance or nonperformance of medical services by the Provider during the term of this Agreement. This indemnification provision shall not, and is not intended to, in any way or manner waive or cause the waiver of the defenses or limitations on damages provided the Provider by the Colorado Governmental Immunity Act (section 24-10-101 et seq. C.R.S.), the Colorado Constitution, or the common law or laws of the United States or Colorado.

B. Healthcare Professional Billing. Healthcare Professional Billing agrees to indemnify, hold harmless and defend the Provider, and its Directors, officers, agents and employees from and against any and all liabilities, losses, damages, claim, lawsuits, causes of action, and expenses, including reasonable attorney's fees, costs and expenses, caused or asserted to have been caused, directly or indirectly, by or as a result of the acts or omissions of Healthcare Professional Billing.

3. Compensation

In consideration of the billing and collection services rendered by Healthcare Professional Billing pursuant to this Agreement, the Provider shall pay to Healthcare Professional Billing monthly during the term of this Agreement an amount equal to the percentage of the Provider's receipts for the previous month as set forth on Appendix A attached hereto. Amounts due hereunder shall be paid to Healthcare Professional Billing no later than thirty (30) business days after Healthcare Professional Billing submits its monthly report to the Provider regarding billing and receipts for the previous month. The above fee may be adjusted from time to time by written agreement between the parties. A one percent (1.0%) monthly rebilling fee will be added to delinquent balances.

Subject to paragraph 8, below, the termination of this Agreement for any reason shall not relieve the Provider of its financial obligations to Healthcare Professional Billing pursuant to this Agreement for all services rendered and costs incurred on behalf of the Provider prior to such termination, subject to the Provider's right of set-off. In the event of termination, Healthcare Professional Billing shall have the right to bill and collect on all accounts in the Healthcare Professional Billing system for three (3) months from the date of termination. After three (3) months, all accounts shall be transferred to

the Provider, another billing and collection service provider, or a collection agency, as directed by the Provider in its sole discretion. The Provider shall compensate Healthcare Professional Billing for services on these accounts during the three (3) months in accordance with this Agreement. During the three (3) months, the Provider shall have access to the accounts being managed by Healthcare Professional Billing.

4. Term and Terminations:

4.1 Term: The initial term of this Agreement shall be for one (1) year, commencing ***April 11, 2011 and ending April 10, 2012***.

4.2 Termination: Either party may terminate this Agreement with or without cause upon sixty (60) days written notice of termination. In addition, either party may terminate this Agreement in the event of (a) the bankruptcy, insolvency or liquidation of the other party, or (b) the commission by the other party of any breach of this Agreement, and a failure by the other party to cure the breach within seven (7) days of receipt of notice of the breach, or any act of fraud, willful misconduct or bad faith in connection with performance of its duties under this Agreement.

5. Representation and Warranties of the District

The Provider hereby makes the following representations and warranties to Healthcare Professional Billing, each or which shall survive any action taken by either party pursuant to this Agreement:

A. The Provider is, and at all times material to this Agreement shall be, a quasi-municipal corporation and political subdivision, duly organized, validly existing, in good standing, and qualified to do business in the State of Colorado.

B. The Provider has, and at all times material to this Agreement shall continue to have, the full power and authority to take all actions contemplated by this Agreement.

C. The execution, delivery and performance of this Agreement are not inconsistent with, and shall not violate or cause a breach or default under, any Agreement or obligation to which the Provider is a party or is otherwise subject.

D. The Provider shall at all times comply with all federal, state and local laws, ordinances, rules and regulations applicable to Provider's performance of this Agreement.

6. Representations and Warranties of Healthcare Professional Billing

Healthcare Professional Billing hereby makes the following representations and warranties to the Provider, each or which shall survive any action by either party pursuant to this Agreement:

A. Healthcare Professional Billing is, and at all times material to this Agreement shall be, a corporation in good standing authorized to transact business in the State of Colorado.

B. Healthcare Professional Billing has, and at all times material to this Agreement shall continue to have, the full power and authority to take actions contemplated by this Agreement.

C. The execution, delivery and performance of this Agreement have been, or at the appropriate time shall be, duly authorized by all necessary corporate action on the part of Healthcare Professional billing.

D. The execution, delivery and performance of this Agreement shall not violate any provision of law or of the Articles of Incorporation or the by-laws of Healthcare Professional Billing.

E. The execution, delivery and performance of this Agreement are not inconsistent with, and shall not violate or cause a breach or default under, any Agreement or obligation to which Healthcare Professional Billing is a party or is otherwise subject.

F. Healthcare Professional Billing shall at all times comply with federal, state, and local laws, ordinances, rules and regulations applicable to Health Care Professional Billing's performance of this Agreement.

G. Healthcare Professional Billing shall hold all medical information received confidential.

7. Miscellaneous

7.1 Assignment: Neither party shall transfer, pledge nor assign this Agreement or any interest herein or arising hereunder without the express written consent of the other party.

7.2 Acknowledgements: Each of the parties to this Agreement affirms and acknowledges that no representations, warranties, or statements have been made to it by any party hereto other than those expressly set forth in this Agreement and that, in entering into this Agreement, it has not relied upon anything done or said with respect to the relationship between the parties, other than as expressly set forth in this Agreement.

7.3 Entire Agreement; Amendments: This Agreement contains the entire agreement and understanding of the parties hereto with respect to its subject matter and supercedes all prior agreements, representations and understandings between and of the parties hereto with respect to such subject matter. No amendment to this Agreement shall be deemed to be effective unless it is evidence by a written instrument duly executed by the parties hereto. The wavier of or failure by a party to enforce any term or condition of this Agreement as to any specific act or omission of the other party, shall not constitute a wavier with respect to any assignment act or omission of the party.

7.4 Governing Law, Jurisdiction and Venue: The construction and performance of this Agreement shall be governed by the laws of the State of Colorado. Jurisdiction and venue shall lie exclusively in the District Court for ***Jefferson*** County.

7.5 Severability: If any provision of this Agreement, or the application of it to any party, shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, then the remaining provisions of this Agreement or the application of such provisions to persons or circumstances other than those as to which it is so determined to be invalid or unenforceable shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

7.6 Attorney's Fees, Costs and Expenses: In any dispute arising from or relating to this Agreement, the prevailing party shall be awarded its reasonable attorney's fees, costs and expenses.

7.7 Notice: Any notice, claim, demand, request or other communication which is required or permitted to be given under this Agreement shall be in writing and shall be given by personally delivered or mailed, registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below or to such other address as the person or entity to whom or which notice is to be given may have previously furnished in writing in the manner set forth above.

7.8 Headings: The headings of this Agreement are inserted for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

7.9 Corporate Practice: Healthcare Professional Billing and the Provider acknowledge that Healthcare Professional Billing is not authorized, licensed, or qualified to engage in any activity that may be construed as, or deemed to constitute, the practice of medicine.

7.10 Independent Contractor: It is understood and agreed by and between the parties that the status of Healthcare Professional Billing shall be that of an independent contractor and of a person retained on a contractual basis to

perform professional or technical services for limited periods of time and it is not intended, nor shall it be construed, that Healthcare Professional Billing, or any of its employees, agents or representatives, are an employee or officer of the Provider, or for any purpose whatsoever. Without limiting the foregoing, the parties hereby specifically acknowledge that HEALTHCARE PROFESSIONAL BILLING IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY HEALTHCARE PROFESSIONAL BILLING OR SOME OTHER ENTITY BESIDES THE PROVIDER, THAT HEALTHCARE PROFESSIONAL BILLING IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS FROM THE PROVIDER, AND THAT HEALTHCARE PROFESSIONAL BILLING IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THIS AGREEMENT.

7.11 Nonexclusive Agreement: Healthcare Professional Billing's undertakings herein are not exclusive and Healthcare Professional Billing reserves the right to perform similar billing and collection services for other medical practices, including those that may be in direct competition with the Provider.

7.12 Fidelity Bond-Insurance: Healthcare Professional Billing shall maintain a fidelity bond or fidelity (i.e., a fraud and theft endorsement) insurance in the amount of $500,000. Healthcare Professional Billing shall provide the Provider with evidence of the fidelity bond or a certificate of insurance within fifteen (15) days of the signing of this Agreement. Healthcare Professional Billing shall maintain the bond or insurance during the term and any renewal terms of this Agreement. The Provider, in its sole discretion, may require the amount of the bond or insurance to be increased at any time during the term or renewal term of this Agreement.

8. Tabor Compliance

Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation within the meaning of Colorado Constitution Article X, section 20, also known as the Taxpayer's Bill of Rights ("TABOR"). All financial obligations of the City pursuant to this Agreement are subject to prior appropriation of the funds therefore.

9. Immigration Compliance

To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement

knowingly employs or contracts with an illegal alien, Consultant shall notify the subcontractor and the City within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Consultant certifies that at the time of bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that the Consultant will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

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

City of Westminster

By: _____
J. Brent McFall, City Manager

Healthcare Professional Billing

By: _____
Linda Carroll, President
26 Garden Center #3C
Broomfield, CO 80020

Approved as to legal form:

_____
City Attorney

APPENDIX A

FEE SCHEDULE:

5% of monthly collections

WESTMINSTER

Agenda Item 8 I

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Delinquent Ambulance Bill Collection Service Agreement

Prepared By: Richard Spahn, EMS Coordinator

Recommended City Council Action

Based on a report from the City Manager, City Council finds that the public interest would be best served by amending the current delinquent ambulance bill collection service agreement with BC Services, and authorizes the City Manager to execute the agreement with BC Services to provide ambulance collections services for one (1) year.

Summary Statement

- Delinquent ambulance bill collection services is very specialized and requires knowledge of insurance industry procedures/guidelines, and state and federal insurance regulations.
- BC Services provides collections for Healthcare Professional Billing; the ambulance billing company currently utilized by the Westminster Fire Department as well as the majority of metro area hospitals and ambulance transporting agencies. This allows for cross referencing of contact information with these organizations, which will facilitate identification and locating patients transported.
- Staff has conducted a phone survey with local collection and ambulance transporting agencies. Based on the survey results, BC Services provides the most competitive fees, has a good reputation, and provides services that are the most advantageous to the City.
- Based on the estimated amount of revenue to be collected the City Attorney's Office recommended the Fire Department enter into a direct agreement with a collection agency independent of Healthcare Professional Billing. BC Services has filled this role for the past three years.
- Revenue collections from BC Services in 2010, after fees were $95,540. No expenditure is required by the City as the source of revenue for BC Services is generated by successful collections.
- The City has the option within 60 days notice to contract with another vendor if service or costs associated with BC Services is out of line.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue
Should the City contract for up to five years with a year to year renewal with BC Services who has committed to a 22% collection fee, which is comparable to what other fire departments are paying for similar services, without pursuing a formal bidding process?

Alternatives
1. Direct Staff to conduct a formal bid process. Staff does not recommend this alternative based on the findings of the survey showing that the current vendor remains the lowest cost alternative available.

2. Direct Staff to perform ambulance collections in-house. Staff does not recommend this alternative due to the need to hire additional FTE's and the complexity of the collection process.

Background Information
A phone survey was conducted with three collection agencies, which were found to be qualified and competitive. Of those surveyed the fees and services provided by BC Services are believed to be the most advantageous to the City. The results of the survey are as follows:

Collection Agency	% of Fees Collected	% of Fees Collected in Litigation
ARS Recovery System	30%	50%
BC Services	22%	50%
Collection Company of America	28%	40%

In addition, a survey was conducted with five fire departments. Of those surveyed the fees and services provided by BC Services are believed to be the most advantageous to the City. The results of the survey are as follows:

Department	% of Fees Collected	% of Fees Collected in Litigation
Littleton Fire	22%	50%
Mountain View Fire	22%	50%
North Washington Fire	22%	50%
South Metro Fire Authority	25%	40%
Thornton Fire	22%	50%

BC Services staff includes attorneys and notaries on site which will minimize inconveniences to the Fire Department and streamline notification of subpoenas and court documents. BC Services agrees to send monthly reports to Fire Administration on revenues collected. They maintain a strong reputation with metro hospitals and ambulance transport agencies.

Council approved the City Manager to enter into a series of one year agreements with Healthcare Professional Billing for ambulance billing in 1999. A third party collections agency was utilized in conjunction with an informal agreement with Healthcare Professional Billing. The City Attorneys Office recommended that the City enter into a direct agreement with a collection agency independent of Healthcare Professional Billing and therefore, in 2008, the City entered into an agreement with BC Services.

The Fire Department has utilized BC Services for ambulance collections for several years and has been satisfied with the services rendered. Staff intends to continue to monitor the market for delinquent ambulance bill collection services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - BC Services Agreement

AGREEMENT TO FURNISH
COLLECTION SERVICES TO THE CITY OF WESTMINSTER
FOR DELINQUENT AMBULANCE BILLS

THIS AGREEMENT, made and entered into as of the 11th day of April, 2011, between the **CITY OF WESTMINSTER**, a Colorado home-rule municipality, hereinafter called the "City," and **BC SERVICES, INC.,** a corporation duly incorporated under the laws of the State of Colorado, hereinafter called the "Agency," is as follows:

WITNESSETH:

WHEREAS, the City desires to engage the Agency to handle certain patient collection services on behalf of the City's patient accounts office; and,

WHEREAS, the Agency desires to accept such engagement offered by the City;

NOW, THEREFORE, in consideration for the mutual obligations contained herein, the Agency and the City, each intending to be legally bound, hereby mutually covenant and agree as follows:

1. ***Term.*** The initial term of this Agreement shall be for one (1) year, commencing on April 11, 2011, and ending on April 10, 2012 (the "Initial Term").

2. ***Use and Disclosure of Protected Health Information.*** The parties hereto agree that in order for the Agency to perform its duties under this Agreement, it will be necessary for the Agency to use and disclose Protected Health Information ("PHI"), as such term is defined at 45 CFR §164.501.

2.1 *Permitted and Required Uses and Disclosures of PHI.* The parties hereto agree that the Agency may use and disclose PHI in order to carry out any Payment function covered under the definition of "Payment" contained in 45 CFR §164.501. The parties hereto further agree that the Agency may use or disclose PHI for any use or disclosure that is required by law.

2.2 *Use and Disclosure of Minimum Necessary Amount of PHI.* The parties hereto desire to ensure that the City only discloses to the Agency the minimum necessary amount of PHI necessary for the Agency to perform its duties under this Agreement. The parties hereto agree that the following information is the minimum necessary in order for the Agency to perform its duties under this Agreement:

(A) Name and address of responsible party;
(B) Name and address of patient;
(C) Date of birth of responsible party;
(D) Date of birth of patient;
(E) Social security number of responsible party;
(F) Social security number of patient;
(G) Payment history pertaining to the account;

(H) Name and address of any healthcare provider and/or health plan pertaining to the account;
(I) Driver's license number of responsible party if available;
(J) Driver's license number of patient, if available;
(K) Upon the Agency's receipt of a written request from patient requesting verification of the account information, the City shall provide the Agency with an itemization of the services and the date(s) such service(s) were rendered to the patient and which pertain to the account receivable referred to the Agency pursuant to this Agreement; and,
(L) Insurance information.

3. ***Termination.***

3.1 *Termination without Cause.* Either party may at any time, for any or for no reason, terminate this Agreement upon sixty (60) days' written notice to the other party.

3.2 *Continued Efforts.* Upon termination of this Agreement for any reason other than pursuant to Section 3.4 below, the Agency shall be entitled to continue working the following types of accounts received from the City prior to the termination date of this Agreement: accounts on which the Agency has received a payment within six (6) months of the termination date of this Agreement; accounts that the Agency has placed on hold pending the receipt of any information from the City; accounts that the Agency has placed on hold pending a re-bill of an insurance company or the outcome of an insurance appeal; and, accounts that the Agency has placed on hold pending the outcome of a patient's personal injury litigation. In any event, the Agency shall be entitled to continue working on any accounts it has received from the City prior to receipt of notice of the City's intent to terminate this Agreement for the full sixty (60) day notice period.

3.3 *No Obligation to Continue Collection.* The Agency shall not be required to perform any work on any accounts placed with the Agency after the Agency has received notice of the City's intent to terminate this Agreement.

3.4 *Termination for Breach.* Notwithstanding the provisions of Section 1 and Section 3.1 of this Agreement, either party may terminate this Agreement immediately if such party determines that the other has breached a material term of this Agreement, subject to the provisions of this section. In the event of a material breach of a party's duties and responsibilities contained in this Agreement, the non-breaching party may immediately terminate this Agreement upon written notice to the other. The party alleged to be in material breach of this Agreement shall have ten (10) days from the date of any written notice of breach to cure such breach. In the event such party cures the alleged breach within the ten (10) day time period, this Agreement shall remain in full force and effect. In the event such party fails to cure the alleged breach within the ten (10) day time period, this Agreement shall terminate.

3.5 *Accounting of Payments After Termination.* Within thirty (30) days after termination of this Agreement by any party, for any reason, or for no reason at all, the City shall

deliver to the Agency a complete accounting of all payments received directly by the City on all accounts placed for collection with the Agency during the term of this Agreement.

3.6 *Agency's Right to Receive Compensation on Certain Accounts After Termination.* The parties hereto expressly agree that the Agency shall be entitled to continue receiving compensation after termination of this Agreement by any party, for any reason, or for no reason at all, for payments received by either the Agency or the City on the following types of accounts: accounts on which the Agency has received a payment within six (6) months prior to the termination date of this Agreement, provided that the Agency shall no longer receive compensation for payments received on such an account if six (6) months elapses without either party receiving a payment on such an account; accounts that the Agency has placed on hold pending the receipt of any information from the City; accounts that the Agency has placed on hold pending a re-bill of an insurance company or the outcome of an insurance appeal; accounts that the Agency has placed on hold pending the outcome of a patient's personal injury litigation; and, accounts that the Agency has reduced to a legal judgment.

4. ***Duties and Responsibilities of the Agency.*** The Agency shall:

4.1 *Collection Notices.* Cause the generation and mailing of collection notices to the City's patients;

4.2 *Inbound Calls.* Receive and handle any inbound calls from the City's patients concerning such collection notices;

4.3 *Outbound Calls.* Make outgoing calls to the City's patients concerning the payment of accounts;

4.4 *Staffing.* Dedicate an appropriate number of employees and/or independent contractors to work on the accounts placed with the Agency by the City;

4.5 *Reports.* Upon request, furnish the City with monthly management reports concerning liquidation percentage, and canceled and returned accounts;

4.6 *Computer Access.* Allow the City appropriate access to the Agency's computer system for the purpose of performing periodic account audits;

4.7 *Restrictions on Use and Disclosure of PHI.* The Agency shall not use or further disclose any PHI other than as permitted or required by this Agreement, or as required by law;

4.8 *Safeguarding of PHI.* The Agency shall use appropriate safeguards and follow all procedures to prevent the use or disclosure of PHI other than as provided for in this Agreement;

4.9 *Reporting of Unauthorized Use or Disclosure of PHI.* The Agency shall report to the City any use or disclosure of PHI not provided for by this Agreement of which the Agency becomes aware;

4.10 *Protection of PHI by Agents and Subcontractors.* The Agency shall ensure that any agents, including any subcontractors, to whom it provides PHI received from, or created or received by the Agency on behalf of the City agrees to the same restrictions and conditions that apply to the Agency with respect to such PHI. All agents and subcontractors shall be required to sign the "Business Associate Protected Health Information Agreement";

4.11 *Access to PHI.* The Agency shall make available PHI in accordance with 45 CFR §164.524. Within ten (10) days after receipt of a request from the City for access to PHI in the possession of the Agency, the Agency shall make such PHI available to the City. Within ten (10) days after receipt of a request from an individual for access to PHI in the possession of the Agency, the Agency shall forward such request to the City;

4.12 *Amendments to PHI.* Within ten (10) days after receipt of a request from the City for an amendment to any PHI, the Agency shall make the requested PHI available to the City for amendment and shall incorporate any such amendments into the PHI in accordance with 45 CFR §164.526. Within ten (10) days after receipt of a request from an individual for an amendment to any PHI, the Agency shall forward such request to the City;

4.13 *Accountings.* Within ten (10) days after receipt of notice from the City that the City has received a request from an individual for an accounting of disclosures of PHI regarding the individual during the six (6) years prior to the date on which the accounting was requested, the Agency shall make available to the City such information as is in the Agency's possession and is required for the City to provide an accounting of disclosures of PHI to the individual in accordance with 45 CFR §164.528;

4.14 *Internal Practices, Books, and Records.* The Agency shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Agency on behalf of the City available to the Secretary of the Department of Health and Human Services for purposes of determining the City's compliance with Subpart E of Part 164 of Title 45 of the Code of Federal Regulations; and,

4.15 *Duties with Regard to PHI Upon Termination of this Agreement.* At termination of this Agreement, if feasible, the Agency shall return or destroy all PHI received from or created or received by the Agency on behalf of the City that the Agency still maintains in any form and retain no copies of such PHI. If such return or destruction is not feasible, the Agency shall extend the protections of this Agreement to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible.

5. ***Duties and Responsibilities of the City.***

5.1 *Contact by Debtor.* The City shall promptly notify agency of any communication or payment by the debtor.

5.2 *Notice of Bankruptcies.* The City shall immediately notify the Agency upon receipt of any notification of the commencement of any proceeding under the United States

Bankruptcy Code initiated on behalf of any patient whose account has been placed with the Agency by the City;

5.3 *Notice of Attorney Representation.* The City shall immediately notify the Agency upon receipt of any notification that an attorney represents any patient whose account has been placed with the Agency by the City;

5.4 *Preparation and Delivery of Accountings.* It shall be the sole responsibility of the City to prepare and deliver any accounting requested pursuant to 45 CFR §164.528;

5.5 *Decisions Concerning Access to PHI.* In the event that an individual has requested access to PHI directly from the Agency, and the Agency has forwarded such request to the City in accordance with Section 4.11 of this Agreement, it shall be the sole responsibility of the City to determine whether to grant or deny such access; and,

5.6 *Amendment of PHI.* In the event that an individual has requested an amendment to PHI directly from the Agency, and the Agency has forwarded such request to the City in accordance with Section 4.12 of this Agreement, it shall be the sole responsibility of the City to determine whether to allow or disallow such amendment.

5.8 *Indemnification to Bankruptcy Trustee.* In the event that an account which is making payments with the Agency files for bankruptcy, and a bankruptcy trustee makes a 90 day demand for reimbursement of preferential payments from Agency, the City hereby agrees to reimburse and indemnify Agency for any payments Agency is required by law to pay back to the bankruptcy trustee.

6. ***Representations and Warranties of the City.*** The City hereby represents and warrants to the Agency as follows:

6.1 *Bankruptcies.* The City shall not place any accounts with the Agency that, as of the date of placement, are included in any proceeding under the United States Bankruptcy Code which has been initiated on behalf of any individual or entity;

6.2 *Attorney Representation.* If the City knows that a patient is represented by an attorney, the City shall notify the Agency of such attorney representation at the time the City places any of such patient's accounts with the Agency;

6.3 *Accurate Information.* All accounts placed with the Agency by the City shall contain accurate information;

6.4 *Consents and Authorizations.* Prior to disclosing any PHI to the Agency, the City shall obtain all required consents and authorizations pursuant to 45 CFR §164.506 and 45 CFR §164.508 respectively, sufficient to permit the disclosure of PHI from the City to the Agency, and to permit the Agency to perform its duties pursuant to the terms of this Agreement;

6.5 *No Restrictions.* The City shall not place any account with the Agency if the City has agreed to any individual's request to restrict the use or disclosure of PHI connected with such account pursuant to 45 CFR §164.522; and,

6.6 *Organization and Authority.* The City is a Colorado home-rule municipality and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms.

7. ***Representations and Warranties of the Agency.*** The Agency hereby represents and warrants to the City as follows:

7.1 *Organization and Authority.* The Agency is a corporation validly incorporated under the laws of the State of Colorado and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Agency and constitutes a legal, valid and binding obligation of the Agency, enforceable against it in accordance with its terms.

8. ***Compensation.***

8.1 *Fees due.* Once an account has been listed for collection, all fees outlined in Section 8 of this contract shall apply whether paid to the agency or directly to the client.

8.2 *Non-Legal Accounts.* The City shall compensate the Agency by remitting to the Agency twenty-two percent (22)% of all amounts recovered without resort to legal action on accounts that have been placed with the Agency.

8.3 *Legal Accounts.* The City shall compensate the Agency by remitting to the Agency fifty percent (50)% of all amounts recovered after the commencement of legal action on accounts that have been placed with the Agency. For the purposes of this Agreement, legal action shall be considered to have commenced when the account has been sent to the Agency's legal department.

8.4 *Legal Attorney Fees.* If attorney fees are provided in the underlying contract or agreement with the patient, the parties hereto expressly agree that the Agency shall have the right to include a claim for attorney fees as part of any action to collect an account placed for collection with the Agency. The parties hereto further expressly agree that the Agency shall be entitled to retain one hundred percent (100%) of any attorney fees collected on accounts placed with the Agency by the City. Accordingly, the parties hereto further expressly agree that the decision to waive (or the refusal to waive) attorney fees on any account placed for collection with the Agency by the City shall be committed to the sole discretion of the Agency.

9. ***Notice of Payment Information.*** The City shall transmit a weekly report to the Agency listing the following information for each account on which a payment was received by the City during the prior week:

A) The amount of the payment;

B) The name of the patient or the guarantor of the patient's account; and,

C) The City's account number.

The City's duties under this Section 9 of this Agreement shall continue subsequent to termination of this Agreement with respect to payments received upon which the Agency remains entitled to receive compensation pursuant to Section 3.7 of this Agreement.

10. ***Payment of Fees.*** The Agency shall submit a monthly invoice (the "Invoice") to the City detailing the fees due from the City to the Agency by the 10th of the following month. The Invoice shall list the following information for each account on which the City received a payment during the period covered by the Invoice:

A) The amount(s) of the payment(s);

B) The name of the patient or the guarantor of the patient's account;

C) The City's account number(s); and,

D) The Agency's total fee(s).

The Agency's Invoices to the City shall be due in full upon receipt. Any Invoice balance not paid in full within (30) days of the date of such Invoice shall accrue interest at the compounded rate of one and one half per cent (1.5%) per month. In the event the Agency files any action against the City for the recovery of fees due from the City to the Agency pursuant to this Agreement, the City acknowledges and agrees that the Agency shall be entitled to recover form the City all costs incurred by the Agency in prosecuting such action, including, without limitation, reasonable attorneys' fees.

The City's duties under this Section 10 of this Agreement shall continue subsequent to termination of this Agreement with respect to payments received upon which the Agency remains entitled to receive compensation pursuant to Section 3.7 of this Agreement.

11. ***Confidentiality.*** The parties agree to keep all of the terms of this Agreement strictly confidential, including without limitation, the Compensation terms contained in Section 8 of this Agreement. The parties further agree to maintain the confidentiality of any confidential information and/or trade secrets that they may learn about each other throughout the course of this Agreement, including without limitation, the terms of any contracts that the other party may have with any third parties. The Agency agrees to keep all Protected Health Information received from, or created or received by the Agency on behalf of the City confidential except as necessary for the Agency to perform its duties pursuant to the terms of this Agreement. The duties of the parties detailed in this Section 11 of this Agreement shall continue in full force and effect for a period of two (2) years after termination of this Agreement for any reason, except for the Agency's duty to maintain the confidentiality of Protected Health Information which shall continue forever, unless disclosure of such information should be allowed or required by law.

12. ***No Third Party Beneficiaries.*** The City and the Agency hereby expressly understand and agree that individuals whose PHI is disclosed by the City to the Agency are not intended to be third party beneficiaries of this Agreement.

13. ***Independent Contractor Status.*** The parties hereto expressly agree that in performing its duties under this Agreement, the Agency is acting as an independent contractor of the City. Nothing contained herein is intended, nor shall it be construed to create, a joint venture relationship, a partnership, or an employer-employee relationship between the parties.

14. ***Notices.*** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed within the continental United States by first-class certified mail, return receipt requested, postage prepaid, addressed as follows:

A) If to the Agency, to:

BC Services, Inc.
Attn: John Boettcher, Sec/Tres
451 21st Avenue
Longmont, CO 80501

B) If to the City, to:

Rick Spahn, EMS Coordinator
City of Westminster
9110 Yates Street
Westminster, CO 80031

Such addresses may be changed by written notice sent to the other party at the last recorded address of that party.

15. ***No Assignment.*** Except as may specifically be provided in this Agreement to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, and assigns. Except as otherwise expressly provided herein, this Agreement is not assignable by any party without the prior written consent of the other party, and no payment to be made hereunder shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or other change.

16. ***Waiver of Breach.*** The waiver by either party of a breach or violation of' any provision of this Agreement shall not operate as or be construed to constitute a waiver of any subsequent breach of the same or another provision.

17. ***Voluntary Agreement.*** The Agency and the City warrant and represent that this Agreement is executed voluntarily with full knowledge of the consequences and implications of their obligations contained herein, and that they have carefully and thoroughly reviewed this Agreement in its entirety.

18. ***Warranty of Authority.*** The undersigned individually warrant and represent that they are authorized to execute this Agreement.

19. ***Execution In Counterparts; Execution via Facsimile.*** This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument, and all signatures need not appear on any one counterpart. If executed in counterparts, this Agreement will be as effective as if simultaneously executed. Signatures on this Agreement may be communicated by facsimile transmission and shall be binding upon the parties transmitting the same by facsimile transmission. Counterparts with original signatures shall be provided to the other party within fifteen (15) days of the applicable facsimile transmission, provided, however, that the failure to provide the original counterpart shall have no effect on the validity or the binding nature of the Agreement.

20. ***Governing Law and Venue.*** This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of Colorado. The Agency and the City hereby expressly agree that any action to interpret, construe, or enforce this Agreement shall be brought in the District Court in and for the City and County of Denver, in the State of Colorado.

21. ***Enforcement.*** If either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of the action, including without limitation, reasonable attorneys' fees.

22. ***Severability.*** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, such judgment shall not affect, impair or invalidate the remainder of this Agreement.

23. ***Further Assurances.*** The parties hereto agree to execute such other instruments, documents or agreements as may be reasonable, necessary or desirable for the implementation of this Agreement and the consummation of the transactions contemplated herein.

24. ***Entire Agreement.*** This Agreement embodies the entire agreement of the parties hereto, and supersedes all other oral or written agreements or understandings between them regarding the subject matter hereof. There are no agreements, representations or warranties of any kind, except as expressly set forth in this Agreement. The parties acknowledge that in executing this Agreement they have relied solely on their own judgment, belief and knowledge, and the advice of their own respective legal counsel, and, except for representations expressly set forth herein, they have not been influenced by any other representation or statement.

25. ***Amendment.*** No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by each of the parties hereto.

26. ***Gender and Number.*** Whenever the context of this Agreement requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

27. ***Headings Descriptive.*** The headings of the several sections of this Agreement are intended for convenience only and shall not in any way affect the meaning or construction of any of this Agreement.

28. ***Change of Law.*** The parties hereto shall modify any term of this Agreement at anytime if it is determined that the inclusion of any term of this Agreement or the omission of any term from this Agreement violates any federal or state law or regulation, including, without limitation: the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164); the Health Insurance Reform: Standards for Electronic Transactions; Announcement of Designated Standard Maintenance Organizations (45 CFR Parts 160 and 162); and, the Security and Electronic Signature Standards (the "Security Standard") (45 CFR Part 142) (or the final version of the Security Standard once such final version is released), all promulgated under the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104-191).

29. ***Tabor Compliance.***

Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation within the meaning of Colorado Constitution Article X, section 20, also known as the Taxpayer's Bill of Rights ("TABOR"). All financial obligations of the City pursuant to this Agreement are subject to prior appropriation of the funds therefore.

30. ***Immigration Compliance.***

To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall notify the subcontractor and the City within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall

not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Consultant certifies that at the time of bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that the Consultant will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

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

BC SERVICES, INC.

By:_____

Printed Name:_____

Title: _____

Address:

_____

_____

ATTEST:

_____

Title: _____

CITY OF WESTMINSTER

By: _____

Printed Name: J. Brent McFall

Title: City Manager

Address:

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM

By:_____
City Attorney

Rev. 2/11

WESTMINSTER

Agenda Item 8 J

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: 7225 Bradburn Boulevard Acquisition Agreement

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Authorize the City Manager to execute a purchase and sale agreement between the City of Westminster and Johnny Patrick Chavez and Gloria Lupe Chavez relative to the acquisition of property at 7225 Bradburn Boulevard to be used in conjunction with the realignment and construction of Bradburn Boulevard.

Summary Statement

- In 2008, a planning study was prepared for 72nd Avenue that included a recommendation for realigning Bradburn Boulevard from its present connection at 72nd Avenue and moving it west so as to connect to the traffic signal at 72nd Avenue and Raleigh Street.
- In November, 2009 Council recommended proceeding with planning and acquisition relative to the realignment of Bradburn Boulevard to be funded in part with the City's allocation of federal Community Development Block Grant (CDBG) funds.
- The Bradburn Realignment project requires the acquisition of a 0.641 acre parcel of land at 7225 Bradburn Boulevard allowing for the new roadway to run at a southwesterly diagonal connecting to the traffic signal at 72nd Avenue and Raleigh Street.
- The City completed an appraisal of 7225 Bradburn Boulevard that established a fair market value of $375,000. There are currently two businesses operating on the property.
- The City has negotiated an acquisition price of $400,000 for the parcel. Since the project is using Federal funds, the City will also be required to pay relocation benefits to two businesses owned by the property owner and his son. The relocation benefit is currently estimated at $26,663, but could change dependant upon acceptance of the business owners. Therefore, Staff recommends that an additional $20,000 in contingency to cover any additional relocation cost.
- The property owner has the right to lease back the property from the City for one to two years until the property is needed for construction of the Bradburn Realignment project.
- The City has sufficient 2010 and 2011 CDBG funds with which to acquire the property.

Expenditure Required: $446,663

Source of Funds: Community Development Block Grant Funds

Policy Issue

Should the City proceed with acquisition of the property although the project has yet to receive full funding for construction?

Alternative

The City Council could choose to delay the acquisition until such time as full funding to construct the project has been attained. Staff recommends that this alternative not be considered as the cost to acquire the property and relocate the businesses could increase with time. A delay would also negatively impact the City's HUD mandated rate of expenditure for spending CDBG funds that could result in a poor performance rating from HUD.

Background Information

In 2008, City Council approved a contract for the preparation of a planning study for the 72nd Avenue corridor between Lowell Boulevard and Utica Street. The study took a technical look at desirable and necessary upgrades to facilities in the corridor given the significant changes that can reasonably be expected in South Westminster in the future. These changes include the Regional Transportation District's (RTD) FasTracks project, nearby development in the transit area, and potential redevelopment and infill development in the historic Harris Park area between Lowell and Bradburn Boulevards.

The corridor also contains facilities nearing the end of their useful life including the box culvert that carries traffic on 72nd Avenue over Little Dry Creek. The culvert received a low rating in the State of Colorado's Off-System Bridge Inspection Program report making it a high priority for replacement. In 2009, the City submitted an application and received approval of $1.1 million in grant funding from that program, available in Fiscal Year (FY) 2013, to be applied toward replacement costs. Another $743,000 grant from the same source was received in 2010. The corridor study also concluded that a realignment of Bradburn Boulevard, starting at the Burlington Northern and Santa Fe Railroad tracks and tying into the traffic signal at 72nd Avenue and Raleigh Street, would resolve many traffic issues related to the section of 72nd Avenue between Bradburn Boulevard and Raleigh Street. The proposed realignment will permit the City to build the roadway and drainage structure concurrently. The study also determined that the property at 7225 Bradburn Boulevard would be needed in its entirety to construct the new roadway alignment.

At a study session on November 2, 2009, City Council gave verbal authorization to proceed with roadway design and land acquisitions needed to construct the realigned Bradburn Boulevard and the drainage structure. Based on the Council directive Staff designated 2010 and 2011 Community Development Block Grant (CDBG) funds towards design services and acquisition of needed property. Based on the availability of funding, Council approved a contract with Jacobs Engineering Group for preliminary design engineering and cost estimating for the project in August 2010. Staff also proceeded to contact the property owner (Mr. Johnny Chavez) at 7225 Bradburn Boulevard to determine his interest in selling the property. Based on Mr. Chavez's interest in selling the property, Staff hired Mr. Rick Chase to conduct an appraisal which established the fair market value at $375,000. Staff then initiated property acquisition negotiations with Mr. Chavez.

The negotiations with Mr. Chavez resulted in a proposed sales price of $400,000 for the property. The acquisition is subject to the property being clear of any environmental contamination. The City will incur the cost of conducting an environmental assessment. The transaction would also permit Mr. Chavez to lease back the property from the City at a cost of $1.00 per year. The initial lease would be for one year with an option to extend the lease in three month increments, but not to extend beyond June 30, 2013. Any three month extension after the initial one year period would require City approval. It is anticipated that the City will not need to proceed with demolition of the buildings for the roadway construction until

at least January, 2013 giving Mr. Chavez the opportunity to lease the property for about 18 to 24 months. The City will hold $10,000 of the $400,000 as security while the tenants occupy the property. The City will release these funds at such time the tenants leave the property in good order and fully in accordance with provisions of the lease.

Mr. Chavez and his son currently operate two businesses on the property. Since federal funds (both CDBG and the grant from the State of Colorado) are being used in conjunction with the design, acquisition and construction relative to Bradburn Boulevard, Mr. Chavez and his son are also entitled to relocation benefits in addition to the cost of the acquisition. To ensure compliance with federal acquisition and relocation requirements, the City hired Western States Land Services, Inc. as a consultant to conduct a relocation assessment for the businesses. The consultant discussed the options with the business owners and prepared an in-lieu (rather than actual costs) calculation that established a total relocation valuation of $26,663. This compensation is not required to be paid to the businesses until such time as they have fully left the premises. Should Mr. Chavez and his son accept the relocation offer the total acquisition cost would amount to $426,663 plus agreed to closing costs. Should they choose not to accept the in-lieu value and opt for actual costs, the relocation assessment will be redone and adjusted accordingly. This could result in the relocation costs either going up or down as a result. Therefore, Staff recommends that a $20,000 contingency be budgeted to cover a potential increase in the relocation cost.

The acquisition of 7225 Bradburn Boulevard is critical to the ability of the City to realign and construct Bradburn Boulevard which promotes the City's goal of "Vibrant Neighborhoods and Commercial Areas" and supporting objective to "Maintain and improve neighborhood infrastructure and housing." The project will remedy significant design flaws and issues caused by the existing alignment while improving accessibility into the historic Harris Park commercial area making it more economically vital.

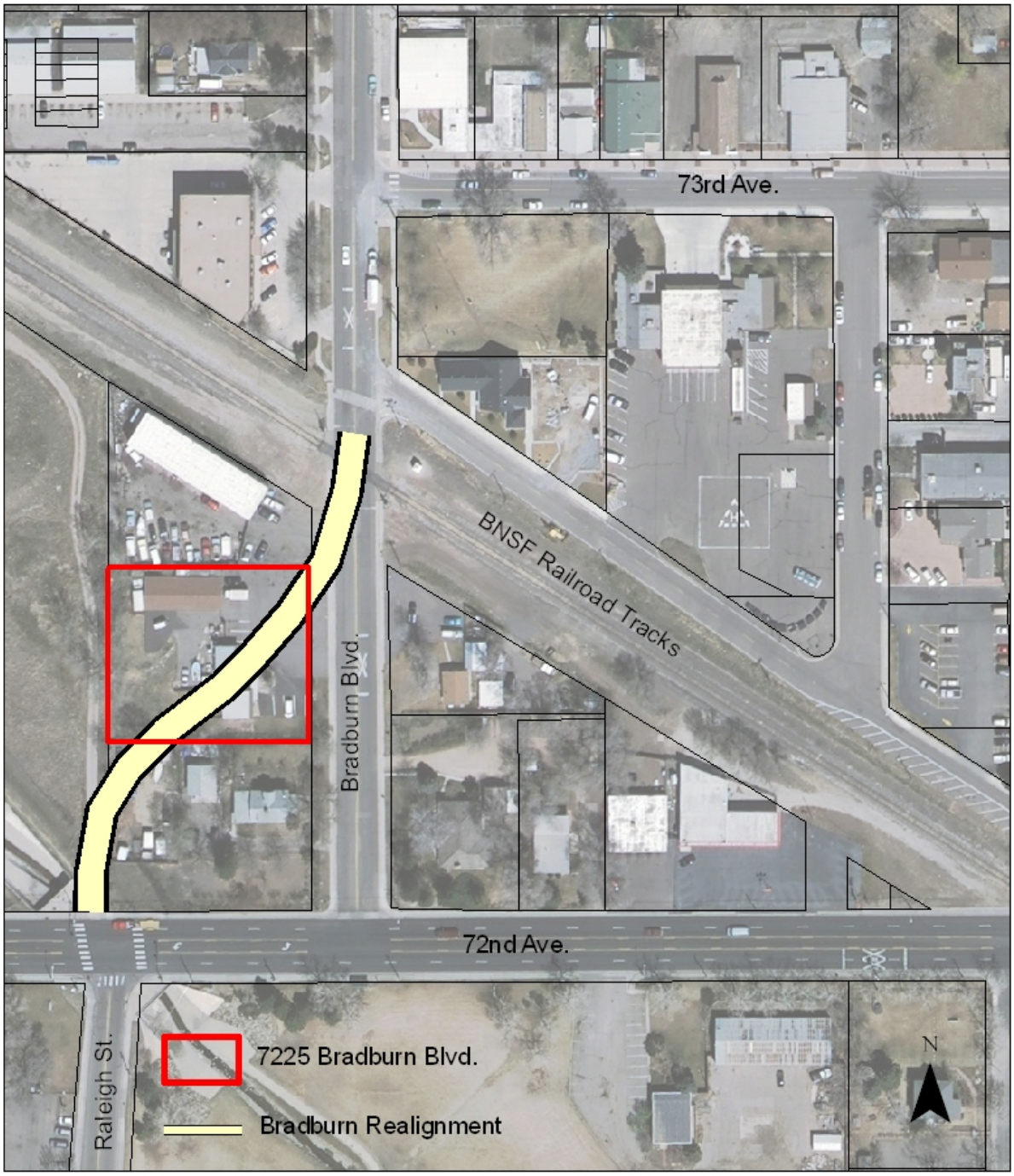
Respectfully submitted,

J. Brent McFall
City Manager

Attachment A - Property Location Relative to Realignment Project Map

Attachment A

Property Location Relative to Bradburn Realignment



WESTMINSTER

Agenda Item 8 K

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: City of Brighton Water Agreements – Two Amendments

Prepared By: Josh Nims, Water Resources Engineering Coordinator
Mary Jay Vestal, Senior Water Resources Engineer

Recommended City Council Action

Authorize the Mayor to enter into an amended Consumable Water Sale Agreement and an amended Consumable Water Lease Agreement with the City of Brighton.

Summary Statement

- In 2009, the City and Brighton entered into an agreement by which Brighton now leases treated water that the City receives from Thornton. In order for Brighton to meet historical return obligations associated with its use of Thornton treated water, the City also entered agreements to provide consumable (i.e. fully usable) water to Brighton.
- One of these agreements was a Consumable Water Sale Agreement whereby Brighton purchased a perpetual, annual consumable water delivery from the City. The other was a Consumable Water Lease Agreement with a term of 15 years.
- Both agreements include delivery schedules that essentially divided the water obligation of the City up equally over the 12 months of the year. Brighton and Westminster have decided that a strictly winter delivery would mutually benefit our systems. Therefore, the proposed amendments were written to realign the delivery schedules of the original agreements.
- Brighton has need for, and Westminster is able to provide, an additional 70 acre feet (AF) per year for the next 14 years. Therefore, the up-to amount in the Lease Agreement will be increased by 70 AF, which will result in additional annual revenue of up to $25,200 for the next 14 years, not including annual Consumer Price Index adjustments to the lease rate.
- A typo and an omission were discovered in the original lease agreement references to City Charter, and Staff would like to take this opportunity to address those by amendment.
- Staff foresees the potential to desire further changes to the delivery schedule over the years as the City and Brighton grow into our systems. Therefore, to ease processing, the proposed Amendments also provide authority for City Manager to authorize such minor changes in the future.

Expenditure Required: $ 0

Source of Funds: N/A

Policy Issues

1. Should the City amend the existing Consumable Water Sale Agreement to 1) change the timing of consumable water deliveries and 2) authorize City Manager to approve future changes in the timing of approved deliveries of consumable water to Brighton?

2. Should the City amend the existing Consumable Water Lease Agreement to: 1) change the timing of consumable water deliveries; 2) authorize City Manager to approve future changes in the timing of approved deliveries of consumable water to Brighton; 3) correct a typo and an omission in reference to the City Charter; and, 4) lease additional water to the City of Brighton under the terms of the Lease Agreement?

Alternatives

City Council could choose not to approve the Amendments or to approve them only in part. However, this is not recommended, as: 1) the realigned deliveries will increase the City's firm yield by reducing our obligations during the time of the year when they are tightest; 2) the increased lease will bring in additional revenue to the Utility Fund; 3) the City Attorney has asked that the typo and omission be addressed at this opportunity; and, 4) as our systems change, the flexibility to assign an alternate delivery schedule may once again be desired to benefit the firm yield of our system.

Background Information

In January 2009, Westminster and Brighton entered into three agreements. The first agreement was a Treated Water Supply Agreement, whereby Westminster leases to Brighton the treated water perpetually leased to Westminster by Thornton in 1982. As part of this agreement, Brighton must supply consumable water to the South Platte River, essentially taking over Westminster's responsibility in that regard related to the 1982 agreement. Since Brighton is currently growing into its system, it does not yet have available a sufficient amount of consumable water to meet these return flow obligations. Therefore, Westminster and Brighton entered into the second and third agreements of January 2009 — a Consumable Water Sale Agreement and a Consumable Water Lease Agreement.

Both the Sale and Lease Agreements include water delivery schedules that essentially divided the water obligation of the City up equally for the 12 months of the year. Since beginning operations under these agreements, both Brighton and Westminster have learned that a winter delivery season will increase the overall firm yields of our respective systems. Therefore, communication was begun related to realigning the delivery schedules by amending these agreements.

In retrospect after signing the original Agreements, Westminster and Brighton realize it is possible that the optimal delivery schedule may change over time as our systems develop. Therefore, at this time Westminster would like to simplify future changes of this nature by authorizing the City Manager to approve them. <u>This authorization would be limited to amendments to the delivery schedule and would not extend to any other aspect of the Agreements, such as term or amount</u>. Authorizing the City Manager to approve future revisions to the delivery schedule will give Staff the flexibility to adjust the delivery schedule as needed to optimize the firm yield of our supply system if analysis proves that it would ease the burden on our system to do so.

At this time, Brighton has asked to lease an additional 70 AF per year under the same terms as the Lease Agreement. Water Resources Staff has determined that the City will have surplus consumable water sufficient to cover this additional lease through 2014. Therefore, the up-to amount in the Lease Agreement will be amended to 260 AF. As with the original Lease Agreement, the charge to Brighton will be $350 per AF per year, adjusted by CPI.

In its review of the Amendments, City Attorney's Office discovered a typo and an omission in the original Lease Agreement's references to City Charter. The Charter reference should have been Section 14.3, Use of Water Outside of City, and was included as 14.2, which refers to the sale of utility property. The original Lease Agreement also failed to specify Westminster's ability to limit deliveries in case of drought restrictions. Staff therefore wishes to correct these references by amendment.

These amendments are very important for the City to secure and develop long-term water supply and support City Council's goal of Financially Sustainable City Government Providing Exceptional Services. The additional revenue also assists the City in meeting the goal of a Financially Sustainable City Government Providing Exceptional Services by having the proceeds for future Public Works and Utilities projects.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: First Amendment to Consumable Water Sale Agreement "First Amendment"
First Amendment to Consumable Water Lease Agreement "First Lease Amendment"

First Amendment to
Consumable Water Sale Agreement
(Revising Water Delivery Schedule; correcting numbering error in Agreement; authorizing City Manager schedule amendments).

This First Amendment to Consumable Water Sale Agreement ("First Amendment") is entered into for and in consideration of good and adequate consideration, the receipt and sufficiency of which is acknowledged, on this ____ day of _____, 201__, by the City of Westminster, a Colorado Home Rule Municipality ("Westminster") and the City of Brighton, a home rule municipal corporation of the County of Adams, acting by and through its Water Activity Enterprise ("Brighton"). Westminster and Brighton are also hereinafter referred to as the "parties" or separately as a "party."

1. Recitals.

1.1. The parties entered into a Consumable Water Sale Agreement (the "Agreement") on January 6, 2009, and subsequently completed the conveyance to Brighton, in accordance with the Agreement, of a permanent right to the use of certain Consumable Water as defined in the Agreement, from Westminster's municipal water supply system pursuant to the terms and conditions of the Agreement.

1.2. The Agreement establishes, at paragraph 2.3 thereof, a delivery schedule for the delivery of Consumable Water pursuant to the Agreement, and specifies that the parties may revise the delivery schedule in the future by mutual written agreement.

2. Agreement.

2.1. Paragraph 2.3 "Delivery Schedule" of the Agreement is amended in its entirety to read as follows:

The Consumable Water will be delivered on the annual schedule set forth below:

Delivery Period	Jan.	Feb.	Mar. 1-19	Mar. 20 – Nov. 10	Nov. 11-30	Dec.
Acre-Feet	9.13	8.25	5.60	0	5.89	9.13

Delivery shall be, as nearly as practicable, at a constant flow rate during each month. The parties may revise the delivery schedule in the future by mutual written agreement. The parties' City Managers are hereby authorized to enter into said mutual written agreement.

2.2. Paragraph 2.3 "Use of Consumable Water" of the Agreement is amended to become Paragraph 2.4 of the Agreement.

2.3. In all other respects, the Agreement remains unchanged and as executed January 6, 2009.

3. Execution. This First Amendment may be executed in duplicate original counterparts.

Executed as of the date first above stated.

CITY OF BRIGHTON, COLORADO

By: _____
Mayor

Attest: _____
City Clerk

CITY OF WESTMINSTER, COLORADO

By: _____
Mayor

Attest: _____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

First Amendment to
Consumable Water Lease Agreement
(Revising Water Delivery Schedule and Amounts; authorizing City Manager schedule amendments, correcting citations).

This First Amendment to Consumable Water Lease Agreement ("First Lease Amendment") is entered into for and in consideration of good and adequate consideration, the receipt and sufficiency of which is acknowledged, on this ____ day of _____, 201__, by the City of Westminster, a Colorado Home Rule Municipality ("Westminster") and the City of Brighton, a home rule municipal corporation of the County of Adams, acting by and through its Water Activity Enterprise ("Brighton"). Westminster and Brighton are also hereinafter referred to as the "parties" or separately as a "party."

1. Recitals.

1.1. The parties entered into a Consumable Water Lease Agreement (the "Lease Agreement") on January 6, 2009, for the lease to Brighton of certain Consumable Water as defined in the Lease Agreement, from Westminster's municipal water supply system for the term and pursuant to the terms and conditions of the Lease Agreement.

1.2. The Lease Agreement establishes, at paragraph 2.3.2 thereof, a delivery schedule for the delivery of the Consumable Water leased pursuant to the Lease Agreement, and specifies that the parties may revise the delivery schedule in the future by mutual written agreement.

1.3 The Lease Agreement contains an incorrect reference to Westminster City Charter Section 14.2.

1.4 The parties desire to increase the total amount of water that may be leased.

2. Agreement.

2.1. Paragraph 1.3 of the Lease Agreement is amended in its entirety to read as follows:

Pursuant to Section 14.3 of the Westminster City Charter, Westminster may lease water and water rights upon certain findings and conditions.

2.2 Paragraph 2 "Consumable Water Lease" of the Lease Agreement is amended in its entirety to read as follows:

Westminster will lease to Brighton for the term of this Agreement up to 260 acre-feet (AF) annually of Consumable Water from Westminster's municipal water supply system subject to the further terms and conditions of this Agreement.

2.3 Paragraph 2.2 "Amounts of Consumable Water Leased" of the Lease Agreement is amended in part to read as follows:

Thereafter, no later than October 1 of each year during the term of this lease, Brighton shall deliver to Westminster written notice of the volume of Consumable Water, up to 260 AF, it wishes to lease and have delivered for the ensuing November 1 through October 31.

2.4 Paragraph 2.3.2 "Delivery Schedule" of the Lease Agreement is amended in its entirety to read as follows:

The leased Consumable Water will be delivered in accordance with the percentage delivery schedule set forth below; provided that Brighton may, by written notice delivered to Westminster no later than 90 days prior to the beginning of the delivery period for which the revised delivery volume is to be delivered, vary the delivery for each delivery period by up to 10%; provided, however, that any increase in the delivery for one delivery period must be offset by a corresponding decrease in the delivery for a subsequent delivery period, so that the total volume of Consumable Water to be delivered does not exceed the volume of Consumable Water to be leased during the current November 1 through October 31 period as specified in the notice provided by Brighton pursuant to paragraph 2.2 above.

Delivery Period	Jan.	Feb.	Mar. 1-19	Mar. 20-Nov. 10	Nov. 11-30	Dec.
% of Annual Volume	24.03	21.70	14.73	0	15.51	24.03

Delivery shall be, as nearly as practicable, at a constant flow rate during each delivery period. The parties may revise the delivery schedule in the future by mutual written agreement. The parties' City Managers are hereby authorized to enter into said mutual written agreement.

Notwithstanding any other provisions herein, Westminster shall retain the power to limit deliveries of water in order to prevent a shortage of water to the users of domestic water within the Westminster city limits.

2.5. Paragraph 2.4 "Lease Payments" of the Lease Agreement is amended in its entirety to read as follows:

Brighton shall pay the sum of $350 per acre-foot of Consumable Water leased hereunder. The per-acre-foot lease price shall be increased, each year beginning on November 1, 2011 by the percentage increase in the Denver-Boulder CPI published by the United States. Westminster shall bill Brighton annually, in February, for that November 1 through October 31 period for leased Consumable Water provided, and Brighton shall pay Westminster the amount due within 30 days of the invoice date.

2.4 Paragraph 3.1 " Findings of Westminster City Council" of the Lease Agreement is amended in its entirety to read as follows:

This lease of Consumable Water is made pursuant to the following findings hereby entered by the Westminster City Council: In the judgment of the City Council, the terms of this Water Lease Agreement, particularly the payments received from this lease, will be sufficient to reimburse the water fund for all operation and maintenance expenses attributable to the water leased, to provide for partial payment of the outstanding water debt of the City, and to provide a return to the City for its investment in its water properties and facilities.

2.5. In all other respects, the Lease Agreement remains unchanged and as executed effective January 6, 2009.

3. Execution. This First Lease Amendment may be executed in duplicate original counterparts.

Executed as of the date first above stated.

CITY OF BRIGHTON, COLORADO

By: _____
Mayor

Attest: _____
City Clerk

CITY OF WESTMINSTER, COLORADO

By: _____
Mayor

Attest: _____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

WESTMINSTER

Agenda Item 8 L

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: RTD FasTracks Eagle P3 Project Utility Relocation Agreement

Prepared By: Andy Walsh, Senior Engineer, Utilities Planning and Engineering
Steve Grooters, Senior Projects Engineer, Utilities Planning and Engineering

Recommended City Council Action

Authorize the City Manager to execute the Utility Relocation Agreement for the Regional Transportation District FasTracks Eagle P3 Project in substantially the same form as the attached agreement and authorize the City Manager to act as the Party Representative for utility relocations during construction of the Northwest Electrified Segment.

Summary Statement

- The City of Westminster is working with the Regional Transportation District (RTD) to develop a portion of the FasTracks Eagle P3 project known as the Northwest Electrified Segment.
- The Northwest Electrified Segment runs adjacent to the southern portion of the City, between Zuni Street and Lowell Boulevard and is aligned within the Burlington Northern Railroad right-of-way.
- A map is attached showing the project location and areas of the City impacted by anticipated construction.
- City-owned water and sanitary sewer utilities located in the path of the project may require realignment, extension or improvements due to impacts from the project construction.
- The Utilities Planning and Engineering Division and the City Attorney's Office worked with RTD staff to develop a two-party Utility Relocation Agreement (URA). This agreement outlines procedures to follow when utility conflicts are identified. In addition, the agreement provides for the timelines, cost apportionment and responsibilities associated with utility relocation work.
- The URA does not commit funding by either the City or RTD. City funding required for utility relocation activities (if any) is determined on a case-by-case basis as part of the processes outlined in the URA.
- Resolutions and funding requirements associated with utility conflicts remain subject to budgeting, authorization and appropriation processes by the City.
- All utility relocations will be subject to City approval through design reviews, approvals and inspections.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

Should City Council authorize the City Manager to enter into a URA with the Regional Transportation District and authorize the City Manager to act as the Party Representative for utility relocations during construction of the Northwest Electrified Segment?

Alternatives

1. City Council could choose to decline entering into a URA with RTD. This alternative is not recommended as such agreements are required for all project stakeholders according to procedures set up for the project by RTD.

2. City Council could choose to authorize Staff to develop a revised URA. However, the agreement has been reviewed by Staff and is consistent with the City's goals and expectations for the project.

Background Information

A multimodal public transportation expansion plan, known as the FasTracks Eagle P3 Project, was adopted by the Regional Transportation District's (RTD's) Board of Directors and approved by voters on November, 2, 2004. This plan was also approved by the Denver Regional Council of Governments. The plan includes expanding public transportation and light rail services throughout the Denver Metro area. The City of Westminster (City) is working with RTD to develop portions of the Eagle P3 project known as the Northwest Electrified Segment (NWES) and Goldline Segment. A portion of the NWES segment is aligned near the City generally between Zuni Street and Lowell Boulevard within the Burlington Northern Railroad right-of-way (please refer to the attached vicinity map). A portion of the Goldline segment is aligned south of the City, generally between Tennyson Street and Lowell Boulevard and within the Union Pacific Railroad right-of-way. City-owned water and sanitary sewer utilities are located in the path of these project segments, some of which require utility relocations due to conflicts with proposed improvements.

To promote the success of the project, RTD has been working with the City to establish procedures to follow when utility conflicts are identified. This agreement is known as the Utilities Relocation Agreement (URA) and is a master agreement that establishes procedures required for implementing utility relocations necessitated by the project. The Utilities Planning and Engineering Division and the City Attorney's Office worked with RTD staff to develop the two-party URA. The agreement has been reviewed by the City Attorney and is consistent with the City's goals and expectations for the project.

Specific procedures have been established within the URA including:

- How utility conflicts are documented.
- How information is conveyed regarding the scope of the work required, cost implications, and utility relocation schedule required.
- Who is responsible for the design and construction of utility relocation work.
- The procedures required by the City for design review, funding and budgeting approvals, and inspections.
- The process for determining roles and responsibilities for the cost (if any) of utility relocations. However, it is important to note that the URA itself does not commit funding by either the City or RTD.
- Furthermore, the URA is subject to budgeting, authorization and appropriation processes, as applicable.

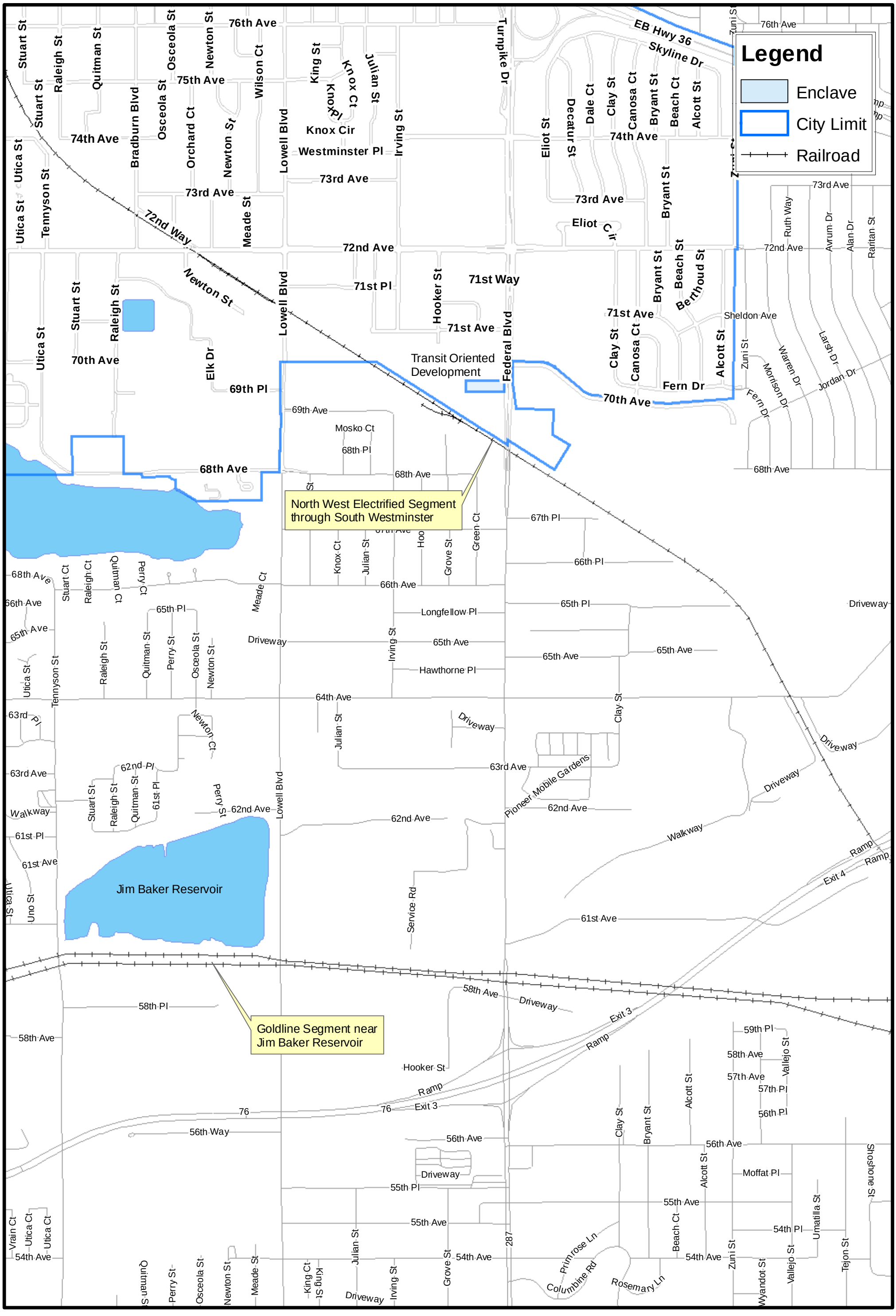
The URA is one of four agreements that the City is preparing with RTD and Adams County staff as part of the Northwest Electrified Segment and Gold Line projects. The other agreements include: 1) Intergovernmental Agreement for the South Westminster Station; 2) Local match (City/RTD Intergovernmental Agreement; and, 3) an agreement with Adams County on the local match percentage share of the Northwest Electrified Segment.

Executing the Utility Relocation Agreement will facilitate the Eagle P3 project and assist the City in meeting City Council's Strategic Plan goals of providing a "Safe and Secure Community" and "Vibrant Neighborhoods In One Livable Community." Resolving utility conflicts will allow residents to receive more reliable water and sewer services with reduced risk of system failures.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Vicinity Map of the Eagle P3 Project Area
RTD Eagle Project – Utility Relocation Agreement for the Westminster Work



Vicinity Map of the Eagle P3 Project

RTD EAGLE PROJECT
UTILITY RELOCATION AGREEMENT

This UTILITY RELOCATION AGREEMENT ("URA") is made and entered into, effective as of last date of both Parties' authorized signatures, by and between the Regional Transportation District, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, *et seq.*, ("RTD" or "District") and the City of Westminster, a home rule municipality in the State of Colorado organized pursuant to Article XX of the Colorado Constitution ("Owner"). RTD and Owner may hereinafter be referred to collectively as "Parties" or individually as "Party."

RECITALS

WHEREAS, RTD is authorized under C.R.S. § 32-9-101, *et seq.* to develop, maintain and operate a mass transportation system for the benefit of the inhabitants of the district;

WHEREAS, under C.R.S. § 32-9-119(e) RTD is authorized to enter into any contract or agreement not inconsistent with its enabling act;

WHEREAS, RTD is authorized to implement a multimodal public transportation expansion plan ("FasTracks Plan") that was adopted by the RTD Board of Directors ("Board"), approved by voters on November 2, 2004, and approved by the Denver Regional Council of Governments, as per the requirements of C.R.S. § 32-9-107.7;

WHEREAS, RTD proposes to construct certain of the projects identified in the FasTracks Plan as one project, as more particularly described hereinafter as the Eagle Project, which will require certain utility relocation work;

WHEREAS, increased coordination between RTD and Owner and prompt performance of such utility relocation work within an adopted plan schedule is in the public interest and will reduce delays and costs of construction for both RTD and Owner;

WHEREAS, to accomplish that purpose, RTD and Owner now desire to enter into this URA, which is one of the fixed guideway corridor utility relocation agreements contemplated by C.R.S. § 32-9-119.1 and which provides for the scheduling and timely performance of the Eagle Project construction and utility relocation work necessitated by construction of the Eagle Project; and

WHEREAS, this URA does not commit any present funding by either Party and is subject to future budgeting, authorization and appropriation processes, as applicable, and is to be implemented through a work-order process.

NOW THEREFORE, the Parties hereto agree as follows:

AGREEMENTS

1) DEFINITIONS. Unless the context otherwise requires, initially capitalized terms shall have the following meanings when used in this URA and any exhibits attached hereto:

Abandonment means (i) the relinquishment by Owner of all right, title, claim and possession of a Utility and (ii) the Utility Work, as governed by Owner, RTD, and industry procedures, that is necessary to retire a Utility from service but not physically remove the Utility from its installed location.

Betterment means the upgrading (e.g., increase in capacity) of a Utility that is not attributable to construction of the Eagle Project and is made solely for the benefit of and at the election of Owner (not including a technological improvement which is able to achieve such upgrade at costs equal to or less than the costs of a "like-for-like" replacement or Relocation). The use of new materials or compliance with Owner's Relocation Standards in the performance of Relocation is not considered a Betterment.

Constructing Party means the Party designated on the Work Order as being responsible for construction of a Relocation.

Contractor(s) means the contractors, consultants, and subcontractors, whether hired by RTD or Owner, undertaking the design or construction of a Relocation, including the RTD Project Contractor(s).

Cost of Relocation means the entire amount to be paid for Utility Work that is properly attributable to the Relocation after deducting from that amount the cost of any Incidental Utility Work, Betterments, Excluded Environmental Work, Depreciation Value, and/or Salvage Value, as applicable.

Depreciation Value means the amount of credit to a Project required for the accrued depreciation of a Utility based upon the ratio between the period of actual length of service and total life expectancy applied to the original cost. For the purposes of Depreciation Value, "Utility" shall not be construed to include a segment of Owner's service, distribution and/or transmission lines.

Designing Party means the Party designated on the Work Order as being responsible for design of Relocation.

Discovery has the meaning prescribed to it in C.R.S. § 32-9-103. Any verbal communication of a Discovery shall be followed by written notice.

Documentary Evidence means all documentation, including without limitation, photographs, maps, or Owner's records, showing installation, maintenance or operation of facilities by Owner or its predecessors in interest that is provided by Owner to support Owner claims of rights by prescription, adverse possession or other legal theory established by use.

Environmental Laws means all federal, state, county, municipal, local and other statutes, laws, ordinances, and regulations that relate to or deal with human health and

the environment, as may be amended from time to time, and which govern handling of materials necessary for or generated by Utility Work and/or mandate removal of materials as a result of conditions discovered at the Utility site.

Environmental Work means tasks, duties and obligations necessary to comply with Environmental Laws.

Excluded Environmental Work has the meaning prescribed to it in Article 7(d)(iii).

Force Majeure means fire; explosion; action of the elements; strike; interruption of transportation; rationing; shortage of labor, equipment or materials; court action; illegality; unusually severe weather; act of God; act of war; terrorism; or any other cause that is beyond the control of the Party performing Utility Work on a Relocation (including the failure of the other Party (including its Contractors), a relevant permitting authority, or any other third-party contractor, to perform any task that is prerequisite to the Party claiming *Force Majeure* timely performing under this URA) so long as that cause could not have been prevented by that Party while exercising reasonable diligence.

Hazardous Materials means petroleum products and fractions thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls, medical waste, radioactive materials, solid waste, and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, substances and wastes listed or identified in, or regulated by all applicable Environmental Laws, and any excavated soil, debris, or groundwater that is contaminated with such materials.

Incidental Utility Work means tasks performed by any Party that (i) are duplicative of Utility Work undertaken by the Designing or Constructing Party's Contractors (such as design review where the Designing Party's Contractor has created the design), including without limitation, each of the items referenced in (ii); or (ii) are staff or consultant time expended on: exchange and review of documentation with respect to identifying Utilities or unidentified utilities; meetings, whether internal or with the other Party or other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts or other affected third parties; procurement of and coordination with Contractors; coordination and interfacing of Owner's Relocation schedule with the Eagle Project design and construction schedules; cooperation with one another's staff or Contractors or with other Eagle Project stakeholders (including other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts); preparation, negotiation and execution of Work Orders and Work Order exhibits; review of legal descriptions; review and acceptance of Relocation Plans; and construction inspection and acceptance.

Operating Rights Agreement means any license, permit, lease, easement, franchise or other use agreement issued by a party having jurisdiction over or ownership of the location in question and pursuant to which Owner operates its facilities in real property not owned in fee by Owner.

Permission means any permission, including without limitation, temporary construction permissions, construction permits, regulatory permission, and/or local agency

utility permit that may be necessary to construct, operate, and maintain Owner's utility facilities, including any appurtenances thereto, in any particular location.

Project means any one of the East Corridor, the Gold Line, the Northwest Rail electrified segment between Denver Union Station and 71st Avenue, and the Commuter Rail Maintenance Facility, which may be collectively referred to herein as "Eagle Project". Each Project is deemed to include, without limitation, the fixed guideway, transit stations, parking facilities, vehicle maintenance facilities, and certain system-wide improvements necessary for operation of each of the Projects.

Project Plans means the detailed maps, drawings, plans, and profiles of a Project.

Project Right-of-Way or *Project ROW* means real property (which term is inclusive of all estates and interests in real property, including Public Lands but exclusive of temporary construction permissions) owned or controlled by RTD that is necessary for operation of the Eagle Project after the Eagle Project has been constructed.

Project Site means the land, spaces and surfaces, including the Project ROW and any temporary construction easements, that are necessary for construction of a Project.

Protection in Place or *Protect in Place* means activity necessary to ensure the safe operation and structural integrity of a Utility that will not be removed or transferred to another location, including without limitation, modification of location (such as lowering the Utility); construction staking of the Utility location during Project or Project-related construction; adjustment of Relocation Plans to avoid exposing a Utility to construction equipment; installing steel plating or concrete slabs; encasement of the Utility; temporarily de-energizing power lines; or installing physical barriers.

Public Lands means, solely for purposes of this URA, real property dedicated to or created as public right-of-way.

Relocate or Relocation means the adjustment of a Utility that is necessary for the continuous operation of Utility service, Project economy, sequencing of Eagle Project construction, or to bring the Utility into compatibility with the implementation of the Eagle Project, including without limitation: Removal and reinstallation, including necessary temporary facilities; transfer or modification of location; acquiring necessary right-of-way at a new location; moving, rearranging, or changing the type of Utility (exclusive of Betterments); Abandonment; Protection-In-Place; and construction of a replacement utility that is functionally equivalent.

Relocation Plans means the preliminary and final Utility Relocation design plans and construction documents. Relocation Plans shall comply with the Relocation Standards and with the terms of this URA.

Relocation Standards means the written standards, procedures, and criteria utilized by Owner and RTD for the design and construction practices used to Relocate a Utility.

Removal means the removal of Utility materials, including the demolishing, dismantling, removing, transporting, or otherwise disposing of Utility materials and cleaning up to leave the Relocation site in a neat and presentable condition, all in accordance with federal, state, and local law.

Responsible Party means the Party responsible for the Cost of Relocation.

RTD Project Contractor means Denver Transit Partners, LLC, the organization hired by RTD to perform the final design and construction of the Eagle Project.

Salvage Value means the amount received from the sale of Utility material that has been removed or the amount at which the recovered material is charged to Owner's accounts if retained by Owner for use, in accordance with 23 C.F.R. 645.

Station IGA means the Northwest Rail Electrified Segment South Westminster Station Intergovernmental Agreement to be entered into between RTD and Owner governing the rights and responsibilities of each of the Parties in implementing the Northwest Rail Electrified Segment South Westminster Station.

Utility or Utilities means a facility or facilities, including necessary appurtenances, owned and/or operated by Owner that has been identified as potentially posing a conflict with the implementation of the Eagle Project. Utility shall also refer to any such facility during and after Relocation.

Utility Work means tasks, obligations and duties, exclusive of Incidental Utility Work and Excluded Environmental Work, required to either accomplish Relocation or confirm that no Relocation is required for a Utility, whether performed by RTD or Owner, including:

a) design of the Relocation, including the creation of Relocation Plans;

b) construction of the Relocation, including labor, materials and equipment procurement, temporary Relocation, and Relocation of existing service lines connecting to any Utility, regardless of the ownership of such service lines or of the property served by such service lines; and

c) activities undertaken to effectuate the Relocation, hereinafter collectively referred to as "Utility Coordination," including without limitation:

i) verification by survey, potholing or otherwise that a Utility is, or is not, in conflict with the Eagle Project;

ii) provision of survey coordinate data, field surveys, and construction staking in the field for the construction of a Relocation;

iii) acquisition of Permissions and property interests;

iv) public information;

v) traffic control;

vi) resurfacing and restriping of streets and reconstruction of curb and gutter and sidewalks as may be required by any relevant authority;

vii) development of and delivery to the non-Constructing Party of as-builts (or, in the alternative, drawings marked to show changes in the field) showing each Relocation; and

viii) activities performed to ensure and document that Utility Work is in accord with Relocation Plans, including, without limitation, materials handling; construction procedures; calibrations and maintenance of equipment; document control; production process control; and any sampling, testing, and inspection done for these purposes (collectively, "Quality Control").

Work Order means the document under which all Relocations shall be implemented and the Responsible Party designated, in accordance with Article 10.

Working Day means any day that is not a Friday, Saturday or Sunday or other day on which commercial banks in Denver are authorized or required by law to remain closed.

2) LIST OF EXHIBITS. The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A	Form of No-Conflict Close-Out Form
Exhibit B	Form of Work Order
Exhibit C	Form of Design of Relocation Acceptance Letter
Exhibit D	Form of Construction of Relocation Acceptance Letter
Exhibit E	Form of Invoice

3) SCOPE OF AGREEMENT.

a) This URA is a master agreement that establishes a general framework for the scheduling and timely performance of Relocations necessitated by implementation of the Eagle Project and prescribes the process for determining, among other things, the Party responsible for the Cost of Relocation.

b) This URA does not commit funding by either Party nor bind any Party to responsibility for the cost or performance of any Relocation. Each Relocation for the Eagle Project will be implemented by a Work Order to be negotiated and agreed by the Parties and which shall serve as the documentation binding the Parties as to responsibility for Cost of Relocation and performance of Utility Work. Until a Work Order is executed by a Party, that Party is not bound with respect to any matters represented therein, including responsibility for cost or performance of any Utility Work.

c) A Work Order, which shall not be inconsistent with this URA, shall be issued for each Relocation and will identify, among other things, the Parties, the applicable corridor of the Eagle Project, the Utility (by Project-specific identification number and general description) and the Relocation schedule.

4) FEDERAL/STATE/LOCAL REQUIREMENTS.

a) Notwithstanding any provision of this URA that may be to the contrary, all Relocation Plans, Relocation Standards, Cost of Relocation estimates, and billings for Relocation for which RTD is the Responsible Party shall comply with the requirements of 23 C.F.R. 645, as may hereafter be amended, which is incorporated herein by this reference. This URA is subject to and the Parties agree to comply with C.R.S. § 32-9-119.1.

b) The Parties shall at all times in the performance of Utility Work, Incidental Utility Work and Excluded Environmental Work strictly adhere to, and comply with, all other applicable federal and state and local laws and their implementing regulations as each currently exists and may hereafter be amended.

c) The Parties shall require such compliance with all applicable laws, regulations and requirements in all Contractor agreements governing performance of Relocations under this URA.

d) Each Party shall contractually require its Contractors to coordinate and cooperate with the other Party and with other Contractors involved in Utility Work and Incidental Utility Work.

5) COORDINATION AND COOPERATION

a) The Parties each agree to coordinate and cooperate with one another and with their respective Contractors in order to ensure that Utility Work, Incidental Utility Work, and any Excluded Environmental Work are performed promptly, and in close coordination with the Eagle Project implementation.

b) The Parties shall coordinate and cooperate with one another and with the RTD Project Contractor to complete the Relocation of utilities. Owner acknowledges that, except as specifically provided in this URA, RTD has contractually delegated RTD's obligations under this URA to the RTD Project Contractor; however, RTD's delegation to the RTD Project Contractor shall not relieve RTD of its duties under this URA or under any statute. RTD has not delegated and shall not delegate to the RTD Project Contractor the acquisition of replacement real property interests described in Article 8 of this URA, or the collection from or payments to Owner, as applicable.

c) The RTD Project Contractor is an express, intended third-party beneficiary to this URA. Other than the RTD Project Contractor, there are no third-party beneficiaries.

6) IDENTIFICATION OF UTILITIES.

a) RTD shall provide Owner with the Project Plans in electronic format at the conclusion of preliminary engineering, conclusion of final design, and at such other times that RTD receives a formal design submittal from the RTD Project Contractor. In addition,

RTD shall provide Owner, in hard-copy format, those portions of the Project Plans that show the location of Owner's Utilities. RTD shall provide Owner with written notice of Owner's affected Utilities for each Project in accordance with C.R.S § 32-9-119.1.

b) RTD, in coordination and cooperation with Owner, shall identify and track the Relocation status of Owner's Utilities on a Utility matrix ("Utility Matrix"). Utility Matrices shall be updated by RTD as Utilities are identified and Relocated and will reflect changes, clarifications, corrections or developments with respect to each Utility's conflict status. Updated Owner-specific Utility Matrices will be provided to Owner upon request. RTD and Owner shall meet regularly to verify whether, based upon then-current Project Plans, a Utility requires Relocation. If at any time a Utility Matrix provided to Owner fails to identify Owner utilities that Owner knows or should reasonably know may be in conflict with a Project, Owner shall notify RTD of such unidentified Owner utility and provide all documentation with respect thereto, and the Owner utility will be added to the Utility Matrix.

c) Any Discovery shall be handled in accordance with C.R.S. § 32-9-119.1.

d) Owner and RTD will meet to confirm the conflict status of each of Owner's Utilities, which determination will be made by reference to the Relocation Standards. The Relocation Standards of each Party shall be utilized in determining whether a Utility is in conflict with the Eagle Project and the Relocation Standards in effect as of the execution date of the Work Order shall govern the Relocation covered by that Work Order and shall be either attached to the Work Order or incorporated therein by reference. The Relocation Standards of Owner shall govern in cases where a Utility is located outside of the Project ROW whereas a Utility to be Relocated into, within, or out of Project ROW shall meet the Relocation Standards of both Parties.

e) If a Utility is confirmed to be in conflict with the Eagle Project, RTD and Owner shall coordinate to determine the nature of the Relocation required based upon the Relocation Standards, and RTD shall update the Utility Matrix to reflect the recommended action and issue a Work Order. If RTD, the RTD Project Contractor and Owner each agree that a Utility is not in conflict with the Eagle Project, the RTD Project Contractor and Owner shall execute a document for each such Utility affirming that the Utility is not in conflict ("No Conflict Close-Out Form"), the form of which is attached as Exhibit A. If for any reason a Utility previously confirmed as not being conflict with the Eagle Project (as evidenced by a fully executed No Conflict Close-Out Form) is subsequently determined to be in conflict with the Eagle Project, the Parties agree to enter into Work Order negotiations to relocate the Utility as soon as is reasonably possible.

f) Populated Utility Matrices are informational documents utilized for RTD's Utility tracking purposes only. Information contained in the Utility Matrix is non-binding until reflected on either an executed No-Conflict Close-Out Form or on an executed, mutually-agreed Work Order, which, in conjunction with the URA, serves as the binding documentation governing a Utility's Relocation status. All information contained in the Utility Matrix is subject to RTD's receipt and review of documentation related to the Utilities. In addition, this URA is entered without prejudice to any aspect of any applicable environmental clearance process. All Project elements, including corridor alignments, station locations and right-of-way plans are subject to receipt of the environmental decision documents and any mitigation measures specified therein.

7) COST OF RELOCATION.

a) Once a Utility is confirmed to be in conflict with the Eagle Project, the Parties shall, as soon as is reasonably possible and to the extent they have not already done so, exchange all documentation, including Operating Rights Agreements and/or Documentary Evidence, governing the location in question in order to determine the responsibility for the Cost of Relocation. If Owner submits Documentary Evidence to RTD, RTD shall have the right to utilize and have considered any additional documentation with respect to the claim that it obtains or has in its possession. The Parties shall mutually agree as to the nature of Owner's rights or, failing such agreement, shall treat the claim as a Dispute under Article 19.

b) The Cost of Relocation shall be borne by RTD except in the following circumstances:

i) where the Utility is located in Project ROW or other RTD property pursuant to an Operating Rights Agreement held by, acquired by, or assigned to RTD that is revocable and/or requires Owner to pay the Cost of Relocation;

ii) where the Utility is located in Project ROW or other RTD property but Owner can provide no Operating Rights Agreement or competent Documentary Evidence of its right to operate Utilities in the location in question;

iii) where the Utility is located in property not owned by Owner pursuant to an Operating Rights Agreement that requires Owner to relocate at Owner's cost and the holder of such Operating Rights Agreement exercises its rights under said agreement; or

iv) where federal, state or local law requires that Owner pay the Cost of Relocation.

c) Notwithstanding anything in this URA which may be interpreted to the contrary, if a Relocation of a Utility is required based upon information, surveys, plans or other information which is provided by a Party and the information is incorrect or revised causing additional Relocations of the same Utility (or any part thereof), the Cost of Relocation for the second and each subsequent Relocation will be paid by the Party that provided the incorrect information or caused the revisions necessitating the subsequent Relocation.

d) Environmental Work.

i) If Hazardous Materials contamination unrelated to Owner's utility facilities is discovered on the Project Site by the Constructing Party, the Constructing Party shall promptly notify the other Party of such Hazardous Materials contamination and shall cease all construction of Relocation at the location in question until such time as Environmental Work at that location has been completed. Owner shall not be responsible to conduct or pay the costs of Environmental Work, except as specifically prescribed in this Article 7(d).

ii) The previous paragraph notwithstanding, the Responsible Party is responsible for the cost of, and the Constructing Party shall perform, any Environmental Work necessitated by the removal of intact Owner Utility infrastructure that contains or is comprised of Hazardous Materials.

iii) In addition, to the extent that any Environmental Work is required to remediate Hazardous Materials contamination caused by (A) the construction, operation, or maintenance of Owner's Utility in its existing location and/or (B) negligent or willful acts or omissions of Owner or its Contractors in constructing the Relocation ("Excluded Environmental Work"), Owner shall be responsible for the costs of all such Excluded Environmental Work and may be required to undertake such Excluded Environmental Work.

iv) All costs for Environmental Work and/or Excluded Environmental Work and the identity of the Party or Parties responsible for the performance and/or payment therefor shall be included in the applicable Work Order by Work Order revision.

v) RTD shall extend the deadline for completion of Relocations affected by Hazardous Materials contamination while Environmental Work and/or any Excluded Environmental Work described in Article 7(d)(iii)(A) is undertaken. The Constructing Party shall make reasonable efforts to redistribute its Relocation crews to other Relocation sites while unable to perform at any contaminated location.

e) Credits

i) If RTD seeks Depreciation Value credit pursuant to 23 C.F.R. 645 for a Utility Relocation for which RTD is the Responsible Party, Owner shall furnish all evidence that it possesses of the period of actual length of service and total life expectancy of the Utility as well as all evidence that it possesses of the original cost to install the Utility. Based upon the submitted evidence, the Cost of Relocation shown on any Work Order shall reflect the Depreciation Value credit due.

ii) Owner shall furnish RTD with evidence of any Salvage Value received for a Utility Relocation for which RTD is the Responsible Party, as required by 23 C.F.R. 645. Based upon the submitted evidence, the Cost of Relocation shown on the Work Order shall reflect the Salvage Value credit due. Where RTD is also the Constructing Party, salvageable Utility property or material removed during Relocation that is not reused shall become the property of RTD, unless otherwise noted in the Work Order.

f) Where possible, the Cost of Relocation shall be negotiated on a "lump-sum" rather than on an "actual cost" basis. However, no lump-sum arrangement will be entered into for any Relocation if such arrangement would preclude federal reimbursement pursuant to 23 CFR 645. If the Cost of Relocation is negotiated on a lump-sum basis, each Party's financial obligation (if any) for the Relocation shall be limited to the lump-sum amount expressly stated and itemized in the Work Order issued for that Relocation. If the Cost of Relocation is negotiated on an actual cost basis, the amount shown on the Work Order shall be an estimated cost, which estimate shall not be exceeded without written amendment of the Work Order. Responsibility for the Cost of Relocation shall not bind the Responsible Party until the Work Order is executed by the Responsible Party. Reimbursement, as necessary, is governed by Article 16.

g) Neither Party shall be reimbursed for costs incurred or time expended in performing Incidental Utility Work.

8) REAL PROPERTY INTERESTS.

a) Utilities Located Pursuant to an Operating Rights Agreement

Any Owner Utilities currently located or anticipated to be located in Project ROW or other RTD property shall be permitted only by an RTD Operating Rights Agreement, which Owner and RTD shall have executed prior to commencement of construction of Relocation. If Owner currently holds an Operating Rights Agreement for Owner's facilities in Project ROW or other RTD property, the terms and conditions of that Operating Rights Agreement, as may be amended by mutual agreement of the parties thereto, shall continue to govern Owner's facilities at that location, unless that Operating Rights Agreement is terminated. RTD reserves the right to convert any Operating Rights Agreement assigned to it in connection with the conveyance of Project ROW or RTD property into an RTD Operating Rights Agreement, provided that both RTD and Owner shall enjoy substantially the same rights and obligations contained in the assigned Operating Rights Agreement.

b) Permission to Perform Utility Work

i) Owner shall not install any new facilities in Project ROW or RTD property without first obtaining an RTD Operating Rights Agreement. Owner may not Abandon Utilities within Project ROW or other RTD property without RTD's consent, as evidenced by RTD's signature on the Work Order.

ii) If Owner's Utilities are located in Project ROW or other RTD property pursuant to an effective Operating Rights Agreement, Owner's Relocation and permission to enter upon the Project ROW or RTD property to undertake Relocation shall be governed by, and in accordance with, the terms of such Operating Rights Agreement.

iii) If Owner's Utilities are located in Project ROW or other RTD property without an effective Operating Rights Agreement, Owner shall not commence construction of Relocation on Project ROW or other RTD property without first obtaining an RTD Operating Rights Agreement from RTD.

iv) Notwithstanding (i) through (iii), above, RTD's signature on a Work Order shall constitute permission for Owner and its employees, agents, and Contractors to enter upon Project ROW or other RTD property for the sole purpose of performing activities necessary to design the Relocation, including without limitation, surveying and potholing, but excluding boring, sampling or other testing, all subject to each of the terms and conditions contained in this URA. Permission for Owner or its Contractors to traverse the property of any other property owners or interest-holders is the sole responsibility of Owner.

c) Property Acquisition and Reimbursement

i) Where reasonably possible, Utilities located within Public Lands shall be Protected-in-Place. Where a Utility is located in Public Lands and must be Relocated out of Public Lands, the Parties shall initially attempt to Relocate into Public Lands. If the Parties cannot so Relocate, the Parties shall meet to determine a suitable Relocation location and a schedule and plan to acquire any property interests necessary for the Utility's Relocation. The Party responsible to acquire Utility property interests shall be identified on the Work Order. Regardless of who performs acquisition of replacement property, both Parties shall have the right to examine and approve the property acquisition transaction contemplated for the new Utility location in order to confirm that a 'like-for-like' replacement of property

interests is to be acquired. Subject to the Station IGA, all property acquisition costs are Utility Work Costs of Relocation and shall, therefore, be borne by the Responsible Party. Property interests necessary for any Relocation must be obtained prior to commencement of construction of Relocation.

ii) If Owner's Utility occupies real property pursuant to fee interest held by Owner as evidenced by documentary proof provided to and approved by RTD ("Owner Property") and RTD requires Owner Property for Project ROW or Eagle Project construction, the Parties shall, whenever reasonably possible, attempt to Protect the Utility in Place so that it will not be in conflict with the Eagle Project. However, if the Parties cannot Protect the Utility in Place, replacement property interests shall be acquired in accordance with Article 8(c)(i) hereof. Once the Utility has been Relocated into a new location and is in service, Owner shall convey to RTD the Owner Property that is required for the Eagle Project. Subject to Article 8(c)(i) of this URA, RTD shall either reimburse Owner for the cost of the Owner Property conveyed to RTD or shall pay the costs to acquire replacement property interests for Owner.

iii) If Owner's Utility occupies real property pursuant to a permanent easement (including proven prescriptive rights) held by Owner as evidenced by documentary proof provided to and approved by RTD ("Owner Easement") and RTD requires the Owner Easement for Project ROW or Eagle Project construction, the Parties shall, whenever reasonably possible, attempt to Protect the Utility in Place so that it will not be in conflict with the Eagle Project. However, if the Parties cannot Protect the Utility in Place, replacement property interests shall be acquired in accordance with Article 8(c)(i) hereof. Once the Utility has been Relocated into a new location and is in service, Owner shall deed, assign, vacate, abandon or release the Owner Easement, as applicable, and, subject to Article 8(c)(i) of this URA, RTD shall pay the cost of the replacement property interests, provided that RTD shall be entitled to offset the cost of replacement property interests or the Cost of Relocation by the amount that Owner receives as compensation from any source for the transfer of rights in the Owner Easement. If RTD has paid the cost of acquisition of replacement property interests and has paid the Cost of Relocation, Owner shall be required to pay to RTD any compensation received from any source other than RTD for the transfer of rights in the Owner Easement.

iv) This URA is not intended to waive Owner's rights to be paid just compensation in the event that RTD should require Owner Property or Owner Easement for the Eagle Project. If no agreement is reached with respect to any particular Owner Property or Owner Easement needed for the Eagle Project, RTD may bring an action to condemn if permitted by, and in accordance with, applicable law, and Owner retains its rights to bring an action for inverse condemnation.

v) If necessary, Work Orders shall be revised to reflect the impact of property acquisition to the construction completion date shown on the Work Order. All real property acquired for the Eagle Project by RTD, including for Utility Relocations, must be and shall be acquired pursuant to the Uniform Acquisition and Relocation Act, 42 U.S.C.A. §4601 and applicable right-of-way procedures in 23 C.F.R. 710.203.

9) PERMISSIONS. Owner shall obtain all Permissions for which Owner is required to be the named permittee. The Constructing Party shall obtain all other Permissions. The Parties

agree to cooperate with one another in obtaining any Permission and to exchange copies promptly after obtaining any Permission.

10) WORK ORDER PROCESS. Relocations required by a Project shall be undertaken pursuant to a Work Order ("Work Order"), the form of which is attached as Exhibit B. Once a Utility is confirmed to require Relocation and the Parties have agreed upon the Work Order content, the Parties shall negotiate and execute a Work Order. The Work Order shall be executed first by Owner, then by the RTD Project Contractor and finally by RTD. Work Orders shall not be binding upon any Party until executed by that Party.

a) Work Order Content. Work Orders shall identify: the existing and proposed location of the Utility; concise description of Owner's property interests or Operating Rights Agreements where currently located; the agreed Relocation and detailed scope of work; the Designing Party; the Constructing Party; the Responsible Party; whether reimbursement, if any, is to be made on a lump sum or actual cost basis; the negotiated lump-sum or actual not-to-exceed Cost of Relocation, inclusive of any estimated Depreciation Value and Salvage Value credits and less the cost of any Betterments and/or Excluded Environmental Work; an indication of whether replacement property interests are required for Relocation and the Party responsible for acquisition thereof; the estimated actual not-to-exceed cost, if any, to acquire replacement property interests; the schedule for commencement and completion of both design and construction of the Relocation; the most-current RTD Project Plans at the Utility location; the Relocation Standards in effect as of the date of the Work Order that are applicable to the Relocation (hard copy or reference); and any other terms and conditions applicable to the Relocation, such as any approved service interruptions or negotiated Betterments and payment arrangements therefor, (collectively, "Work Order Content"). The non-Designing Party shall be solely responsible to provide (hard-copy, electronically, or by reference) the Relocation Standards that it requires the Designing Party to apply to the Relocation covered in the Work Order. If Relocation Standards are not so provided, the Designing Party shall not be responsible for the cost of any corrective Utility Work. The construction completion date identified on any fully executed Work Order shall supersede the time limits identified in any written notice previously delivered to Owner by RTD in accordance with C.R.S. § 32-9-119.1.

b) Service Continuity. There shall be no shutdowns or temporary diversions of Owner's Utilities unless agreed by Owner and evidenced in detail on the Work Order. Owner shall have sole responsibility to operate any valves and/or switches, as applicable, unless Owner requests otherwise in writing. Owner's Utilities shall otherwise remain fully operational during all phases of Eagle Project construction. Except where due to *Force Majeure*, and without waiving any claims under applicable law that the Constructing Party may have against the Designing Party, the Constructing Party shall be responsible for the actual documented costs and damages incurred by Owner arising out of any unapproved interruption in Owner's Utility service resulting from performance of Utility Work or Eagle Project construction.

c) Work Order Preparation. To the extent such documentation has not previously been exchanged, RTD and Owner shall coordinate the exchange of all information necessary for preparation of the Work Orders and shall promptly meet to resolve through good faith negotiation any comments or disagreements with respect to Work Order Content. If the Parties cannot reach agreement on the Work Order Content, the Work

Order shall be handled as a Dispute in accordance with Article 19. Once the Parties have reached agreement on the Work Order Content, the Work Order shall be prepared by RTD for execution by the RTD Project Contractor and the Parties. Work Orders may be delivered by e-mail, facsimile, hand delivery, or by certified or registered first class mail. Owner shall respond within 14 calendar days after receipt of the Work Order either by executing the Work Order or providing comments.

d) Work Order Conclusive. Once a Work Order is fully executed, that Work Order shall be conclusive as to all matters represented therein. Any material change to the Work Order scope of work and any change that will result in an increase in the time necessary to complete a Relocation or an increase to the Cost of Relocation above the amount authorized on the Work Order must be shown on a revised duly executed Work Order. Executed Work Orders, as they may be revised from time to time, are incorporated into this URA by this reference.

11) BETTERMENT.

a) If Owner requests a Betterment, RTD will determine, in its sole discretion, whether Betterment work at any specific location can be accommodated based upon the following considerations: (i) whether the work is compatible with the Eagle Project work; (ii) whether the work would delay the Eagle Project schedule; and (iii) if RTD is the Responsible Party, whether it is feasible to separate the Betterment work from any related Utility Work being performed by the Constructing Party.

b) If RTD agrees to include a Betterment at any specific location and RTD is either the Constructing Party, Responsible Party or both, Owner, the RTD Project Contractor, and RTD shall negotiate the price (lump-sum or actual cost) for said Betterment and shall include the cost and terms of the Betterment in a Work Order. All Betterment work, including the cost to RTD for incremental design, shall be at Owner's sole cost.

c) Where RTD is the Designing or Constructing Party, upon execution of the Work Order, Owner shall deposit the total price of the Betterment work with RTD. Payment for Betterment work shall not be subject to setoff. If the negotiated price is on an actual cost basis, RTD shall notify Owner whenever the cost of such Betterment work reaches 80% of the negotiated price specified for the Betterment on the Work Order. If the actual costs exceed the negotiated price specified for the Betterment on the Work Order, the Contractor will not proceed unless the increased cost is agreed by Owner on a revised Work Order and paid by Owner to RTD prior to progressing with the work.

12) DESIGN AND REVIEW OF RELOCATION PLANS. Completed Relocation Plans shall be submitted to the non-Designing Party for review, who shall review the Relocation Plans solely for conformance with the URA and with the Relocation Standards provided by the non-Designing Party. Approval or rejection of Relocation Plans shall be returned to the Designing Party by no later than 14 calendar days after its submission, unless a different time period is expressly provided in the respective Work Order. The non-Designing Party's approval of Relocation Plans shall be evidenced by an executed design of relocation acceptance letter ("DRAL"), the form of which is attached as Exhibit C. All DRALs shall be prepared by RTD for execution by the non-Designing Party. Rejection of Relocation Plans shall be made in writing and shall specify the grounds for rejection as well as suggestions for correcting non-conformance. Upon revision by the Designing Party, The revised

Relocation Plans shall be re-reviewed and either approved or rejected not later than 7 calendar days after re-submission to the non-Designing Party. The RTD Project Contractor shall execute DRALs for RTD.

13) CONSTRUCTION OF RELOCATION; INSPECTIONS.

a) After execution of the DRAL, the Constructing Party shall determine whether all Permissions have been obtained and, if necessary, take steps to obtain any Permission that has not been obtained. The Constructing Party shall provide notice to the other Party of its anticipated construction of Relocation commencement date.

b) Completed construction of Relocation shall be inspected by RTD and Owner for conformance with the URA and Relocation Plans as soon as is reasonably possible following completion of construction. RTD shall endeavor to provide Owner seven calendar days' advance notice of the date on which construction of Relocation is scheduled to be inspected, but Owner agrees to use best efforts to attend construction inspection upon receipt of earlier notice if seven calendar days' notice is not feasible or is not commercially reasonable. The non-Constructing Party's approval of construction of Relocation shall be evidenced by an executed construction of relocation acceptance letter ("CRAL"), the form of which is attached as Exhibit D. All CRALs shall be prepared by RTD for execution by the non-Constructing Party. If the construction of Relocation is approved, CRALs shall be executed immediately after inspection. Rejection of construction of Relocation shall be made in writing within two Working Days of inspection and shall specify the grounds for rejection as well as suggestions for correcting non-conformance. The revised Relocation shall be re-inspected for conformance with corrective suggestions immediately following corrective work and either approved or rejected after re-inspection. Provided that the non-Constructing Party approves the re-inspected construction of Relocation, CRALs shall be executed upon completion of re-inspection. A non-Constructing Party's inspection, approval and acceptance of any construction of Relocation performed shall not be construed as a waiver of any claim that the non-Constructing Party may have under applicable law. **RTD approval of construction of Relocation performed by Owner shall be limited to Utility Work performed within Project ROW or RTD property**. The RTD Project Contractor shall execute CRALs for RTD.

c) If Relocations and Relocation inspections are directly coordinated with Eagle Project construction or are undertaken on the Project Site and the potential for conflicting traffic control operations exists, RTD shall perform the required traffic control, regardless of whether the Relocation is performed by RTD or Owner. RTD shall perform construction staking on the Project Site for all Relocations. As-built plans shall meet the requirements of the party responsible for maintaining the Utility.

d) The Constructing Party shall provide the non-Constructing Party as-built plans or drawings marked to show changes in the field not later than 90 calendar days after the execution of the respective CRAL.

14) APPROVALS AND ACCEPTANCES. Approvals and acceptances shall not be unreasonably withheld or delayed. If approval or acceptance is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such approval or acceptance. Every effort shall be made to identify with as much detail as possible what changes are required for approval and acceptance.

15) OWNERSHIP, OPERATION, AND MAINTENANCE OF UTILITIES.

a) If Owner is the Constructing Party, ownership and all responsibilities for operations and maintenance of the Utility shall be Owner's. If RTD is the Constructing Party, Owner shall assume ownership and all responsibilities for operation and maintenance of the Utility upon execution of the CRAL.

b) If Owner Utilities remain located within Project ROW after all Utility Work has been completed, Owner's access for maintenance and servicing of the Utilities after rail operations commence shall be allowed exclusively pursuant to and in accordance with the Operating Rights Agreement governing that location.

c) RTD shall require the RTD Project Contractor to warranty for not less than one year from the date of execution of the CRAL all Utility Work performed by the RTD Project Contractor that will be owned and maintained by Owner. Upon written receipt of Owner's reasonable request specifying the extent to which any such Utility Work is defective, RTD agrees to exercise on Owner's behalf warranty rights pertaining to Utility Work performed for Owner by the RTD Project Contractor.

16) REIMBURSEMENT.

a) The Responsible Party shall be identified on the Work Order. The Designing or Constructing Party (if not the same as the Responsible Party) may invoice the Responsible Party no more than monthly for Utility Work costs incurred on or subsequent to the effective date of this URA utilizing the form of invoice attached as Exhibit E. Invoices shall cover all Utility Work performed since the prior invoice submission. The previous sentence notwithstanding, any costs incurred to acquire replacement property interests for Owner's utilities under this URA must be invoiced separately and must have been identified as a cost on the Work Order.

b) The Responsible Party shall make payment within 60 calendar days of receipt of invoice. If the Responsible Party disputes any portion of the invoice, it may withhold payment for the disputed portion while timely remitting payment on the undisputed portion. All invoices for Utility Work must be submitted not later than one year after execution of the corresponding CRAL for that Utility Work. All invoices submitted to RTD for reimbursement shall be reviewed for compliance with the cost eligibility and reimbursement standards contained in 23 CFR 645.101, *et seq*.

c) The Responsible Party will ensure that it has budgeted, authorized, and appropriated funds for all Utility Work costs specified in a Work Order. Neither Party will authorize any Work Order or Work Order revision that will cause the lump-sum or estimated not-to-exceed actual cost shown to increase beyond the previously appropriated amounts, unless the Responsible Party appropriates additional funds. Execution of a Work Order or Work Order revision by the Responsible Party is a representation that it has sufficient funds available for the Utility Work identified in the Work Order.

17) DEADLINES AND DELAYS.

a) Except where due to *Force Majeure*, if RTD or the RTD Project Contractor fails to meet a deadline established herein or in the applicable Work Order, RTD shall reimburse Owner for the actual documented costs and damages arising out of any such delay. RTD

shall not be liable to Owner for any delay in, or failure of performance of, any covenant or promise contained in this URA, nor shall any delay or failure constitute default or give rise to any liability for damages if and only to the extent that such delay or failure is caused by *Force Majeure* **and** RTD has provided Owner notice of such *Force Majeure*.

b) Time is of the essence in the performance of all Utility Work specified in all Work Orders. Where Owner has elected to perform Utility Work, Owner shall be liable to RTD for actual damages suffered by RTD as a direct result of Owner's delay in the performance of any Utility Work or as a direct result of Owner's interference with the performance of the Project construction by other contractors, except where those damages were caused by *Force Majeure* **and** Owner has provided RTD notice of such *Force Majeure*.

c) In addition to, and without limiting any rights or remedies available under this URA or otherwise, if Owner has elected to perform the Relocation Utility Work described in a Work Order and Owner fails to complete that Utility Work on or before the deadline established in the applicable Work Order, or if RTD reasonably determines that Owner will be unable to timely complete such Utility Work, RTD shall, after providing Owner 14 calendar days to cure or provide a plan to cure, issue a Dispute Notice in accordance with Article 19. If the Parties are unable to resolve the Dispute, RTD shall proceed to court in accordance with C.R.S § 32-9-119.1. Owner shall be responsible for delay damages to RTD in accordance with Article 17(b).

d) Continuing Performance. In the event of a Dispute, the Parties agree that they will continue their respective performance as required hereunder, including paying invoices, and that such continuation of efforts and payment of invoices shall not be construed as a waiver of any legal right or power: (a) of any Party under this URA, any Work Order, or any other agreement executed pursuant hereto; or (b) otherwise available pursuant to applicable law.

18) NOTICES; REPRESENTATIVES AND AUTHORITY.

a) Notices. Any and all notices required to be given by RTD or Owner pursuant to this URA must be provided in writing, deliverable by e-mail, facsimile, hand delivery, or by certified or registered first class mail, to the Party representatives identified herein. Notice shall not be deemed given if not provided in the manner prescribed in this Article 18. All notices shall be concurrently provided to the following persons, who shall be the project liaisons for day to day activities under this URA:

FOR RTD:

Kevin Custy
RTD Utility Representative
1560 Broadway, FAS-71
Denver, Colorado 80202
Phone: 303-299-6993
Fax: 303-299-2452
e-mail: Kevin.Custy@rtd-fastracks.com

FOR OWNER:

Mike Happe
Utilities Planning and Engineering Manager

City Hall
4800 West 92nd Avenue
Westminster, CO 80031
Phone: 303 658-2182
Fax: 303 706-3927
e-mail: mhappe@cityofwestminster.us

b) Party Representatives. For the purpose of this URA, the individuals identified below are hereby-designated representatives of RTD and Owner. Either Party may from time to time designate in writing new or substitute representatives or project liaisons.

FOR RTD:

Brian Middleton
Eagle Project Director
1560 Broadway, FAS-71
Denver, Colorado 80202
Phone: 303-299-2173
Fax: 303-299-2452
e-mail: Brian.Middleton@rtd-fastracks.com

FOR OWNER:

J. Brent McFall
City Manager
City Hall
4800 West 92nd Avenue
Westminster, CO 80031
Phone: 303 658-2010
Fax: 303 706-3921
e-mail: bmcfall@cityofwestminster.us

FOR THE RTD PROJECT CONTRACTOR

Denver Transit Partners, LLC
c/o Gregory J. Amparano
General Manager
Denver Transit Holdings, LLC
999 18th Street, Suite 1201 North
Denver, Colorado 80202
Fax: (303) 297-7553
email: gregory.amparano@fluor.com

c) Authority. Party representatives and the project liaisons identified in Section 18(a) shall each have the authority to negotiate and approve Work Orders, DRALs, CRALs, Work Order revisions, and, where applicable, No-Conflict Close-Out Forms; review and approve or reject Relocation Plans; inspect and approve or reject construction of Relocation and otherwise act for the Party represented; provided, however, that only Party representatives (or delegate) shall have the authority to execute Work Orders or revisions thereto, DRALs, CRALs and No-Conflict Close-Out Forms. Either Party may limit the signature authority of its Party representative by submission to the other Party of written

notice specifically identifying the extent of and limitations of the Party representative's authority.

19) DISPUTE RESOLUTION.

a) Dispute Notice. In the event of any dispute, claim, or controversy arising out of or relating to this URA, any Work Order, or any Utility Work involving or otherwise relating to the Eagle Project or the Utility Work ("Dispute"), the complaining Party shall provide a notice of Dispute ("Dispute Notice") to the other Party except where the non-complaining Party waives the requirement to receive a Dispute Notice in writing. The Dispute Notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the complaint. The complaining Party may, but will not be required to, aggregate the Dispute with other Disputes into one Dispute Notice.

b) Good Faith Negotiation. RTD and Owner shall attempt to settle all Disputes. To this effect, RTD and Owner shall conduct at least one face-to-face meeting between the Party representatives identified herein to attempt to reach a solution satisfactory to both RTD and Owner. Such meeting shall take place within 7 calendar days following delivery of a Dispute Notice. If that meeting does not resolve the Dispute, RTD and Owner shall each designate an official, at a level no lower than RTD Project manager and Owner chief engineer, to resolve the Dispute.

c) Legal Remedies. If RTD and Owner fail to resolve a Dispute in accordance with Article 19(b), either Party may proceed to district court in accordance with C.R.S. § 32-9-119.1(5) and may pursue any other remedies that may be available to it at law or in equity.

20) DAMAGE TO PERSONS AND PROPERTY. Each Party shall be responsible for any damage, including environmental damage, to any persons and property, including Project ROW, other RTD property, Owner Property, adjacent property, utilities, adjacent structures, and other third person real or personal property, that is caused by its or its Contractor's activities associated with the Project or any Relocation. The Parties shall require their Contractors, employees and agents to exercise due precaution and care to avoid causing such damage and the occurrence of any such damage shall immediately be repaired at the expense of the Party that caused the damage to the reasonable satisfaction of the party injured, unless otherwise agreed by the party injured. The Parties shall notify one another of any such damage and any claims filed against either Party arising out of such damage.

21) INSURANCE.

a) RTD shall obtain an Owner Controlled Insurance Program (OCIP) (where RTD is "Owner") for the construction phase of the Eagle Project. The OCIP provides coverage for RTD, the RTD Project Contractor and certain of its subcontractors for: General Liability with limits of liability of no less than $2,000,000 per occurrence and aggregate; Workers Compensation as required by statute; Employers Liability; and an excess or Umbrella policy. RTD shall also procure coverage for Builder's Risk, Pollution Liability and, if necessary, Railroad Protective Liability, each with limits of liability not less than $1,000,000 per occurrence and aggregate. Owner, its officers and employees shall be

named an additional insured on the OCIP General Liability policy for any construction of Relocation that Owner elects to have RTD perform.

b) By Owner.

i) Whenever Owner is the Constructing Party and it (or its Contractor) will be present on the Project Site, or on any RTD property, and whether or not a Work Order has been executed, Owner shall maintain (and/or require any Contractors performing activities hereunder to maintain): (a) Commercial General Liability (Bodily Injury and Property Damage) insurance with limits of liability of not less than $1,000,000 per occurrence and aggregate, including Product and Completed Operations Liability Insurance (or the equivalent, if in a policy form reasonably acceptable to RTD); (b) automobile liability insurance covering owned, non-owned and hired automobiles in an amount not less than $1,000,000; and (c) Workers' Compensation insurance as required by law. Owner shall cause RTD, its governing body, and their respective officers, employees and authorized agents to be named as additional insured on the above general liability insurance.

ii) Whenever Owner is the Designing Party of a Relocation to be constructed in or on the Project Site, Owner shall also maintain (and/or cause any Contractors performing design of Relocation to maintain) professional liability coverage for design professionals in a form reasonably acceptable to RTD and with limits of liability not less than $1,000,000 per occurrence and aggregate.

iii) Where Owner or its Contractor is required to obtain insurance under (i) and (ii) of this provision, Owner shall cause a certificate (or certificates) evidencing the insurance required to be delivered to RTD as a condition precedent to commencement of Utility Work by Owner and by each other party required to provide such insurance, and shall cause such insurance to be maintained in full force and effect until all such Utility Work is completed. Each certificate shall provide that coverage shall not be suspended, voided, canceled or materially reduced in coverage or in limits, except after 30 calendar days' prior written notice to RTD. If requested by RTD from time to time, Owner shall provide RTD with verification by a properly qualified representative of the insurer that Owner's and/or its Contractors' insurance complies with this paragraph and shall cause all other parties required to provide insurance pursuant to this paragraph to do the same. All Owner Contractors shall be required to have commercial insurance from a provider with a Best's A- rating.

iv) Without in any way limiting any applicable indemnification under Article 22, Owner shall have the right to comply with and satisfy any or all of its insurance obligations under this URA in lieu of obtaining the applicable insurance policy(ies) by notifying RTD of Owner's election to be self-insured as to the applicable insurance coverage. The same coverages and limitations prescribed by Article 21(b) shall apply. If requested by RTD at any time, Owner shall provide RTD with a letter of such self-insurance in a form reasonably acceptable to RTD.

22) INDEMNIFICATION.

Each Party shall require its Contractor(s) to indemnify, save, and hold harmless the other Party, its directors, employees, Contractors, and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the indemnifying Contractor, or its employees,

agents, subcontractors, or assignees, and arising out of the terms of this URA or any Work Order executed pursuant hereto to the same extent and limits to which the indemnifying Contractor indemnifies the contracting Party. Owner shall not perform design or construction of Relocation with staff labor.

23) TERMINATION.

a) RTD may terminate any Utility Work required by a Work Order at any time that RTD determines that the purposes of the distribution of funds under that Work Order would no longer be served by completion of the Utility Work. RTD shall effect such termination by giving written notice of termination to Owner at least 20 calendar days before the effective date of such termination. RTD will reimburse Owner in accordance with the terms of the URA for Utility Work duly performed prior to the date of termination and for which RTD is the Responsible Party.

b) Subject to the preceding paragraph, all provisions of this URA that create rights or provide responsibilities for either Party after any termination of Utility Work shall survive such termination with respect to that Utility Work.

c) All data, studies, surveys, maps, models, photographs and reports or other materials relating to Utilities or property rights or interests or rights of Owner that are provided to RTD by Owner under this URA shall be returned to Owner.

24) SETTLEMENT OF CLAIMS. Neither Owner nor RTD shall be entitled to reimbursement for any Utility Work covered by this URA, including costs with respect to real property interests (either acquired or relinquished), except as set forth in the URA and in the Work Order. The terms and conditions of this paragraph shall prevail over any statutory, common law, regulatory or administrative provisions governing the subject matter hereof. This URA, including all executed Work Orders, is intended as a full settlement of all claims regarding RTD's and Owner's responsibility for the Cost of Relocations. Except for obligations undertaken by RTD and Owner pursuant to this URA, Owner and RTD each waives, releases, and forever discharges the other Party, its members, officers, directors, agents, employees, successors and assigns from any and all claims for reimbursement, whether known or unknown, which either Party ever had or now has, regarding liability for the cost of the Utility Work necessitated by the Eagle Project and identified in the Work Order. This paragraph is intended to address only the issue of responsibility for the Cost of Relocation and does not extend to any tort claims that might arise out of the performance of the Utility Work.

25) NO LIENS. Each Party shall keep the Project Site and any other RTD or Owner property free from any statutory or common law lien arising out of any Utility Work performed by it, materials furnished to it, or obligations incurred by it, its agents, or Contractors.

26) RETENTION OF RECORDS.

a) Each Party shall keep and maintain all books, papers, records, accounting records, files, reports and other material relating to the Utility Work it performs (or has performed) pursuant to this URA, including detailed records to support all invoices submitted by each Party, for a period of three years after the date of acceptance of the completed Utility

Work. Each Party and any other party or agency providing funding to RTD (including their respective auditors) shall have access to and shall be entitled to audit all such records during normal business hours upon reasonable notice to the Party maintaining such records.

b) RTD and Owner shall mutually agree upon any financial adjustments found necessary by any audit undertaken.

c) The Parties shall insert subparagraph (a) into any contracts entered for performance of Utility Work and shall also include in such contracts a clause requiring all Contractors to include subparagraph (a) in any subcontracts or purchase orders.

27) TERM. This URA is effective on the later of the Parties' execution dates shown below and will continue to govern the Eagle Project until acceptance by RTD and Owner of all Utility Work shown on the Work Order(s) for the Eagle Project, or until final payment owing from either Party for the Eagle Project has been made, whichever is later. Certain provisions that provide rights or create responsibilities for either Party after expiration or termination of any Utility Work, must, by their terms, survive.

28) APPROPRIATIONS. RTD's obligations under this URA or any renewal shall extend only to monies appropriated for the purpose of this URA by RTD's board of directors and encumbered for the purposes of this URA. RTD does not by this URA irrevocably pledge present cash reserves for payments in future fiscal years, and this URA is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of RTD.

29) LEGAL AUTHORITY. Each Party warrants that it possesses the legal authority to enter into this URA 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 URA and to be bound to its terms. The person(s) executing this URA on behalf of each Party warrant(s) that such person(s) have full authorization to execute this URA.

30) SEVERABILITY. If any provision or provisions of this URA shall be held to be invalid, illegal, unenforceable or in conflict with federal or Colorado state law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, unless the deletion of invalid, illegal or unenforceable provision or provisions would result in such a material change as to cause completion of the transactions contemplated herein to be unreasonable.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

In witness whereof, Owner and RTD have executed this URA.

FOR OWNER:

By: _____

Name: J. Brent McFall
Title: City Manager
Date: _____

FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____

Name: Brian Middleton
Title: Eagle Project Director
Date: _____

Approved as to legal form for Owner:

By: _____

Name:
Title:

Approved as to legal form for RTD:

By: _____

Name: Jenny C. Barket
Title: Associate General Counsel

EXHIBIT A

UTILITY NO-CONFLICT CLOSEOUT FORM

This Utility No-Conflict Closeout Form ("No-Conflict Form") is executed by Owner and the RTD Project Contractor in connection with that Eagle Project Utility Relocation Agreement ("URA") entered by Owner and RTD. Unless the context clearly otherwise requires, initially capitalized terms shall have the meaning prescribed to them in the URA.

A fully-executed No-Conflict Form indicates the Parties' concurrence that, as of the Project plans current at the date of Owner's execution hereof, no Relocation is required for Owner's Utility referenced herein. Owner and the RTD Project Contractor acknowledge that future modifications to the Project may require Relocation of the referenced Utility in accordance with the URA. Two originals shall be executed and a copy shall be forwarded to RTD by the RTD Project Contractor.

Owner	
Utility Identification No.:	
Location	
Comments (attach pages as necessary)	

FOR OWNER

By: _____ Date: _____
Name:
Title:

FOR RTD PROJECT CONTRACTOR

By: _____ Date: _____
Name:
Title:

If this form is not signed by the owner, Owner shall state below its basis for disagreement with the No-Conflict designation for this Utility:

_____
_____
_____
_____
(attach pages as necessary)

EXHIBIT B
FORM OF UTILITY WORK ORDER

Owner:

URA No.: _____ Utility Identification No.: _____

Work Order No.: _____ Work Order Revision No.: _____

Work Breakdown Structure No.: _____

LOCATION:

DESCRIPTION:

OPERATING RIGHTS:

DESIGN ☐ No Design Required

Performing Party	☐ RTD	☐ Owner:		
Responsible Party	☐ RTD	☐ Owner:		
RTD pays Owner	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Owner pays RTD	Lump Sum: _____		Actual Cost Not to Exceed: _____	
RTD pays Contractor	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Comments	_____			

CONSTRUCTION ☐ No Construction Required

Performing Party	☐ RTD	☐ Owner:		
Responsible Party	☐ RTD	☐ Owner:		
RTD pays Owner	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Owner pays RTD	Lump Sum: _____		Actual Cost Not to Exceed: _____	
RTD pays Contractor	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Comments	_____			

CONSTRUCTION INSPECTION ☐ No Construction Inspection Required

Performing Party	☐ RTD	☐ Owner:		
Responsible Party	☐ RTD	☐ Owner:		
RTD pays Owner	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Owner pays RTD	Lump Sum: _____		Actual Cost Not to Exceed: _____	
RTD pays Contractor	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Comments	_____			

PROPERTY ACQUISITION ☐ No Property Acquisition Required

Performing Party	☐ RTD	☐ Owner:		
Responsible Party	☐ RTD	☐ Owner:		
RTD pays Owner	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Owner pays RTD	Lump Sum: _____		Actual Cost Not to Exceed: _____	
RTD pays Contractor	Lump Sum: _____		Actual Cost Not to Exceed: _____	
Comments				

SCHEDULE (THIS WORK ORDER ONLY)

Design	**Construction**
Start Date:	Start Date:
Completion Date:	Completion Date:
Comments:	

CHANGE ORDER

If this section is signed by the RTD representative, then this Work Order will function as a Change.

RTD Representative Date

WORK ORDER TERMS AND CONDITIONS

SCOPE OF WORK ORDER. This Work Order is entered into by and among Owner and RTD, and, where applicable, the RTD Project Contractor in order to implement in part the URA identified herein, as the same may be amended from time to time, and which is incorporated herein by this reference. All work undertaken pursuant to this Work Order shall be performed in accordance with the requirements of the URA, which shall govern to the extent of any conflict between its terms and the terms of this Work Order. Relocation Standards specifically identified in the URA are incorporated herein by this reference. Unless otherwise defined herein, all initially capitalized terms and conditions shall have the meaning prescribed to them in the URA.

WORK ORDER ATTACHMENTS. This Work Order and any attachments hereto contain information specific to the Relocation to be performed hereunder. Attached and/or referenced Relocation Standards are incorporated herein by this reference and shall be considered a part of this Work Order. This Work Order governs only the Utility Work specifically identified herein and shall be conclusive as to all matters represented herein.

ORDER OF EXECUTION. This Work Order shall be executed first by Owner, then by the RTD Project Contractor (if applicable) and finally by RTD.

IN WITNESS WHEREOF, RTD, the Owner, and where applicable, the RTD Project Contractor have executed this Work Order, which shall be effective as of the date of the RTD's signature.

Owner: _____

By: _____

Print Name: _____

Title: _____

Date: _____

RTD Project Contractor: _____

By: _____

Print Name: _____

Title: _____

Date: _____

RTD: **Regional Transportation District**

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT B

FORM OF UTILITY WORK ORDER (cont.)

Utility Identification No.:

SECTION A — SCOPE

SECTION B — REQUIRED PERMITS

Permit Type	Permit Responsibility

SECTION C — LIST OF ATTACHMENTS

- ☐ Exhibit 1: Owner Design Sheet _____
- ☐ Exhibit 2: RTD Design Sheet: _____
- ☐ Exhibit 3: Cost Estimate _____
- ☐ Exhibit 4: Property Rights: _____
- ☐ Exhibit 5: Other: _____

EXHIBIT C

FORM OF DESIGN OF RELOCATION ACCEPTANCE LETTER

THIS DESIGN OF RELOCATION ACCEPTANCE LETTER ("DRAL") is executed by the non-Designing Party in connection with that Eagle Project Utility Relocation Agreement ("URA"), entered into by the Parties. Execution of this DRAL indicates the non-Designing Party's acceptance and approval of the design of Relocation, as attached to this DRAL, performed and completed by the Designing Party. Unless otherwise defined herein, initially capitalized terms shall have the meaning prescribed to them in the URA. Two originals shall be executed and a copy shall be forwarded to RTD by the RTD Project Contractor

Owner: _____

Utility Identification No.: _____

Work Order No.: _____ Work Order Date: _____

Work Order Rev. No.: _____ Rev. Date: _____

Designing Party: _____

Now, therefore, the non-Designing Party executes this DRAL to indicate that it has reviewed the design of Relocation completed by the Designing Party and has found the design of Relocation to have been designed in accordance with the non-Designing Party's Relocation Standards duly provided to the Designing Party:

Non-Designing Party

By: _____
Name:
Title
Date: _____

☐ The non-Designing Party declines execution of this DRAL at this time for the following reasons:

_____

_____

_____ (attach pages as necessary

RTD OFFICIAL USE ONLY

☐ The Constructing Party may proceed with construction of the Relocation on the Project Site.
By: _____
Name:
Title/Company:
Date: _____

EXHIBIT D

FORM OF CONSTRUCTION OF RELOCATION ACCEPTANCE LETTER

THIS CONSTRUCTION OF RELOCATION ACCEPTANCE LETTER ("CRAL") is executed by the non-Constructing Party in connection with that Eagle Project Utility Relocation Agreement ("URA") entered by the Parties. Execution of this CRAL indicates the non-Constructing Party's inspection and acceptance of the construction of Relocation performed and completed by the Constructing Party. Unless otherwise defined herein, initially capitalized terms shall have the meaning prescribed to them in the URA. Two originals shall be executed and a copy shall be forwarded to RTD by the RTD Project Contractor

The construction of Relocation inspected and accepted by execution hereof is described below:

Owner: _____

Utility Identification No.: _____

Work Order No.: _____ Work Order Date: _____

WO Revision No.: _____ WO Revision Date: _____

Constructing Party: _____

Now, therefore, the non-Constructing Party executes this CRAL to indicate that it has inspected the construction of Relocation completed by the Constructing Party and has found the construction of Relocation has been performed in accordance with the Relocation Plans:

FOR NON-CONSTRUCTING PARTY

By: _____
Name:
Title/Company:
Date: _____

☐ The non-Constructing Party declines execution of this CRAL at this time for the following reasons:

_____

_____

_____ (attach pages as necessary

EXHIBIT E
FORM OF INVOICE

Owner: Attn: Address: FEIN #:	This Invoice No. _____ Eagle Project: URA No. _____ Work Order No. _____
Estimated percentage of work completed under the Work Order:	

Please complete for either Lump Sum or Actual Cost

LUMP SUM	**ACTUAL COST**
Lump Sum: $	Actual Cost (estimated cost not-to-exceed): $
Previously Billed: $	Previously Billed: $
This Invoice: $	This Invoice: $
Remaining: $	Remaining: $
Comments (add pages as necessary):	Comments (add pages as necessary):

Reimbursement for replacement property acquisition costs shall be invoiced separately.

I, the undersigned, certify on behalf of Owner that: 1) the payment requested under this invoice is true and correct and complies with the terms of the URA and applicable Work Order; and 2) all attached documentation supporting this invoice comply with 23 CFR 645, including applicable credits for salvage and/or depreciation, if any.

FOR OWNER

By: _____ _____
Name: Date
Title:

RTD has reviewed and approved the costs identified in this invoice and in the attached pages.

FOR RTD

By: _____ _____
Name: Date
Title:

WESTMINSTER

Agenda Item 8 M

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Memorandum of Understanding with Regional Transportation District regarding the addition of Westminster Center Station

Prepared By: Matt Lutkus, Deputy City Manager

Recommended City Council Action

Authorize the City Manager to sign a Memorandum of Understanding between the City and the Regional Transportation District regarding the addition of the Westminster Center Station to the Northwest Rail FasTracks Corridor.

Summary Statement

- When the FasTracks Transit System was placed on the ballot and approved by voters in 2004, the proposed Northwest Commuter Rail Line consisted of seven stations along the 41-mile line that begins at Denver Union Station and terminates in downtown Longmont. As part of subsequent decisions of the Regional Transportation District (RTD) Board of Directors, four additional stations were added including a station at approximately 88th & Harlan. There is no funding available for the construction or maintenance of these four stations either in the current FasTracks budget or within the revenues that would be available from the proposed FasTracks tax increase.

- The City Council and City Staff, as well as prospective developers of the Westminster Urban Revitalization Project (WURP), believe that a commuter rail station adjacent to the present Westminster Mall is vital to the long-term plans for redevelopment of the area. RTD's projections show that this station will be very highly utilized by transit riders along the corridor.

- Early in 2010, City officials met with the RTD General Manager and key staff members to emphasize the importance of the station at Westminster Center and City's commitment to provide for the incremental cost of adding such a station. RTD's "Station Addition Policy" adopted in 2009, provides the criteria and the process to be used for requesting the addition of a rail station.

- As a follow-up to the 2010 meeting, City Staff prepared a draft Memorandum of Understanding that has since been reviewed and edited by RTD Staff. The Memorandum of Understanding essentially puts into writing the City's commitment to obtain non-FasTracks funds from public and private sources to build the station while RTD agrees that once this funding has been identified and is available, they will initiate the review and approval process.

- Council reviewed a draft of the Memorandum of Understanding at the February 14, 2011, post council meeting briefing. Since that time, the draft has been modified but no substantive changes have been made to its content.

Expenditure Required: $6 million to $12 million for the station itself not including parking and pedestrian, bus and automobile access facilities and other ancillary facilities

Source of Funds: City funds, potential grants and private development funding

Policy Issue

Should the City enter into a Memorandum of Understanding with the Regional Transportation District regarding the City's and the RTD's commitments to pursue the construction of a Northwest Rail station at Westminster Center?

Alternatives

1. City Council could decide to take no action with regard to having Westminster Center Station added to the FasTracks Northwest Rail plan.

2. City Council could determine that it should take a more aggressive position with regard to obtaining a full or partial FasTracks funding for Westminster Center Station.

City Staff believes that neither of these alternatives is appropriate at the current time. It is clear to Staff that the City needs to take a proactive role if it hopes to reach an objective of having a Westminster Center Station open at the same time as the rest of the Northwest Rail Corridor system. However, a request for using FasTracks funding to build the station would have little support from either RTD elected officials and staff or the other communities located along the rail corridor.

Background Information

When the FasTracks system was placed on the ballot and approved by the voters in the Regional Transportation District in November 2004, the Northwest Rail Line consisted of a 41-mile track connecting Denver Union Station with seven stations from south Westminster to downtown Longmont. During the years that followed the election, four additional stations were identified as being desirable on this rail line. These included a station in Westminster at approximately at 88th & Harlan Street. It is noteworthy that the projected ridership analysis completed for the corridor showed that a station located at Westminster Center would have the second highest ridership of any station located along this corridor.

As the projected costs for building the FasTracks system increased, the projected revenues for the system generated by the FasTracks tax steadily declined in each successive annual projection. It was ultimately determined that the additional four stations could not be funded through the FasTracks program.

The Westminster Center Station and the other three "unfunded" stations were included in the environmental analysis that was done as part of the Environmental Evaluation (EE) submitted to the United States Army Corp of Engineers in May 2010. The unfunded stations were, however, not included in the 30% design drawing for which RTD contracted subsequent to the completion of the EA. Moreover, it has not been the RTD Staff's intent to include the "unfunded" stations in any future studies and engineering for the corridor.

City elected officials and staff have made it clear during the past several years that the City is committed to seeing that the Westminster Center Station opens simultaneously with the rest of the Northwest Corridor. From the perspective of City Staff and potential developers of the Westminster Center Urban Revitalization Project (WURP), the construction of a rail transit station adjacent to this site is vital for the development of the area as a retail, office, entertainment and high density residential area.

In April 2010, Mayor McNally, City Manager Brent McFall and Deputy City Manager Matt Lutkus met with the RTD General Manager Phil Washington and other key RTD Staff to discuss how the City's goal for a Westminster Center Station could be achieved. Westminster officials indicated a willingness to commit the funds necessary to add the station while the RTD Staff demonstrated a strong willingness to cooperate with the City to help ensure that the Westminster Center Station was constructed in a timely

manner. As a follow-up to this meeting, City Staff drafted and RTD Staff have since edited a Memorandum of Understanding (MOU) that articulates the City's and RTD's commitments toward the construction of a Westminster Center Station. The draft MOU has been reviewed and approved by the City Attorney and by RTD's legal department. The agreement has been approved by RTD and is now ready for Council's formal consideration. In this agreement, the City acknowledges the need to obtain a private and non-FasTracks public dollars to construct the station while RTD commits to initiating the review and approval process of the station as soon as funding has been identified. The process will entail City Staff submitting a proposal that addresses the criteria for adding stations in the RTD Board adopted Rapid Transit Station addition policy that is attached to the MOU.

Late last year, the RTD Board of Directors approved expenditure of $500,000 for an engineering study of the Northwest Rail line. This study will provide a more definitive projection of the cost of the Northwest Rail Line infrastructure. It was not RTD's intent to include any of the unfunded stations in this analysis. However, RTD Staff have indicated a willingness to add the Westminster Station as a supplemental analysis if the City pays the additional cost required to include the Westminster Center Station. Funds have been set aside in the WURP budget for these types of expenditures and City Staff will ask the WEDA Board for formal approval of an expenditure for this study once the scope and projected costs have been identified.

The Mayor and City Staff have had multiple conversations with Westminster's partners along the Northwest Rail Corridor regarding the addition a Westminster Center Station. The elected officials representing these communities have indicated their support for Westminster's addition of a station at Westminster Center and the other unfunded stations on the rail line.

The City's efforts to have a Northwest Rail Station constructed at 88th & Harlan are directly related to the City Council's Strategic Planning Goal of a "Strong Balanced Local Economy" and, more specifically, the objectives of developing "A Multi-modal Transportation System That Provides Access to Shopping and Employment Centers" and "Revitalized Westminster Center Urban Redevelopment Project Area." These efforts are also consistent with the Strategic Goal of "Vibrant Neighborhoods in One Livable Community" and, more specifically, the objective of "Developed Transit-oriented Development Around Commuter Rail Stations."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Memorandum of Understanding
- Board of Directors Report

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF WESTMINSTER
AND
THE REGIONAL TRANSPORTATION DISTRICT

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this ____ day of _____, 20[•], by and between the CITY OF WESTMINSTER (the "City") and the REGIONAL TRANSPORTATION DISTRICT ("RTD"). RTD and the City are collectively referred to herein as the "Parties".

RECITALS:

WHEREAS, in November 2004, voters in the district approved the funding and the construction of the FasTracks Plan that identified as a part thereof the Northwest Rail Corridor paralleling US 36 between Denver Union Station and Longmont;

WHEREAS, the Northwest Rail Corridor is anticipated to be constructed in two phases, commencing with the Northwest Rail Electrified Segment between DUS and 71st Avenue/Lowell ("NWES") and the remaining segment between 71st Avenue/Lowell and Longmont ("NWC2");

WHEREAS, the Northwest Rail Corridor station to be located at Westminster Center, located in the vicinity of US 36 and 88th Avenue, was not included during the preparation of the ballot issue but was addressed in the Final Environmental Evaluation dated May 18, 2010 (the "EE");

WHEREAS, since 2004, the Westminster Urban Reinvestment Project, also known as the Westminster Mall, has evolved as a significant redevelopment area that is anticipated to include commercial office, retail and high density residential uses;

WHEAREAS, funding for the Westminster Center station is currently not included in RTD's FasTracks financial plan due to fiscal constraints;

WHEREAS, it is anticipated that, even if additional funding is requested and approved through a regional ballot election, the Westminster Center station will not be included for funding, and

WHEREAS, the City intends to submit a proposal that will address the specific requirements and intent of the Rapid Transit Station Addition Policy adopted by the RTD Board of Directors in June 2009, attached hereto as Exhibit A; and

WHEREAS, the US 36 Mayors and Commissioners Coalition (MCC) supports the addition of the Westminster Center station and other Northwest Rail stations that remain unfunded.

COMMITMENTS:

WHEREFORE**,** in support of the afore-mentioned goals, the Parties hereto agree to commit best efforts in implementing this MOU by cooperating on the funding of the Westminster Center station on the basis of the following mutual commitments:

1. The City shall seek to procure sufficient non-FasTracks funds from public and private sources to ensure that the Westminster Center station will be constructed and ready for full operation at such time as NWC2 commences revenue service.

2. RTD agrees that if sufficient funding for the construction of the Westminster Center Station and the required ancillary facilities has been secured by the City and made available to RTD for this purpose, RTD will initiate the review and approval process outlined in the Rapid Transit Station Addition Policy. The Station Addition Policy requires approval from the RTD Board of Directors upon completion of the analysis described in the policy.

3. This MOU sets forth the intent of the signatories hereto, but is not a legally binding document and is not intended to confer remedies on any party in the event of its breach.

4. Unless terminated earlier by mutual written consent of the Parties, this MOU will automatically terminate upon commencement of revenue service of NRC2.

IN WITNESS WHEREOF, UDFCD and RTD have executed, through their respective lawfully empowered representatives, this MOU as of the day and year above written.

REGIONAL TRANSPORTATION DISTRICT

_____

BY: Richard F. Clarke, Assistant General Manager, Capital Programs

CITY OF WESTMINSTER

_____

J. Brent McFall
City Manager

BOARD OF DIRECTORS REPORT

RTD

To: Clarence W. Marsella, General Manager

From: Bill Van Meter, Acting Assistant General Manager, Planning

Date: June 2, 2009

Subject: Rapid Transit Station Addition Policy

Date:		
GM:		
Board Meeting Date: June 23, 2009		
ACTION	DISCUSSION	INFO
X		

RECOMMENDED ACTION

It is recommended by the Planning and Development Committee that the Board of Directors adopt this policy, which updates the District's current established procedures and guidelines for evaluating proposed new stations on RTD's existing and planned light rail and commuter rail lines. Since each potential station and station area is unique, no one set of guidelines should determine whether a station is appropriate for a specific site. The criteria described below are meant to serve as a policy framework for issues that should be considered when planning for and approving new stations. RTD staff will evaluate each of the criteria, and provide the results for the RTD Board's information when considering the approval of a new station. Final determination regarding whether new stations will be added to light rail and commuter rail lines, and who will provide associated funding of new stations, will be a Board decision on a case by case basis.

BACKGROUND

RTD periodically receives requests for consideration of new stations to be added to the existing and planned light rail and commuter rail systems, and staff anticipates that as new rapid transit lines open, there will continue to be requests for additional stations on these lines over time. In response to these requests, in 2003 the Board of Directors adopted the current "Rapid Transit Station Spacing and Station Naming Policy." This 2009 Policy Update is proposed as a means to add commuter rail to the existing policy, which is focused primarily on light rail, and to provide updates that reflect updated Federal Transit Administration (FTA) measures and FasTracks experience.

Definition of Rail Modes and Station Spacing Guidelines

The following discussion presents information on RTD's light rail and commuter rail modes and relates general guidance for station spacing for these modes.

Light Rail Transit

Light rail (LRT) utilizes electrically propelled cars, or trains of cars, operating either on exclusive rights-of-way or over public streets, with power supplied by overhead wires. Tracks used for light rail operations are not normally shared with freight and other railway passenger trains. Light rail systems are intended to accommodate all types and lengths of passenger trips within the most densely developed portions of metropolitan areas during weekday peak travel periods, as well as during off-peak travel periods. Typically, light rail routes range from 5 to 20 miles in length. Frequency of service on light rail systems typically ranges from five to 15 minutes during peak travel periods, and from 10 to 20 minutes during other times of the day. Normal station spacing for such systems ranges from one-quarter mile to one mile, providing good access while maintaining reasonable overall operating speeds. Table 1, below, provides guidance for LRT station spacing.

Table 1

Light Rail Line Setting	Station Spacing
Central Business District	¼ to ½ mile
Dense Urban	½ to ¾ mile
Mixed Urban/Suburban	¾ to 1 mile
Suburban	1 to 1½ miles
Maximum	2 miles

Commuter Rail Transit
For purposes of this Board Report, RTD has identified 2 types of Commuter Rail, Tier One and Tier Two, based on physical and operating characteristics, as described below.

Tier One Commuter Rail
Tier One Commuter Rail (CR1) is primarily intended to service the long-distance, regional traveler market. CR1 rail normally accommodates the longest-distance trips made within metropolitan regions during weekday peak travel periods, at high overall average operating speeds, with relatively few station stops. Typical CR1 rail routes range from 20 to 50 miles in length. CR1 rail frequency of service on individual routes may be every 20 to 60 minutes during weekday peak travel periods, with less frequent off-peak service. CR1 vehicles often have relatively slow acceleration and deceleration rates, making stopping and starting more time-consuming than for LRT. The Northwest Rail Corridor meets the general definition of CR1. Table 2, below, provides guidance for station spacing to optimize CR1 rail performance (i.e., maintain a high average train speed) and maximize ridership. In the evaluation of station spacing, consideration will be given to opportunities for future transit supportive development in the determination of the category of rail setting for future stations and corresponding station spacing.

Table 2

CR1 Rail Setting	Station Spacing
Urban	2 to 3 miles
Suburban	3 to 5 miles
Rural	5 to 8 miles
Maximum	10 miles

Tier Two Commuter Rail
In general, Tier Two Commuter Rail (CR2) systems are those with shorter lines that provide more frequent service than CR1 systems. CR2 systems are intended to accommodate all types and lengths of passenger trips within the more densely developed portions of metropolitan areas during weekday peak travel periods, as well as during off-peak travel periods. CR2 rail routes often range from 10 to 20+ miles in length. Frequency of service on CR2 rail systems can range from 10 to 30 minutes during peak travel periods, and from 15 to 60 minutes during other times of the day. The Gold Line, East Corridor and North Metro Corridor generally meet the definition of CR2. In the evaluation of station spacing, consideration will be given to opportunities for future transit supportive development in the determination of the category of rail setting for future stations and corresponding station spacing. Table 3, below, provides guidance for CR2 station spacing.

Table 3

CR2 Rail Setting	Station Spacing
Central Business District	½ to 1 mile
Dense Urban	1 to 2 miles
Mixed Urban/Suburban	2 to 3 miles
Suburban	3 to 4 miles
Maximum	5 miles

DISCUSSION

The capital and operating and maintenance (O&M) costs of adding a new station can vary greatly depending upon when a new station is added, and on its corridor-specific impacts. If the addition of a station does not require an increase in rail fleet, i.e., an additional trainset, additional costs would likely only include the cost of the station platform and its associated components, access requirements, and station O&M costs. The cost of this relatively minimal investment may be in the order of $6-$12 million, excluding annual costs for station O&M. However, if the addition of a new station requires the operation of an additional trainset to maintain service frequency (due to increased travel time for the train), then significant upfront capital and ongoing annual vehicle O&M costs will significantly increase the long-term cumulative cost of adding the new station. Impacts could run to $6-$12 million for station costs; $8-$16 million for an additional trainset; and $2-$3 million annually in additional vehicle O&M costs.

This policy presumes a "first in" methodology for adding stations. This means that if the first new station requires an additional trainset, the first requestor would be responsible for securing these funds. If the first station does not require a new trainset but the second additional station does due to increased cycle time, then the second requestor would be responsible for securing these additional funds. All requestors for new stations should be responsible for securing funding for the station platform and its associated components, access requirements, and station O&M costs.

The following bullets provide guidance for evaluating each proposed new station, none are pass/fail criteria.

1. *Station Spacing* All additional station locations should consider the spacing guidance presented in the Discussion section above for the appropriate mode. As this is only guidance, exceptions would be acceptable if other criteria support the station.

2. *Annualized Cost/Benefits* For this analysis, annualized costs are divided by the annualized benefits. To justify a new station using this measure, this ratio would need to be positive, as well as less than or equal to one.

   Costs
   The annualized cost includes the following items:
   - Annualized capital costs (station, trackwork, number of rail vehicles, access roads, etc.), plus
   - Annual O&M costs associated with the new station, including O&M costs of additional trains, if required as a result of the additional train run times resulting from the new station

   Benefits
   The annualized benefit (revenues) includes:
   - Annualized contribution to capital and or operating costs from non-RTD sources, plus
   - Projected annualized farebox revenues from new riders, plus
   - Other annualized revenues (such as dollars from land development).

3. *Impact to FTA Cost Effectiveness Index (CEI)* The FTA's measure of cost-effectiveness for New Starts project funding is the CEI. For projects that are programmed to receive New Starts funding, the CEI must be below FTA's threshold to maintain federal funding eligibility. CEI thresholds are updated by FTA on an annual basis. For this measure, RTD staff will inform the Board of the estimated impact of a proposed new station (positive or negative) on the corridor's CEI, and will inform the Board whether, as a result, there is a potential impact to federal funding eligibility.

4. *Timing of Request* The timing of a third party request may have an effect on the environmental clearance/NEPA schedule as well as the engineering and construction project schedules. Several scenarios may occur including:
   - Request incorporated prior to development of the draft environmental document; this may result in some delay in overall project schedule and may require a nominal cost change order to the environmental contractor.
   - Request incorporated prior to development of the final environmental document; this would require supplemental environmental clearance for the new station, which likely would delay the overall project schedule as well as require a change order with associated cost increases required for environmental clearance.
   - Request made between final environmental clearance and Record of Decision; this would cause a significant delay in gaining final environmental approval from the FTA, requiring RTD to incur potentially significant schedule delays and costs associated with reworking environmental documentation.
   - Request made after receiving environmental clearance; this would require supplemental environmental clearance and could delay the overall project schedule as well as require a change order.
   - Request made during construction; this would require supplemental environmental clearance; and would likely delay the overall project schedule as well as require a change order. Adding a station at this phase could add considerable costs to construction.
   - Request made after operations have begun; this would require supplemental environmental clearance and securing a construction contractor. It should be noted that adding stations to existing lines could be highly disruptive to operations, requiring closures for construction.

5. *Constructability.* Is the proposed site compatible with RTD design criteria for stations – i.e., grades, tangents, widths, lengths, signalization, power system requirements, etc.?

6. *Adjacent Transportation Network (for auto, bicycle and pedestrian access).* Is the station easily accessible from existing or planned major roadways and do those roadways have sufficient capacity to handle the additional vehicular, pedestrian, and bicycle movements that a new station would generate? It is RTD's practice to identify and mitigate impacts to auto, bicycle and pedestrian access that are attributable to the transit improvement under consideration. This measure assures that these impacts continue to be addressed appropriately.

7. *Local Bus Network.* Does the local bus network serve the station? Can the bus network be easily modified to serve this new station?

8. *Community Support.* Is the community in favor of a potential station? Would the community, especially if it is a residential neighborhood, prefer not to have a station? Is this new station supported by the affected municipality and/or the development community? Does the potential station have transit supportive land uses planned in the immediate vicinity?

9. *Equity.* Is there a transit dependant population nearby that could benefit from, or be negatively impacted by, proximity to the station? Does this addition adversely affect the condition of "hold harmless" as stated in the FasTracks Program?

These criteria are meant to serve as a framework for issues that should be considered by RTD when considering stations. As noted, since each potential station and station area is unique, no one set of guidelines should determine whether a station is appropriate for a specific site.

FINANCIAL IMPACT

Preparation of the Rapid Transit Station Addition criteria for Board consideration will require staff time and potentially some additional costs for consultant services. As documented above, significant costs could be incurred by the District if new stations are approved. These costs would include additional environmental clearance costs, costs to construct, operate and maintain the new stations, and costs for additional vehicles, if needed to maintain service frequencies. The Board will need to consider these costs on a case by case basis and determine funding responsibility as appropriate.

ALTERNATIVES

1. Accept the recommended action. It is recommended by the Planning and Development Committee that the Board of Directors adopt this policy, which updates the District's current established procedures and guidelines for evaluating proposed new stations on RTD's existing and planned light rail and commuter rail lines. Since each potential station and station area is unique, no one set of guidelines should determine whether a station is appropriate for a specific site. The criteria described below are meant to serve as a policy framework for issues that should be considered when planning for and approving new stations. These results shall be developed by RTD staff for the RTD Board's information when considering the approval of a new station. Final determination regarding whether new stations will be added to light rail and commuter rail lines, and associated funding of new stations, will be a Board decision on a case by case basis.

2. Modify this policy to append or reduce the number of criteria suggested in this document.

3. Do not adopt this policy; instead leave the 2003 version in place. The 2003 version does not specifically address Commuter Rail corridors, nor does it include an analysis of the impact to the Federal Transit Administration's Cost Effectiveness Index. This option is not recommended. The recommended alternative, to update the 2003 policy, will provide the RTD Board with a broader range of information to be used when considering whether to add additional stations.

Prepared by: David Hollis, Manager, Planning Technical Services
Bill Van Meter, Acting Assistant General Manager, Planning

WESTMINSTER

Agenda Item 8 N

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Second Reading of Councillor's Bill No. 11 re 2010 4th Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 11 on second reading providing for supplemental appropriation of funds to the 2010 budget of the General, Utility, General Capital Outlay Replacement, Parks Open Space Trails, and General Capital Improvement Funds.

Summary Statement

City Council action is requested to adopt the attached Councillor's Bill on second reading authorizing a supplemental appropriation to the 2010 budget of the General, Utility, General Capital Outlay Replacement, Parks Open Space Trails, and General Capital Improvement Funds.

- General Fund amendments total: $134,559
- Utility Fund amendments total: 10,423
- General Capital Outlay Replacement Fund amendments total: 736,218
- Parks Open Space Trails Fund amendments total: (345,900)
- General Capital Improvement Fund amendments total: 763,289

- This Councillor's Bill was passed on first reading March 21, 2011.

Expenditure Required: $1,298,589

Source of Funds: The funding sources for these budgetary adjustments include lease proceeds, program revenues, grants, reimbursements, contributions, cash-in-lieu, and interest earnings.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **11**

SERIES OF 2011 INTRODUCED BY COUNCILLORS
Winter - Major

A BILL
FOR AN ORDINANCE AMENDING THE 2010 BUDGETS OF THE GENERAL, UTILITY, GENERAL CAPITAL OUTLAY REPLACEMENT, PARKS OPEN SPACE TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General, Utility, General Capital Outlay Replacement, Parks Open Space Trails, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by $1,298,589. This appropriation is due to the receipt of funds from lease proceeds, program revenues, grants, reimbursements, contributions, cash-in-lieu, and interest earnings.

Section 2. The $1,298,589 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A dated March 21, 2011 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	$134,559
Utility Fund	10,423
General Capital Outlay Replacement Fund	736,218
Parks Open Space Trails Fund	(345,900)
General Capital Improvement Fund	763,289
Total	$1,298,589

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 21st day of March, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April, 2011.

ATTEST:

_____
Mayor

_____
City Clerk

WESTMINSTER

Agenda Item 8 O

Agenda Memorandum

City Council Meeting
April 11, 2011

SUBJECT: Second Reading of Councillor's Bill No. 12 re Amendments to Title XIII, Chapter 1, of the Westminster Municipal Code to Establish a Set Process for the Adoption and Publication of Regulations that Control Use of City Park and Recreation Facilities

Prepared By: Hilary M. Graham, Assistant City Attorney
Bill Walenczak, Director of Parks, Recreation, and Libraries

Recommended City Council Action

Pass Councillor's Bill No. 12 on second reading to establish a process for the adoption of regulations controlling the public's use of City park and recreation facilities.

Summary Statement

- The Director of Parks, Recreation & Libraries has the unique ability to adopt regulations, the violation of which can lead to ejection from parks, denial of future use of those facilities, and possible criminal penalties. W.M.C. §§ 13-1-4 and 13-1-5. The Director's authority to adopt regulations has been used sparingly and has resulted in only a handful of regulations.
- In order to ensure that these regulations remain enforceable and that the public has adequate notice of the standards that apply to their use of City facilities, it is suggested that a process for the adoption and publication of such regulations be established. This process would also require the regulations to remain on file at the City Clerk's office and on the City's website.
- This ordinance would draw a significant distinction between "rules" developed and applied internally to guide the procedural operation of the City and more formal "regulations" that are adopted on substantive matters to regulate public conduct. Thus, Staff suggests eliminating a few extraneous references to "rules" (as opposed to "regulations") that appear in Title XIII, Chapter 1.
- This Councillor's Bill was passed on first reading on March 28, 2011.

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

Respectfully submitted,

J. Brent McFall
City Manager
Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **12**

SERIES OF 2011 INTRODUCED BY COUNCILLORS
Dittman - Major

A BILL
FOR AN ORDINANCE AMENDING TITLE XIII, CHAPTER 1, OF THE WESTMINSTER MUNICIPAL CODE CONCERNING REGULATIONS FOR THE ORDERLY USE AND MANAGEMENT OF THE CITY'S PARKS, RECREATION FACILITIES, AND BUILDINGS, AND REMOVING UNNECESSARY REFERENCES TO "RULES" CONTAINED THEREIN

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 13-1-4, W.M.C., is hereby AMENDED to read as follows:

13-1-4: ENFORCEMENT OF ~~RULES~~ REGULATIONS:

(A) The Director shall make and publish, pursuant to the procedure outlined in Section 13-1-9 herein, such regulations, not inconsistent with the terms of this Title, as needed, for the orderly use and management of the City's parks, recreation facilities, and buildings.

(B) The Director and any law enforcement officers acting in the line of duty shall diligently enforce the provisions herein and shall have the authority to eject, from any park or community building, any person acting in violation of these ~~rules and~~ regulations. Further, the Director shall have the authority to deny use of park or community buildings to individuals or groups who refuse to comply with the provisions of this Chapter, the conditions of any use permit, and regulations promulgated hereunder.

Section 2. Section 13-1-5, subsection (A), W.M.C., is hereby AMENDED to read as follows:

13-1-5: ENFORCEMENT OF APPLICABLE LAWS AND ORDINANCES:

(A) All persons entering parks or community buildings shall abide by the ~~rules and~~ regulations of the City, as provided herein, and the instructions and directions of duly authorized agents, employees or law enforcement officers of the City in their line of duty.

Section 3. The index for Chapter 1 of Title XIII, W.M.C., is AMENDED to read as follows:

CHAPTER 1

PARKS, OPEN SPACE, AND COMMUNITY BUILDING REGULATIONS

13-1-1: PURPOSE AND INTENT
13-1-2: DEFINITIONS13-1-3: USE REGULATIONS
13-1-4: ENFORCEMENT OF ~~RULES~~ REGULATIONS
13-1-5: ENFORCEMENT OF APPLICABLE LAWS AND ORDINANCES
13-1-6: FISHING, HUNTING, WILDLIFE AND BOATING REGULATIONS
13-1-7: POLICIES FOR NON-PARK USE OF PARKLANDS
13-1-8: REDESIGNATION, SALE, OR TRADE OF PARKLANDS
13-1-9: ADOPTING REGULATIONS

Section 4. Chapter 1 of Title XIII, W.M.C., is hereby amended BY THE ADDITION OF A NEW SECTION 13-1-9 to read as follows:

13-1-9: ADOPTING REGULATIONS:

(A) The Director may prepare and adopt regulations as necessary by dating and signing the regulations after consultation with the City Attorney. The regulations shall become effective upon the signature of the Director or at such later date as specified by the Director.

(B) Within ten (10) days following adoption, the Director shall cause notice of the adoption of a regulation to be published, along with the complete text of the regulation as follows: on the City's official website where it shall remain available, posted in a prominent location in City Hall for thirty (30) days following adoption, on file at the City Clerk's office for public inspection.

(C) Regulations in existence prior to the adoption of this Section shall become valid and enforceable under this Section if published in full on the City's website and made available for inspection and copying at the office of the City Clerk within sixty (60) days following adoption of this Section.

(D) The City Clerk shall be the custodian of the Director's regulations and shall maintain an official copy available for public inspection and copying during regular business hours, upon payment of a fee for such copies in accordance with the law.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April, 2011.

ATTEST:

_____
Mayor

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office