



## CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration except when addressing the City Council during Section 12 of the agenda.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
  - A. City Manager's Report
5. City Council Comments
6. Presentations
  - A. Arbor Day/Earth Day/Tree City USA Proclamation
  - B. "Just Say No" Week 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. Ambulance Billing Service
  - B. Light Duty Vehicles Purchase
  - C. Tandem Dump Trucks with Snow Removal Equipment Purchase
  - D. City Park Recreation Center Aquatics Renovation Contracts
  - E. Standley Lake and Golf Courses Restrooms Construction Contract
  - F. 2009 Water Leases to FRICO-Standley Lake Irrigators
  - G. 2009 Wastewater Collection System Improvement Project/CIPP Lining
  - H. Hyland Village Off-Site Sanitary Sewer Upsizing and Traffic Signal Installation

### 9. Appointments and Resignations

### 10. Public Hearings and Other New Business

- A. Public Hearing re The Westminster Center Urban Reinvestment Plan
- B. Resolution No. 12 re The Westminster Center Urban Reinvestment Plan
- C. Resolution No. 13 re Edward Byrne Memorial Justice Assistance Grant Formula Program
- D. Resolution No. 14 re Purchase of Shoenberg Farm Lots 5 and 14A
- E. Resolution No. 15 re IGA with State re Historic Preservation Grant re Shoenberg Farm Milk & Ice House Construction
- F. Resolution No. 16 re IGA with State re Historic Preservation Grant re Shoenberg Farm Concrete Silo Construction
- G. Councillor's Bill No. 8 re Bradburn Boulevard Bikeway Project Supplemental Appropriation
- H. Resolution No. 17 re IGA with CDOT re Bradburn Blvd, 73<sup>rd</sup> Avenue to Turnpike Drive Bikeway Project
- I. Resolution No. 18 re First Amendment to the North Huron Urban Renewal Plan
- J. Resolution No. 19 re Refinancing of up to \$69 Million of the 2005 Series WEDA Bonds for the North Huron URA
- K. Councillor's Bill No. 9 re Appropriation of FY2008 Carryover Funds into the FY2009 Budget of the General Fund
- L. 2008 Westin Westminster Conference Center Possessory Interest Tax Payment
- M. Councillor's Bill No. 10 re Lease/Purchase of Park Services Maintenance Equipment Supplemental Appropriation
- N. Park Services Maintenance Equipment Master Lease Agreement
- O. Park Services Maintenance Equipment Contracts

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

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

- A. City Council
- B. Executive Session – Receive legal advice from the City Attorney concerning the City’s special use permit process, pursuant to W.M.C. 1-11-3(C)(6)and(8) and C.R.S. 24-6-402(4)(b).

**13. Adjournment**

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)**

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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 23, 2009 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, and Scott Major were present at roll call. Councillor Faith Winter was absent and excused. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Carla Koeltzow, Deputy 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 9, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall made a public notice that there would be no Study Session on March 30, the fifth Monday of the month, and that a meeting of the Westminster Economic Development Authority would be conducted after adjournment of this meeting. After both meetings are concluded, City Council would hold a post-meeting to discuss the City Park Recreation Center aquatics renovation, to which the public was welcome to attend.

CITY COUNCIL COMMENTS

Councillor Briggs reported the he, along with the Mayor and other Councillors, represented the City at the National League of Cities Legislative Conference in Washington D.C. last week. They had the opportunity to meet with Colorado Senators and Representatives. It was a good conference and keeping political connections is very valuable for the City.

Councillor Major also attended the NLC Conference, his fourth year, and thanked Staff for preparing Council with the right information to remind Washington that Westminster is here, when distributing federal funding.

Councillor Lindsey reported that this was also her fourth year at a NLC Conference. She attended two days of excellent leadership training and two days of workshops. Valuable information was gained in regards to the several federal economic stimulus packages being offered and networking with representatives from other cities. She also noted that on April 3 & 4, Council will be attending a strategic planning retreat.

Mayor McNally announced that this Wednesday from 5 to 7 p.m., there will be an open house at the Presbyterian Church at Bradburn Village to discuss the master plan for Metzger Farm Open Space, at 120<sup>th</sup> & Lowell, in partnership with the City and County of Broomfield. On April 1, at City Park Recreation Center, there will be another open house to view maps and discuss the planned transportation improvements to U.S. 36. This will be the final meeting in Westminster for comments before the record of decision is sent to Washington for inclusion in the upcoming U.S. Transportation Act.

CITIZEN COMMUNICATION

Mike Hayes, member of the Westminster 7:10 Rotary Club, made a formal request to Council for serious consideration to allow service clubs to have access to Channel 8. Information could be provided to encourage citizens to volunteer or join such clubs that improve quality of life and do good work for the City.

PRESENTATIONS

Councillor Major presented certificates and pins for 20 years of City service to employees Jim Cloud, Rob Martinez, Pam Mayhew and Sandy Thornton.

Mayor McNally presented certificates, pins, and monetary stipends for 25 years of City service to employees Roger Harshman and Dan Stadler.

Mayor Pro Tem Dittman presented certificates and pins to employee Mark Schmidt for 30 years of City service and to employee Jim Kautz for 35 years of City service.

Kathy Barta, Colorado Government Finance Officer Association Administrator, presented the Government Finance Officer's Certificate of Achievement for Excellence in Financial Reporting to the City's Comprehensive Annual Financial Report project team. This is the twenty-fifth consecutive year the City has received this prestigious award.

Kathy Barta also presented the 2008 Colorado Government Finance Officer Association award for Significant Contributions to Government Finance for the City's Geographical Information Systems assisted tax audit program. Councillor Major and City employees Josh Pens, Jim Maydew and Dave Murray received this award on behalf of the City.

Councillor Lindsey presented a proclamation to City Environmental Analyst Carey Rangel and Environmental and Administrative Services Officer Rachel Harlow-Schalk proclaiming March 28, 2009, from 8:30 to 9:30 p.m. as Earth Hour in the City of Westminster. At 8:30 p.m. all non-essential lighting at City Hall, including the iconic bell tower, will be turned off for one hour in observance of Earth Hour.

#### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: acceptance of the February 2009 financial report; award the bid for eleven Police Department patrol vehicles to Lakewood Fordland in the amount of \$252,297.50; based on the report and recommendation of the City Manager, determine that the public interest will be best served by authorizing the purchase of Workers' Compensation Excess insurance for \$76,845 from Midwest Employers Casualty Company; authorize the City Manager to sign a contract with Sand Construction in the amount of \$83,164 for construction services for the renovation of the former Colorado Rapids portion of the City Park Fitness Center, and authorize a contingency in the amount of \$8,316 for a total project budget of \$91,480; find that the public interest would best be served by entering into a sole source contract with Frontier Radio Communications and authorize the City Manager to sign an annual contract with two one year renewals in the amount of \$74,113.56 for the City of Westminster and City of Arvada combined 800 MHz radio system; based on the report and recommendation of the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute a sole source agreement with Financial Consulting Solutions Group, Inc. for completion of financial model analyses and revisions to the model in an amount not to exceed \$60,720; authorize the City Manager to execute a renewal of the current Large Item Cleanup Services contract with Waste Management of Colorado for the 2009 calendar year in the amount of \$87,000 and authorize a contingency of \$600 for a total budget of \$87,600; authorize the City Manager to sign an amendment to the engineering design services contract with WH Pacific, Inc. for the McKay Drainageway project totaling \$73,650; authorize the City Manager to sign a one year Consumable Water Lease Agreement with Aggregate Industries for 152 acre feet of water in the amount of \$53,200; final passage of Councillor's Bill No. 6 approving a supplemental appropriation in the amount of \$200,000 reflecting the City's receipt of a Great Outdoors Colorado Grant for Westminster Center Park, and in the amount of \$300,000 reflecting the City's receipt of a Jefferson County Open Space Grant for the City Park Recreation Center Aquatics Renovation; and final passage of Councillor's Bill No. 7 on second reading transferring \$1,964,350 from the Utility Capital Project Reserve Fund to the Special Assessments Metro Wastewater Reclamation District Regular operating account to cover the payment to Metro Wastewater Reclamation District.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. There was no request. Councillor Major moved to approve the consent agenda as presented. The motion was seconded by Councillor Kaiser and passed unanimously.

PUBLIC HEARING ON THE THIRD AMENDED PDP FOR PANORAMA POINTE SUBDIVISION PARCEL C

At 7:47 p.m., Mayor McNally opened a public hearing to consider approval of the proposed Third Amended Preliminary Development Plan for Panorama Pointe Subdivision, Parcel C. Mac Cummins, Planning Manager, provided background information and entered the agenda memorandum and attached documents into the record. He stated that notice of this hearing had been published in the newspaper, mailed to property owners within 300 feet of the parcel and the property had been properly posted. The site of the proposed Panorama Pointe project (Parcel C) is approximately 4.09 acres in size and is generally located south of 84<sup>th</sup> Avenue and west of 83<sup>rd</sup> Way. Approval of the PDP is required to re-establish senior housing as an allowed use for the property. Westminster Municipal Code Section 11-5-17, Duration of Plan Approvals, requires that Preliminary Development Plans more than five years from the approval date are expired, and must be submitted for review and reconsideration in accordance with the current code requirements and City standards.

Testifying on behalf of the applicant and describing the proposed use of senior housing for Parcel C was Steve Elkin, 1873 S. Bellaire St. Suite 1105 in Denver. The Architect, Jim Lambert, was also available for questions.

Mr. Cummins also reported that the Planning Commission had reviewed the proposal on March 10, 2009, and recommended Council approval.

Mayor McNally invited public comment. No one came forward, and the Mayor closed the hearing at 7:49 p.m.

THIRD AMENDED PDP FOR PANORAMA POINTE SUBDIVISION PARCEL C

Mayor Pro Tem Dittman moved to approve the Third Amended Preliminary Development Plan for Panorama Pointe Subdivision, Parcel C. Councillor Lindsey seconded the motion and it passed with all members of Council voting in favor.

RESOLUTION NO. 11 RE SERVICE COMMITMENT AWARD FOR PANORAMA POINTE PARCEL C

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Lindsey, to adopt Resolution No. 11 awarding Service Commitments to the senior housing project proposed for Parcel C of the Panorama Pointe Subdivision. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser, seconded by Councillor Major, to adjourn. The motion passed unanimously, and the Mayor adjourned the meeting at 7:56 p.m.

ATTEST:

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Deputy City Clerk

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Mayor



## Agenda Item 6 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
April 13, 2009



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

**Prepared By:** Rob Davis, City Forester  
Carey Rangel, Environmental Analyst

### Recommended City Council Action

Councillor Winter to present a proclamation to City Forester Rob Davis and Environmental Analyst Carey Rangel proclaiming April 18, 2009, 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 24th consecutive year that the City has received the Tree City USA Award.
- Mayor Nancy McNally is requested to present the City's Arbor Day and Earth Day proclamation to City Forester Rob Davis 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 meets 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 Rob Davis, 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 sway the balance of life and the Earth. For the City of Westminster, April 18, 2009, is established as Earth Day in order to coordinate with Arbor Day events. Each year, a different theme is chosen and for 2009 the theme is "Living Green."

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

Arbor Day and Earth Day School Program: Thursday, April 16, 1:00 p.m. at Rocky Mountain Elementary

The presentation at Rocky Mountain Elementary School will educate 4th grade students about the benefits of trees, tree protection, and the history of Arbor Day and Earth Day. Prizes for the Arbor Day poster contest will be awarded, with the first place winner receiving a potted evergreen tree. Second through tenth place winners will receive a 2 to 3-foot shade tree. The students will be shown how to properly plant and take care of their trees as well. All students will receive buttons, tree seedlings, and a reusable grocery bag from the Environmental Advisory Board, which include educational materials on protecting our resources. A presentation may be made on how to live more green, conserve energy, and recycle at your curb.

Arbor Day and Earth Day Celebration: Saturday, April 18, 2009

Park Service Division Staff will distribute bare-root honeylocust, birch and spruce 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. Additionally, members of the Environmental Advisory Board will be on hand to collect plastic bags for recycling, sell reusable grocery bags and provide information on living green, recycling, household hazardous waste, and storm water protection. Because the attendees are community involved and consciously 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

**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 2008 Earth Day theme is “Climate Change.”

**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 18, 2009,**

### **ARBOR DAY and EARTH DAY**

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

Signed this 13 day of April 2009.

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Nancy McNally, Mayor





## Agenda Item 6 B

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2008



**SUBJECT:** Proclamation re “Just Say No” Week

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

**Recommended City Council Action**

Councillor Kaiser to present the proclamation for “Just Say No” Week in the City of Westminster.

**Summary Statement**

- Again this year, the City is supporting “Just Say No” Week.
- The City of Westminster in conjunction with the Westminster Area Community Awareness Action Team (CAAT), local schools, churches and area businesses are joining together to encourage all citizens of Westminster to participate in this effort and to be reminded that the use of alcohol, tobacco and other drugs by our youth is one of the most serious problems facing today’s society.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**SUBJECT:** "Just Say No" Week Proclamation

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**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

The City of Westminster has participated by proclaiming "Just Say No Week" since 1986. The Westminster Area Community Awareness Action Team's (CAAT) Drug-free Conference and "Just Say No" Carnival are community school-based programs dedicated to the well being of children and teenagers.

The Westminster Area CAAT has requested that City Council proclaim April 26 through May 2 as "Just Say No" Week. During that week, the "Just Say No" flag will be flown from a standard in front of City Hall as a visible reminder of the need for the community to focus on a drug-free society.

The issuance of this proclamation promotes City Council's Strategic Plan Goal for a Safe and Secure Community by encouraging citizens to take responsibility for their own, their children's, and the community's safety and well-being through lifestyle choices that create a drug-free environment.

Clifford "Skeet" Hartman, Mike and Kathy Pascoe, Brittany Arguello, and Phyllis and Phil Aschenbrenner, members of the Westminster Area CAAT Board, will be present to accept this proclamation.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

**WHEREAS**, Alcohol, tobacco and other drug use by our youth is one of the most serious problems facing our society today; and

**WHEREAS**, The Westminster Area Community Awareness Action Team works to empower youth to lead healthy, productive, drug-free lives; and

**WHEREAS**, Just Say No Week represents a comprehensive effort on the part of schools, parents, the community and children themselves to persuade youth not to use alcohol, tobacco and other drugs; and

**WHEREAS**, The Drug Free Youth Conference, Red Ribbon Week Celebration, Parents Who Host, Lose the Most Campaign, and “Just Say No” to Drugs Week are community and school-based programs dedicated to the well being of children and teenagers and locally coordinated by Westminster Area Community Awareness Action Team; and

**WHEREAS**, Resiliency of youth is promoted through City, school and community programs by providing opportunities to form strong relationships with positive peers and adults within community institutions, develop and practice new life skills, and assume useful, meaningful roles in their communities.

**NOW THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim the week of April 26 through May 2, 2009**

### **JUST SAY NO WEEK**

in the City of Westminster and encourage all citizens of Westminster to participate in this effort and remind our citizens that drug use by youth is a serious problem that requires everyone’s attention.

Signed this 13<sup>th</sup> day of April, 2009.

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Nancy McNally, Mayor



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Ambulance Billing Service

**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 with 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 and to automatically renew for an additional one-year term.

**Summary Statement**

- On April 10, 2006 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 through 2009. The Fire Department is very satisfied with the services of HPB.
- The City pays HPB a 5% fee for all revenues collected. HPB has agreed to maintain this 5% rate for the continuation of the long term contract through the two-year term of the contract.
- Staff conducted a survey of other vendors and fire agencies for comparison of fees paid for ambulance billing services. The survey showed that nine other fire departments pay between 6 and 8% with an average fee of 6.8% for ambulance billing services.
- In 2008, HPB collected over \$2 million in ambulance revenues for the City of Westminster. HPB was paid \$100,334 for this service from the 2008 Fire Department Operating Budget.
- In 2009, the Department projects that over \$2 million will be collected in ambulance revenues and estimates fees paid to HPB will once again be over \$100,000. The exact amount is unknown until the end of the billing year but should not exceed \$110,000.
- With the help of HPB, the Fire Department has achieved a 72-75% collection rate after write-offs with a 75.6% collection rate in 2008. The average collection rate for area fire departments is 60-65%.
- Adequate funds were budgeted and are available in the 2009 Fire Department Operating Budget to cover this expense.

**Expenditure Required:** Approximately \$100,000 to \$110,000

**Source of Funds:** 2009 General Fund - Fire Department Operating Budget

**Policy Issue**

Should the City contract for one year with a one-year renewal with Healthcare Professional Billing who has committed to maintain their 5% billing rate, which is substantially lower than other 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. Additionally, the vendor has agreed to maintain the 5% collections fee through the two-year contract.
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 6-8% 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:

<b>Department</b>	<b>Billing Agency</b>	<b>Billing Fee</b>
Cunningham Fire	WIBS	6.5%
Englewood Fire	Medibanc (ADPI)	6.5%
Federal Heights Fire	Pridemark	7.5%
Littleton Fire	Medibanc (ADPI)	7.75 %
Mountain View Fire	Healthcare Professional Billing	6%-8%
North Metro Fire	Healthcare Professional Billing	6%
North Washington Fire	Pridemark	7 %
Sable Altura	Healthcare Professional Billing	6%-8%
South West Adams County Fire	Healthcare Professional Billing	6%
South Metro Fire Authority	WIBS	Would not disclose
Thornton Fire	Pridemark	Would not disclose
West Metro Fire	Bills Internally	N/A
<b>Average</b>		<b>6.8%</b>
Westminster Fire	Healthcare Professional Billing	5%

The Fire Department has utilized Healthcare Professional Billing for over 9 years and has been very satisfied with the service rendered. End of the year collection ratio for ambulance billing in 2008 was 75.6%, 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 and has the option with 60 days notice to contract with another vendor if service or costs associated with Healthcare Professional Billing is out of line.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Light Duty Vehicles Purchase

**Prepared By:** Jeffery H. Bowman, Fleet Manager

**Recommended City Council Action**

Based on the results of the State Bid, award the bid for two Toyota Prius hybrids totaling \$46,238 to Stevenson Toyota, the bid for one Chevrolet light duty van for \$30,361 to Dellenbach Chevrolet and the bid for two light duty Chevrolet pickups for \$43,036 to Daniels Chevrolet, and, based on the results of a City bid process, award the bids for the purchase of four GMC pickups totaling \$99,912 to Daniels Chevrolet.

**Summary Statement**

- City Council action is requested to award nine light duty vehicle purchases based on the State of Colorado bid and on City of Westminster bids for light duty vehicles. Five vehicles will be for the Parks Division maintenance, two for Police Department animal control and administration, one for Community Development Department field operations and one for Utilities Division field operations.
- The City solicited additional bids for General Motors vehicles in addition to the Colorado State Bid, in those cases where the State awarded vehicles other than General Motors.
- The City saves considerable dollars by purchasing vehicles through the State Bid whenever possible.
- The seven General Motors vendors solicited in the City bid process were: Daniels Chevrolet, Dellenbach Chevrolet, Emich Chevrolet, Mike Shaw Chevrolet, Century Chevrolet, Go Chevrolet and Transwest GMC.
- All vehicles recommended for purchase have been previously approved and are within the amount authorized by City Council in the 2009 Budget.

**Expenditure Required:** \$219,547

**Source of Funds:** \$192,691 - General Capital Outlay Replacement Fund  
\$ 26,856 – Utility Fund

**Policy Issue**

Should the City approve the use of the Colorado State and City of Westminster Bids for purchase of the vehicles outlined in this agenda memorandum?

**Alternatives**

1. Reject both the Colorado State and City of Westminster bids and instruct City Staff to re-bid vehicles. This is not recommended because the State Bid reflects the purchasing power of all the political subdivisions in the State. In addition, where vehicle classes were not awarded to a General Motors vendor on the State Bid, the City solicited front-range General Motors dealerships.
2. Do not purchase some or all of the proposed replacement vehicles in 2009. This is not recommended because all of these vehicles have a maintenance history that makes it impractical to keep them in regular service, based on Fleet Maintenance recommendations.

**Background Information**

As part of the 2009 Budget, City Council approved the purchase of these nine light duty vehicles in 2009. The light duty vehicles to be replaced are outlined in the graph below. The maintenance costs do not include accident repairs or fuel costs. These vehicles are used to transport crews, tools and material to job sites around the City. These vehicles have reached a point where it is no longer economically reasonable to maintain them in service. Information regarding each old vehicle being replaced and the replacement recommendation is as follows:

DEPARTMENT	OLD UNIT #	YEAR	OLD MAKE/MODEL	MILES	MAINTENANCE COSTS (LTD)	NEW MAKE/MODEL	PRICE	AWARD
Community Development	2336	1996	Chevrolet Corsica	86,472	\$13,194.95	Toyota Prius Hybrid	\$23,119.00	State Bid Stevenson Toyota
PR&L	7006	1997	GMC Sonoma	66,279	\$27,254.89	Chevrolet Colorado W/Plow	\$22,194.00	State Bid Daniels Chevrolet
PR&L	7202	1999	Chevrolet S-10	105,076	\$15,579.87	Chevrolet Colorado W/Plow	\$20,842.00	State Bid Daniels Chevrolet
PR&L	7048	1998	Chevrolet 3500	90,700	\$21,087.05	Chevrolet 3500 2WD	\$23,848.00	City Bid Daniels Chevrolet
PR&L	7700	1999	GMC 2500	101,610	\$23,797.15	Chevrolet 2500 W/Plow	\$24,604.00	City Bid Daniels Chevrolet
PR&L	7045	1998	GMC 2500	82,115	\$16,040.02	Chevrolet 2500 W/Plow	\$24,604.00	City Bid Daniels Chevrolet
Police	8620	2000	Chevrolet 2500 w/animal cage	111,381	\$26,977.82	Chevrolet 2500 Van W/Animal Cage	\$30,361.00	State Bid Dellenbach Chevrolet
Police	8214	1996	Chevrolet Lumina	69,579	\$10,625.42	Toyota Prius Hybrid	\$23,119.00	State Bid Stevenson Toyota
PW&U	9310	1999	GMC 2500	91,781	\$16,053.16	Chevrolet 2500	\$26,856.00	City Bid Daniels Chevrolet

The City operates a standardized GM fleet of light duty vehicles whenever practical. This saves on parts inventory and personnel training. The Colorado State Bid does not always award vehicles to General Motors. In cases where General Motors was not selected by the State of Colorado, Westminster held a separate bid for light duty vehicles between seven front-range dealerships. The following are the bid tabulations for the GMC 2500 and 3500 pickup trucks:

**GMC 2500 4wd Bid Results**

<b>Contractor Name</b>	Daniels Chevrolet	Dellenbach Chevrolet	Emich Chevrolet	Century Chevrolet	Go Chevrolet	Mike Shaw Chevrolet	Transwest GMC
<b>Base Price with required options</b>	\$20,976	Late Bid Not Accepted	\$22,083 *	No Bid	No Bid	No Bid	Incomplete Bid
<b>Extended Cab Option for PWU</b>	\$3,300		\$4,000				
<b>Other Dealer and Non-Dealer Installed Options for PWU</b>	\$2,580		\$2,580				
<b>TOTAL</b>	\$26,856		\$28,663				

\* Quote does not include \$3,628 for plow assembly.

**GMC 3500 2wd Bid Results**

<b>Contractor Name</b>	Daniels Chevrolet	Dellenbach Chevrolet	Emich Chevrolet	Century Chevrolet	Go Chevrolet	Mike Shaw Chevrolet	Transwest GMC
<b>Base Price with required options</b>	\$23,848	Late Bid Not Accepted	\$25,297	No Bid	No Bid	No Bid	Incomplete Bid

The total cost of these purchases is within the amount that City Council previously approved for these nine vehicles. This project meets Council’s Strategic Plan goals of Safe and Secure Community, Financially Sustainable City Government and Beautiful City by maintaining a cost effective, dependable fleet of vehicles.

Respectfully submitted,

J. Brent McFall  
City Manager





**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Tandem Dump Trucks with Snow Removal Equipment Purchase

**Prepared By:** Joe Lachermeier, Purchasing Officer  
Jeff Bowman, Fleet Manager  
Ray Porter, Street Operations Manager  
Rick Clark, Utilities Operations Manager

**Recommended City Council Action**

Award the bid for three tandem axle cab and chassis trucks to the low bidder, Transwest Trucks, for model MQ-112V Freightliner trucks in the amount of \$260,970. In addition, based on the recommendation of the City Manager, find that the public interest would best be served by accepting the proposal from O.J. Watson Co., Inc. for the purchase and installation of three dump bodies and snow removal equipment in the amount of \$263,361, to be installed on the above trucks.

**Summary Statement**

- City Council action is requested to award the bid for three replacement tandem axle cab and chassis trucks based on the City of Westminster’s bid requests to three dealers.
- The low bidder Transwest Trucks meets the specifications requested in the City bid and in accordance with the bid agrees to deliver and accept payment for two trucks after January 1, 2010, when budget funds are available.
- City Council action is also requested to approve the sole source proposal from O.J. Watson Co., Inc., Westminster’s standardized vendor, for dump bodies and snow removal equipment installation.
- City Council previously approved \$185,000 in the 2009 General Capital Outlay Replacement Fund (GCORF) budget to replace one truck.
- City Council also approved \$174,500 in the 2010 GCORF budget and \$20,000 in the 2010 Street Division Operating budget for a second truck replacement.
- A third truck replacement of \$194,500 was approved by City Council in the 2010 Utilities Capital Replacement Fund.

**Expenditure Required:** \$524,331

**Source of Funds:** General Capital Outlay Replacement Fund (GCORF)  
Utility Capital Outlay Replacement Fund  
General Fund - Street Operating Budget

**Policy Issue**

Should the City proceed with the 2009 purchase of the low bid for one tandem dump truck with the standardization of the snow removal equipment and the 2010 purchase of two additional tandem dump trucks with snow removal equipment to be ordered in 2009 and delivered and paid for in 2010?

**Alternative**

Do not purchase the proposed replacement of the tandem axle cab and chassis, and the installation of the snow removal equipment. This is not recommended by the Fleet Maintenance Division because the vehicles have a maintenance history that makes it impractical to keep them in service and a \$34,000 savings for placing the 2010 orders in 2009 would not be realized.

**Background Information**

Funding for the truck chassis and snow equipment was approved by City Council in 2009 in the General Capital Outlay Replacement Fund for replacement of Unit #6110. Funding for two truck chassis and snow equipment was approved by City Council in 2010 in the General Capital Outlay Replacement Fund, Utilities Capital Outlay Replacement Fund and the Street Division Operating Budget for replacement of Units #6105 and #9787. These vehicles are used by the Department of Public Works and Utilities for snow removal, hauling material, patching, overlay, etc. Formal bids were not conducted for the purchase and installation of the dump bodies and snow removal equipment due to critical needs for standardization and the past track record of success with this equipment and this installer. These trucks are essential as emergency equipment utilized for snow and ice control operations, making standardization an important factor in providing this critical service. In February, Street Operations Division, Fleet Maintenance and Purchasing Staff all met with O.J. Watson Co., Inc. to negotiate pricing for the installation of the snow removal equipment and the dump bodies. Staff negotiated a price of \$87,787 per vehicle, and, when compared to what other entities are paying for similar equipment, this quote is lower than the average. Staff also included optional bids for two additional tandem axle cab and chassis trucks scheduled for 2010 replacement. Transwest will honor the 2009 price of \$86,990. Ordering these two trucks now and taking delivery in 2010 will save \$20,000 in engine cost increases and \$14,000 in dump body/snow equipment increases while allowing for a January 2010 delivery and payment. All three bidders for the truck cab and chassis have confirmed this \$10,000 per truck industry wide increase in 2010 is due to this third and final emissions requirement for diesel truck engines sold in the United States. Additionally, anticipated in 2010 is an 8% increase for the dump body and snow equipment that can be attributed to the rising steel costs, which have averaged over 8% the past 3 years (2007-2009).

Bids for the truck chassis are as follows:

<b>Company</b>	<b>Bid Amount – 3 trucks</b>	<b>Trade-Ins</b>	<b>Total</b>
Transwest Trucks (Freightliner)	\$298,470	\$37,500	\$260,970
Colorado Kenworth	\$316,959	\$36,500	\$280,459
McCandless International	\$310,854	\$26,500	\$284,354
Transwest Trucks (White Star)	\$337,410	\$37,500	\$299,910

Staff has determined that partnering with O.J. Watson Co., Inc. for the installation of the Crysteel dump body, the Monroe plow, Monroe sander and Force America hydraulic system, equipment we have standardized on for the past several years, and which has an outstanding proven performance for Westminster’s fleet, is in the best interest of the City. O.J. Watson Co., Inc. is the only franchised dealer in the state of Colorado for Monroe truck products and the Crysteel dump body.

Standardization of the equipment is an integral part in providing Westminster a high level of emergency snow and ice service. Westminster’s Fleet Maintenance Division maintains a stock of solenoids, spreaders, cylinders and frames for the Monroe snow equipment. Standardization on this equipment decreases the probability of operator error and accidents, facilitates replacements and repairs and provides

overall flexibility for assigning and training operators to specific equipment. Decreased downtime for equipment equates to a higher level of service on the road.

The purchase of the tandem axle cab and chassis and the installation of snow removal equipment process helps achieve the City Council's Strategic Plan Goals of "Safe and Secure Community", by ensuring reliable equipment to provide safe streets during snow and ice emergencies and a "Financially Sustainable City Government" by considering the life cycle costs of the equipment.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** City Park Recreation Center Aquatics Renovation Contracts

**Prepared By:** Becky Eades, Landscape Architect II

**Recommended City Council Action**

Authorize the City Manager to enter into a Contract Amendment with Adolphson and Peterson Construction establishing the Guaranteed Maximum Price (GMP) for the City Park Recreation Center Aquatic’s Renovation at \$6,030,440, and a project contingency of \$376,522 (6%) for a total project budget of \$6,406,962. Also authorize a Contract Amendment with the project architect, Sink Combs Dethlefs in the amount of \$70,500 for additional architectural and engineering services, and authorize the following transfers into the CIP project account for the City Park Pool Renovation: \$750,000 from the POST Revenue Swim Fitness Center Bond Funds; \$1,242,697 PRL Reserve Fund transfer; \$175,000 from the CPRC Ozone Replacement CIP; \$50,000 from the Pool Disinfectant/Monitoring Systems CIP; \$200,000 from the Recreation Facilities Major Maintenance BO&M CIP; \$300,000 from the Recreation Facilities BO&M CTF CIP; and \$50,000 from the Recreation Facilities BO&M JCOS CIP.

**Summary Statement**

- On December 8, 2008, Council authorized a Contract Manager/General Contractor (CM/GC) contract with Adolphson and Peterson Construction (A&P) for a preconstruction fee of 0.5% and a construction management fee of 3%.
- A&P has concluded preconstruction services and as required in the existing contract, they have developed a Guaranteed Maximum Price (GMP) of \$6,030,440 to complete the project.
- A 6 percent construction contingency of \$376,522 is included in the project budget.
- The CPRC Aquatics Renovation was originally budgeted at \$3,500,000 in POST revenue bond funds, of which \$309,430 has been encumbered for architectural services, the additional \$70,500 requested will increase the project percentage for design to 6 percent.
- In addition, Staff received a Jefferson County Joint Venture grant for \$300,000 to go towards the project. The Jefferson County grant has already been appropriated by City Council.
- The renovation is anticipated to begin in late April 2009 and to be complete in early 2010.

**Expenditure Required:** \$ 6,477,462

**Source of Funds:**

- \$3,190,570 POST Revenue Bond Funds
- \$ 300,000 Jeffco Joint Venture Grant
- \$ 219,195 2007 Conservation Trust Fund Carryover
- \$ 750,000 POST Revenue Bond Funds/Swim Fitness Center Re-assignment
- \$2,017,697 General Capital Improvement Fund - Miscellaneous project transfers

**Policy Issues**

Does City Council wish to finalize the contract with A&P Construction by issuing a contract amendment establishing the project Guaranteed Maximum Price (GMP)?

Does City Council concur with the reallocation of other funding sources to fully fund this project?

**Alternative**

Council could direct Staff to discontinue or eliminate parts of this project. Staff does not recommend this alternative as the aquatics area has not been renovated in over 18 years and is struggling to remain regionally competitive with the newer facilities operating in adjacent communities.

**Background Information**

The CPRC was built in 1986, and the aquatics component currently consists of three separate pools on three deck levels, the renovation will bring the lower pool level up even with the middle level for safety and surveillance reasons. A summary of the proposed renovation is as follows: Much of the existing deep pool will remain and this area will be enhanced with the addition of a jumping platform and climbing wall; the existing slide that connects the deep pool to the middle pool will be removed due to maintenance issues and replaced with a free standing tube slide that exits and re-enters the building into a small 'trough'; the middle pool and tot pool will be on the same deck level, eliminating stairs and ramps on the pool deck, increasing user safety and enhancing surveillance; an approximately 120 foot long "Lazy River" with a variable speed current will be added between the middle and tot pools; the tot pool will include a zero-depth entry, a play feature and double tot slide; two reservable party rooms will be added to increase facility revenue; and a small outdoor splash pad will be added with landscape enhancements to create an inviting outdoor area, including a picnic shelters. The locker rooms will be completely renovated, including the replacement of all aged plumbing, the addition of oversized lockers and four family changing rooms.

On April 2, 2007, Staff presented Council with a Staff Report detailing a proposed breakdown of the estimated \$8 million in proceeds anticipated to be available to park projects from the Open Space/Parks Bond. Of that \$8 million, \$3.5 million was estimated to be sufficient to fund the CPRC Pool and Locker Room Renovation, based on no specific renovation plan. As Staff proceeded with the project architect, Sink Combs Dethlefs, in analyzing needs for the renovation it became apparent that \$3.5 million would not be sufficient to allow for a renovation of enough impact to maintain a competitive edge when compared to newer public and private facilities opening nearby. Staff identified what was believed to be the minimal amount of changes to the existing pool area and locker rooms to not only maintain the existing user group, but to attract the widest variety of new users as well. Impacts to the proposed budget were considered with each decision, and the proposed plan offers what Staff believes to be the minimal amount of work to achieve the project goals; although, certain elements of the plan can be eliminated if City Council desires.

Additional costs to the renovation, already included in the GMP, include a new ozone disinfection system (\$236,000) for the existing pools that was already scheduled to be updated. Staff spent a great deal of time researching the latest pool disinfection system options in order to find a system that maintains the current high water and air quality standards at the most reasonable price possible. BO&M Staff also discovered some structural concerns when an inspection was made of the facilities infrastructure. Permanent repairs of the Rec Centers' support columns (\$161,883), along with the need for all new locker room plumbing (\$218,000), were also added into the cost of the project.

The locker room portion of the proposed renovation includes a complete redo as opposed to a more cosmetic facelift. As mentioned earlier, this was determined to be necessary based on underground structural issues as well as the need for new plumbing. The structural engineers recommended complete removal of the locker room deck to make the structural repairs complete. This of course added additional cost to the locker room renovation. The tradeoff in costs to accomplish the complete overhaul was

minimal once the amount of basic infrastructure repair and replacement was determined. This did allow for the incorporation of the four family changing rooms into a more cohesive design, increasing the functionality of the overall locker room area.

Staff chose the CMGC method because it brings the contractor onto the team during the design process, which allows for the integration of value engineering and constructability and means/methods review throughout the final design stages, allowing cost implications of every design decision to be weighed heavily into the process. It has been Staff's experience that this method also minimizes the number of change orders normally experienced on a straight bid project. The CM/GC method also enables the project to be fast tracked allowing for the potential of an earlier completion, which would, in-turn, allow the City Park Recreation Center to be fully open to the public and generating revenue sooner. Staff has worked closely with Adolphson and Peterson Construction throughout the estimating process to insure that competitive bids from subcontractors were used to determine the Guaranteed Maximum Price (GMP) for the project. For all trades, a minimum of three qualified bids were sought, with up to eleven bids per trade being requested in some instances. In some instances where three bidders did not submit prices, additional qualified bids are being sought. For the larger budget items, such as the pool work that accounts for one-third of the project cost, six bids were solicited from all over the western United States. Staff is confident that competitiveness was maintained throughout the bid process. In all, 52 subcontracted categories were bid for this project. The contractor will continue to evaluate bids and solicit even more pricing where it feels the project can benefit. This will hopefully reduce the GMP to a smaller number and return dollars to the City.

Staff recommends temporarily transferring \$750,000 from bond proceeds that were previously allocated for improvements to the Swim and Fitness Center (SFC). Originally, Council approved \$1,000,000 to go towards improvements to the SFC. Staff feels that the CPRC Aquatics Renovation is a higher priority and needs to be done according to the developed plan. Therefore, Staff suggests reallocating \$750,000 to the City Park Aquatics Expansion and utilizing the remaining \$250,000 to bring a consultant on board to develop a master plan strategy for phased improvements to the SFC, and to possibly begin some modest improvements. Staff would intend to direct future Parks and Recreation Capital money for these phased improvements allowing for the overall renovation to provide the most benefit to the SFC users and Staff.

The CM/GC contract with A&P construction that was approved by Council on December 8, 2008 included a provision requiring a contract amendment establishing the GMP for the project which covers all construction related expenses, including the previously established preconstruction fee of 0.5% and construction management fee of 3%.

The Architect has requested additional fees for engineering services that correspond with the increased scope of the project. Initially, the architect's fee was equivalent to 8% of the project budget; and even with the additional fee request of \$70,500 the architect's fees are equivalent to 6% of the new increased project budget. For comparison, architect fees for the Irving Street Library were approximately 9.5% of the construction costs; architect fees for the Public Safety Center were approximately 7.5%; and architect fees for Fire Station 2 were approximately 12.7%.

City Council reviewed the project budget on March 23<sup>rd</sup> and directed Staff to place this item on a regular City Council meeting agenda for approval.

The renovation of the City Park Recreation Center aquatics area fulfills the 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



Westminster City Park Recreation Center  
**AQUATIC RENOVATION AND ADDITION**

**Design Concept**



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Standley Lake and Golf Courses Restrooms Construction Contract

**Prepared By:** Ken Watson, Regional Parks & Golf Manager  
Sarah Washburn, Landscape Architect II

**Recommended City Council Action**

Authorize the transfer of \$235,547 from five existing Capital Improvement Project accounts into the Golf Courses Restrooms Capital Improvement accounts to fund the Standley Lake, Heritage and Legacy Ridge restrooms projects, and authorize the City Manager to execute a contract with CG Construction, Inc., in the amount of \$894,318 for the construction of five stand-alone restrooms including: one restroom at Standley Lake, and two restrooms each at The Heritage at Westmoor Golf Course and Legacy Ridge Golf Course, and to authorize a 10-percent contingency amount of \$89,432, for a total project budget of \$983,750.

**Summary Statement**

- In 2008, voters passed a Parks, Open Space, and Trails (POST) Revenue Bond. \$501,003 from the POST Bond was identified for construction of new restrooms at The Heritage at Westmoor and Legacy Ridge golf courses.
- On January 30, 2007, Jefferson County approved a \$150,000 joint-venture grant for a new restroom at Standley Lake. Standley Lake CIP funds will provide \$150,000 match toward this project.
- Jefferson County also approved a \$41,407 joint-venture grant for construction of new restrooms at The Heritage on February 12, 2008. In addition, Jefferson County approved a reimbursement for the Westminster Sports Center renovation, with the understanding that these funds would be applied toward a new roof for the Sports Center, and that unused monies could be applied to The Heritage restrooms project. The remaining joint-venture grant reimbursement monies to be applied to The Heritage portion of the restrooms project is \$110,715.
- Additional funds of \$235,547 are available in the Parks and Golf CIP accounts to comprise the remainder of finances required, pending authorization for transfer of these funds from other project accounts by City Council.
- Bids were solicited on December 2, 2008 from five reputable construction companies based on positive experience with the City or based on recommendation by the project's engineer. Four bids were received for the project, with CG Construction, Inc., offering the lowest bid for the work.

**Expenditure Required:** \$983,750

**Source of Funds:** Grant funds, Parks, Open Space and Trails Bond funds, Standley Lake Regional Park CIP funds, Re-allocated Parks CIP funds, and Re-allocated Golf CIP funds.



## **Policy Issue**

Should the City proceed with construction of one restroom at Standley Lake, and two restrooms each at The Heritage at Westmoor Golf Course and Legacy Ridge Golf Course?

## **Alternatives**

1. City Council could choose to not authorize the construction of any new restrooms and invest the money in other projects. However, grant funding has already been awarded specifically for construction of these restrooms, and bond issue money has already been assigned to Legacy Ridge and The Heritage for improvements. In addition, the porta-johns currently at the sites detract from the overall quality of the golf courses and park, and Staff has received many comments regarding the inadequacy of the current facilities.
2. City Council could choose to forego the construction of restrooms at one or two of the three sites to meet the current budget. However, all three sites are a priority and equally in need of upgraded utility-served restrooms. Funding is available with the proposed transfers for construction at all sites, and this is an excellent opportunity to install quality facilities and substantially enhance the experience for patrons at these City properties.

## **Background Information**

Standley Lake is a 2,327-acre regional park offering recreation in the form of boating, fishing, picnicking, overnight camping in designated areas, and other similar activities. A portion of the park's original campsites and day-use areas were relocated in 2004 after the spillway construction, and were moved to the western portion of the campground. This western area is currently served with porta-johns, with the closest permanent restroom nearly ¼ mile away. The relocation of the campsites has generated a need for a permanent restroom to serve the area; therefore, a new multi-user restroom, drinking fountain, and outdoor rinse shower would be added at the campground's western edge to fulfill this need (See location map). Utility-served restrooms are a requirement of the Standley Lake Park Intergovernmental Agreement between the cities of Westminster, Thornton, and Northglenn, signed in 1994.

The Heritage at Westmoor Golf Course is a 224-acre City-owned golf course located at 10555 Westmoor Drive. The Heritage is known as a quality municipal course with championship-quality playing conditions. Since inception, the golf course has used porta-johns at two locations along the course. New multi-user restroom facilities would replace the porta-johns and will also include covered entries, enhancing the overall quality of the users' experience at the course. The "south" restroom location will include a chilled water drinking fountain. The restrooms would be located at a south location between holes 5 and 6, and a north location behind hole 12, and serving 5 holes in the general vicinity (see location maps). The proposed restroom on Hole #12 (Heritage "North") requires unusually long service lines for water and sewer, thus the majority of additional funding for the project.

Legacy Ridge Golf Course is a 190-acre City-owned golf course located at 10801 Legacy Ridge Parkway. New multi-user restrooms would likewise replace porta-johns currently used on this golf course and also feature chilled-water drinking fountains and covered entries. These restrooms would be located at the east side of the course between holes 5 and 6, and a west location between holes 14 and 15 (see location maps).

All of the golf course restrooms will be secured at night with automatically operated doors that will seal off access to the buildings. The restroom at Standley Lake will be locked and unlocked manually as necessary by Lake Operations Staff as part of their regular daily operations.

In 2008, Staff obtained professional engineering services from Sorenson Engineering, Inc and professional architectural services from Ennis Associates to design plans for each restroom site. In 2009, Staff secured water and sewer taps prior to the rate increase on April 1, 2009. Staff also contracted with Xcel in 2009 to install electrical services to 3 sites that require installation by Xcel only.

Design fees for architecture and engineering, as well as payment for water and sewer tap fees, and payments for Xcel’s electrical service work have encumbered \$204,922 of the original \$953,125, leaving a remainder of \$748,203 available for the construction contract.

Bids were solicited from five reputable construction companies on December 2, 2008. Four of those companies chose to bid on the project in January 2009. The bids include construction of utilities and the restroom structures to create finished restrooms at each of the five sites.

The engineer and architect’s estimate of probable construction cost, based on 2008 unit pricing estimates, was \$818,704 for all five sites. Staff was surprised to find the bids received were higher than anticipated, particularly considering other bids received by the City have been low. However, this project at 5 different sites has a variety of complexities and requires work from many different construction disciplines, which distinguishes it from other projects such as the major road widening and utility infrastructure projects recently awarded. The bid sums are distributed as follows:

**CONSTRUCTION BIDS:**

	Total
CG Construction, Inc.	\$894,318.00
FCI Constructors	\$904,000.00
White Construction	\$958,000.00
Arrow J Construction	\$977,138.57

The project consultants and Staff will continue to work with the lowest bidder in an attempt to reduce costs, but the restrooms project is currently under-funded based on the original funding amounts. Pending City Council approval, the following funding sources are available to re-allocate toward construction of the restrooms:

Account 80375050305 Parks CIP funds originally intended for renovation of Municipal Park Playground (renovation delayed)	\$120,263
Account 80175050179 Parks CIP funds originally intended for construction of a dog park at Faversham Park (Faversham site was eliminated due to a lack of citizen support. Staff is investigating alternative sites in south Westminster that may be suitable for this use. Staff has reset a goal of completing this project in 2010, and will budget additional funds in the 2010 Park Renovation Program CIP.)	\$30,284
Account 80975050315 Parks CIP funds for Big Dry Creek Park Construction (Remaining funds unspent after construction completed)	\$45,000
Account 80975050045 Golf Course CIP funds intended for irrigation pump system at Heritage (Replacement delayed)	\$20,000
Account 8975050145 Golf Course CIP funds intended for irrigation pump system at Legacy Ridge (Replacement delayed)	\$20,000
<b>Total Additional Funds Available to fund Restrooms Construction</b>	<b>\$235,547</b>

Pending approval of the transfer of funds stated prior, the available funding sources for construction of the restrooms project are as follows:

Bond Issue: The Heritage at Westmoor and Legacy Ridge Golf Courses	\$501,003
Jefferson County Open Space Grant: The Heritage at Westmoor Golf Course	\$41,407
Jefferson County Open Space Grant: The Heritage at Westmoor Golf Course (remainder of monies from the Westminster Sports Center renovations grant)	\$110,715
Jefferson County Open Space Grant: Standley Lake Regional Park	\$150,000
General Capital Improvements: Standley Lake Regional Park	\$150,000
<b><i>ORIGINAL FUNDING TOTAL</i></b>	<b><i>\$953,125</i></b>
Encumbered Funds: Design fees, water & sewer tap fees, Xcel fees, etc.	(- \$204,922)
<b><i>ORIGINAL FUNDING REMAINING TO DATE</i></b>	<b><i>\$748,203</i></b>
Additional funds: Re-allocated Parks CIP and Golf CIP	\$235,547
<b>TOTAL AVAILABLE REMAINING FUNDS FOR CONSTRUCTION</b>	<b>\$983,750</b>

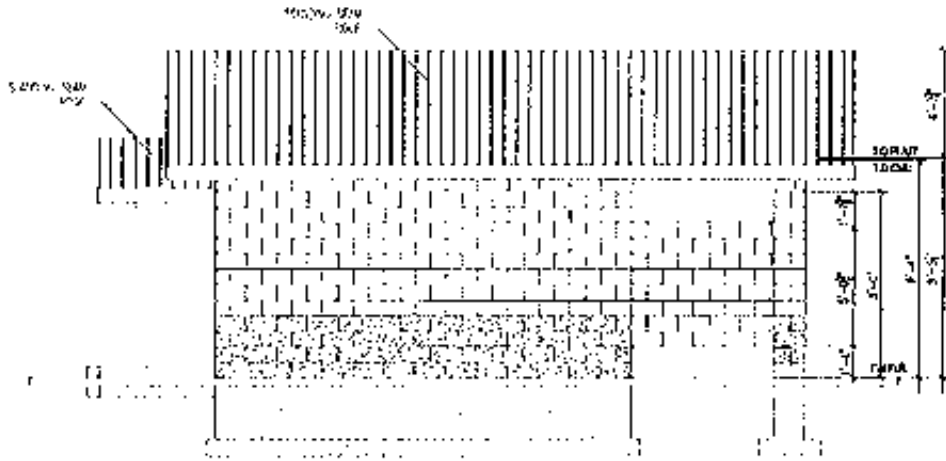
This project meets the City Council Strategic Plan Goal of Beautiful and Environmentally Sensitive City.

Respectfully submitted,

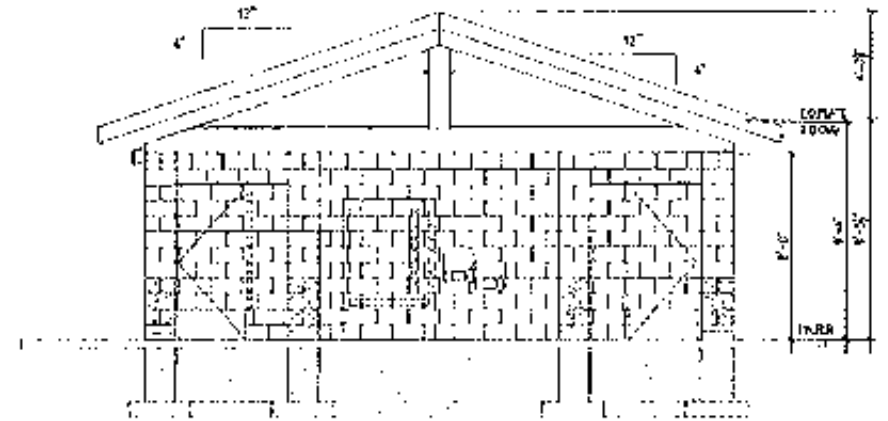
J. Brent McFall  
City Manager

Attachments

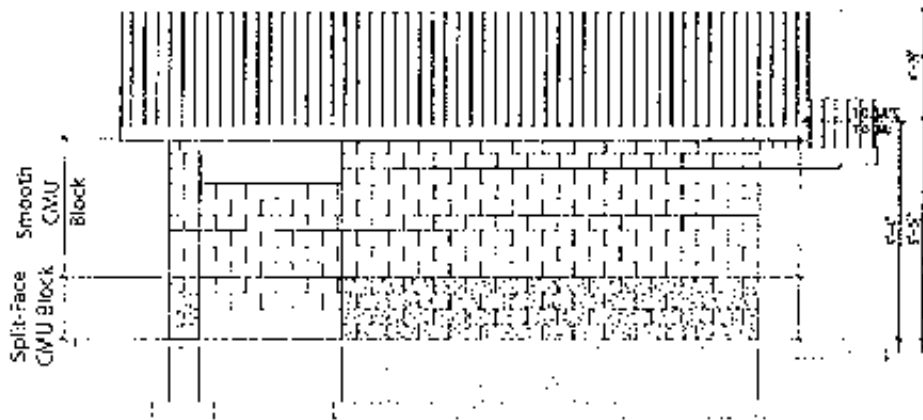
# Standley Lake Regional Park Restroom: Elevations



Side Elevations

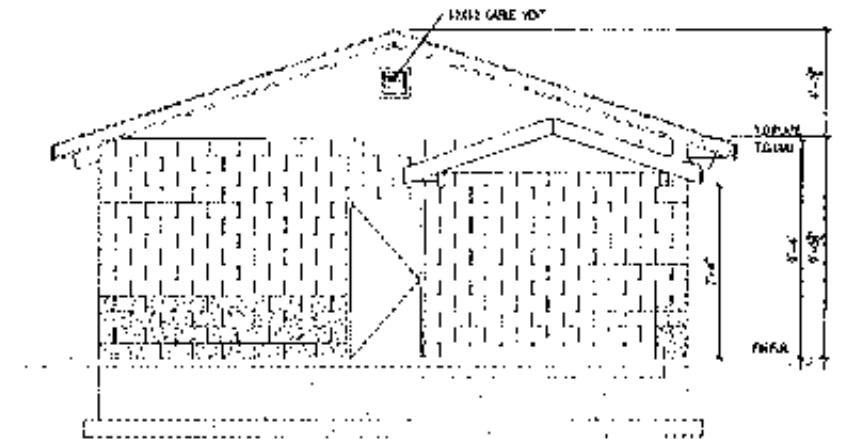


Front Elevation



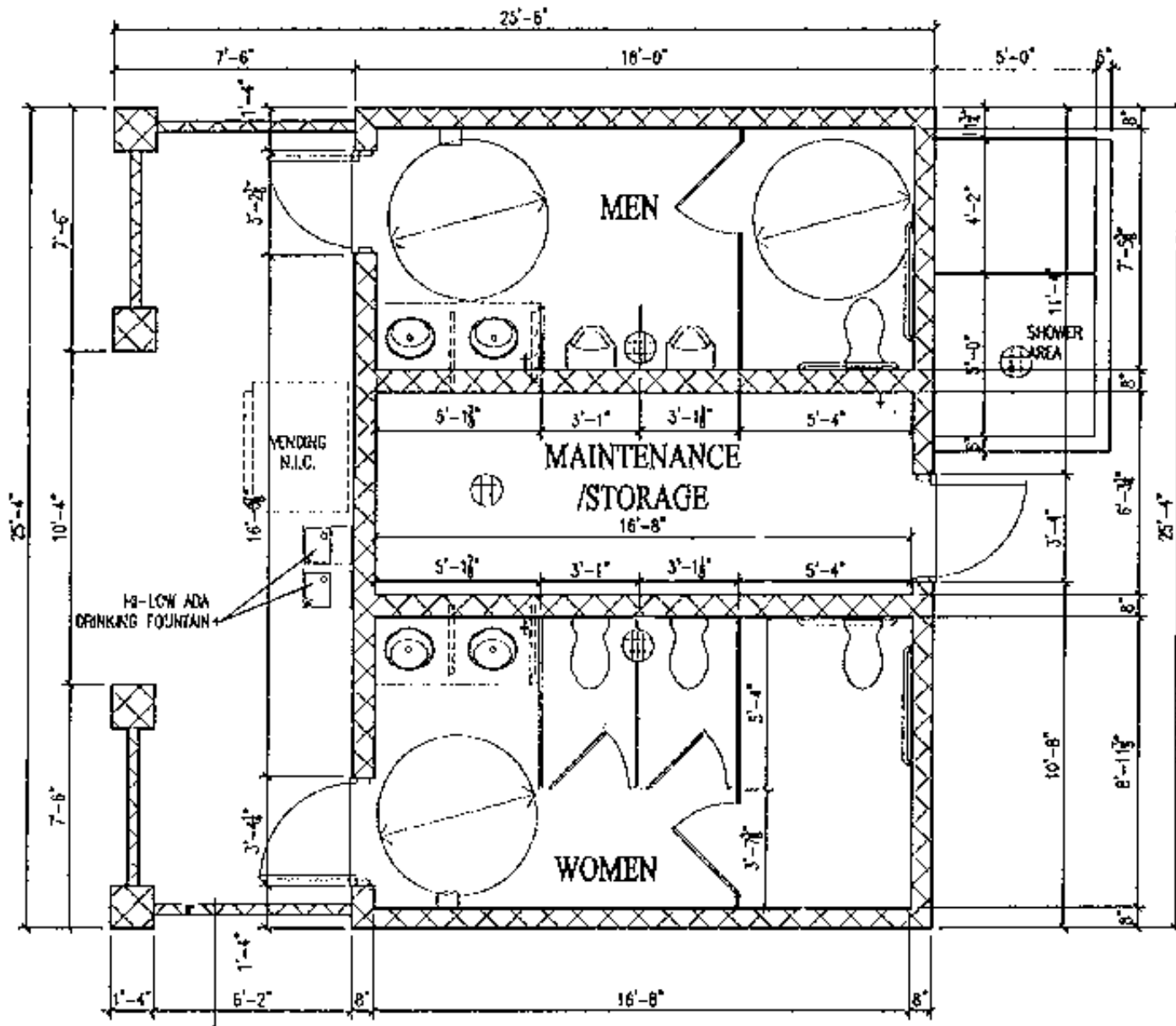
Split-Face  
CMU Block  
Smooth  
CMU  
Block

Side Elevations



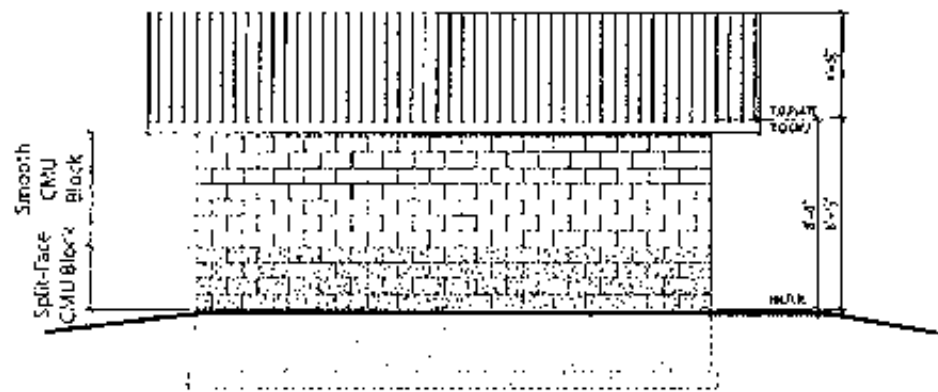
Rear Elevation

Standley Lake Regional Park Restroom: Floorplan



- Amenities:**
- ADA accessible
  - Baseboard heat
  - Hi/low drinking fountain
  - Electric hand dryer
  - Mirror, Soap dispenser
  - Outdoor rinse shower w/ roof, curb & drain
  - Vending area
  - Locking doors
- Men's Amenities:**
- 1 toilet
  - 2 urinals
  - 2 sinks
  - Electric hand dryer
  - Mirror, Soap dispenser, etc
- Women's Amenities:**
- 3 toilets
  - 2 sinks
  - Electric hand dryer
  - Mirror, Soap dispenser, etc

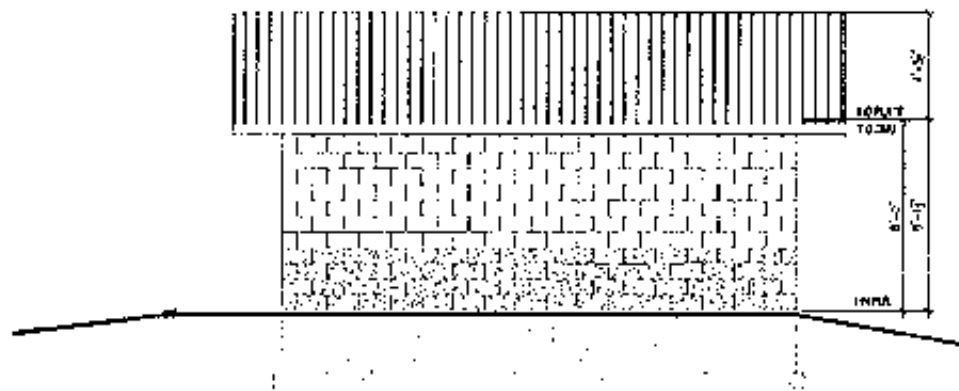
# The Heritage at Westmoor Golf Course and Legacy Ridge Golf Course Restrooms: Elevations



SIDE ELEVATIONS

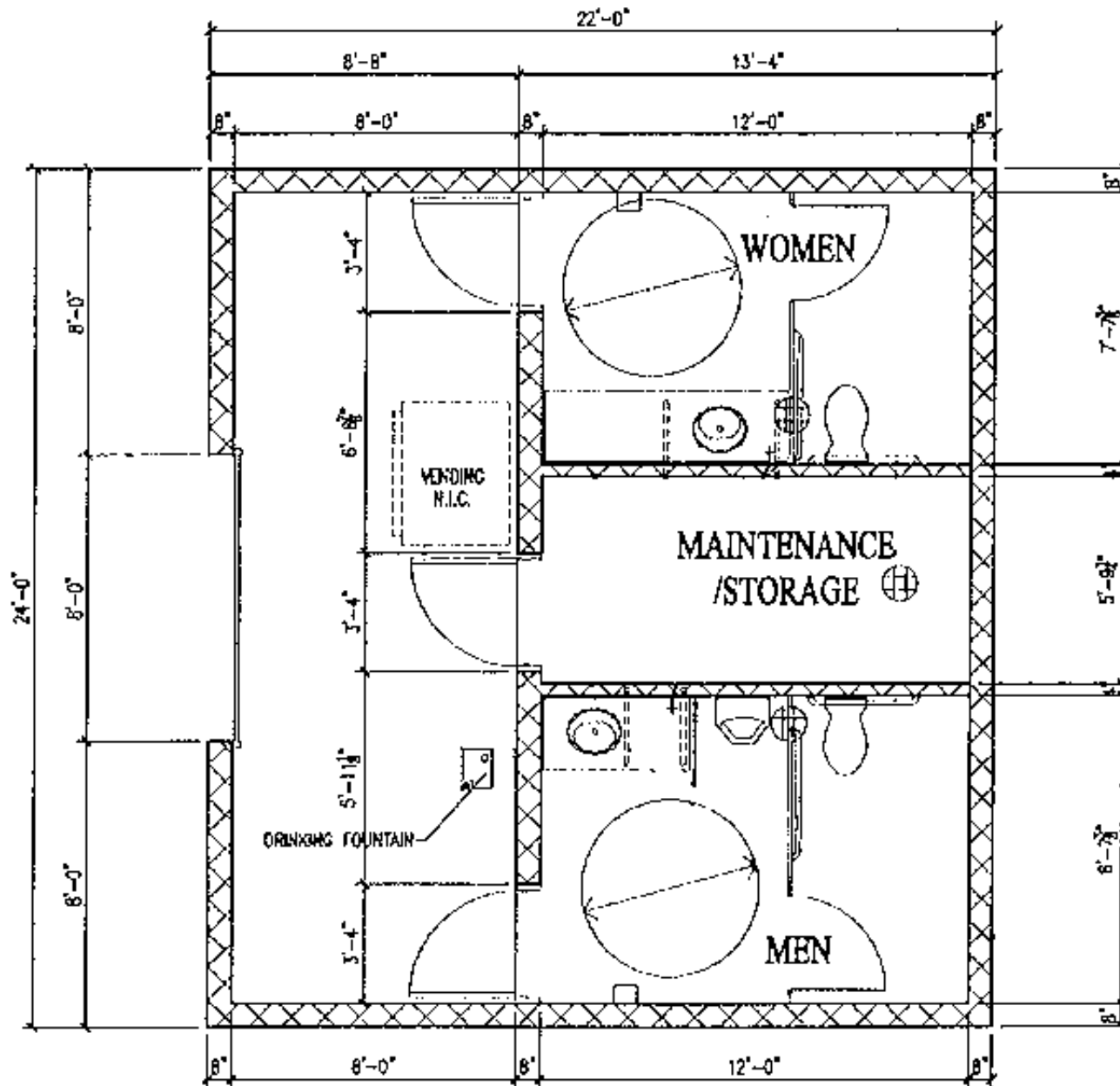


FRONT ELEVATION



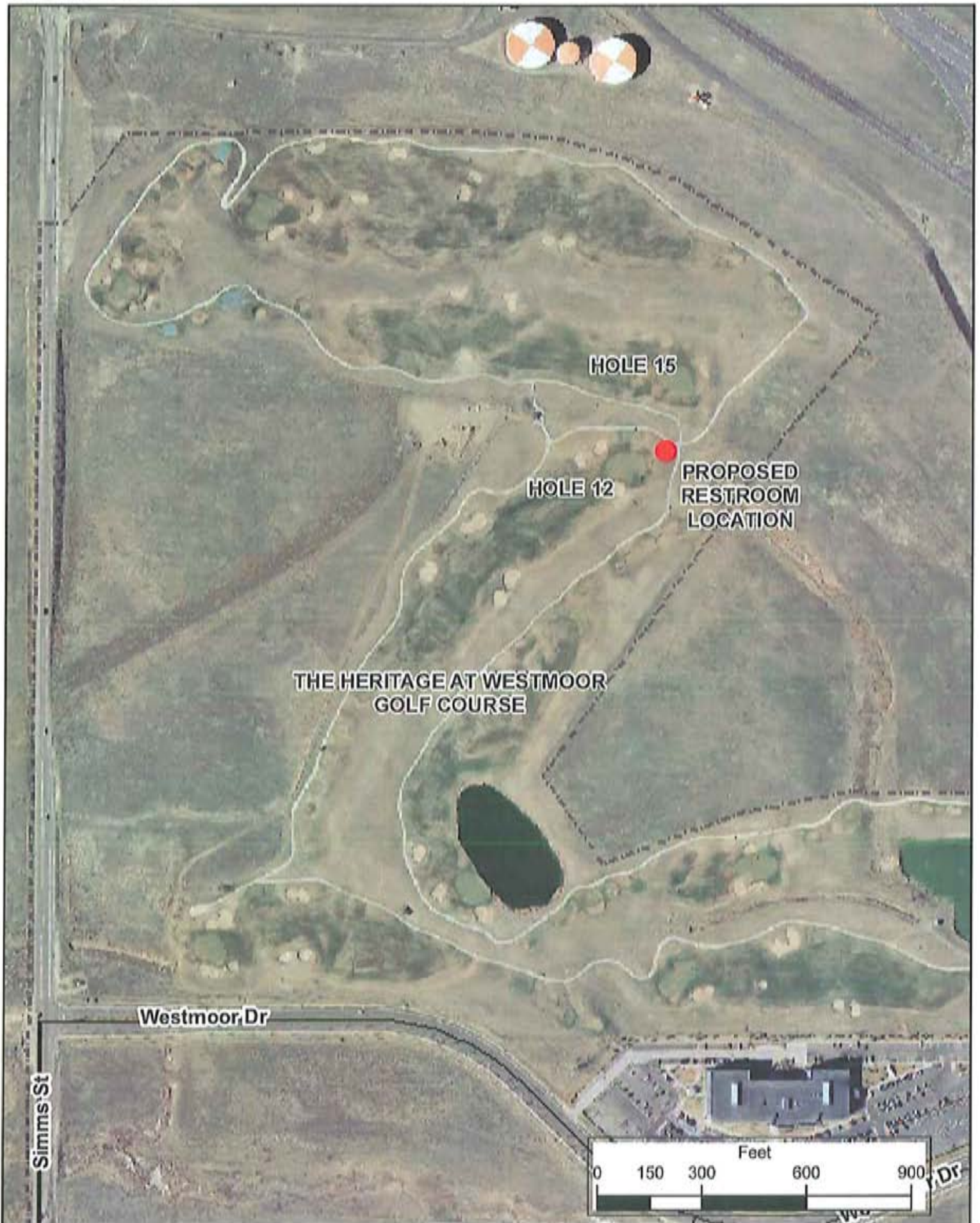
REAR ELEVATION

The Heritage at Westmoor Golf Course and Legacy Ridge Golf Course Restrooms: Floorplan



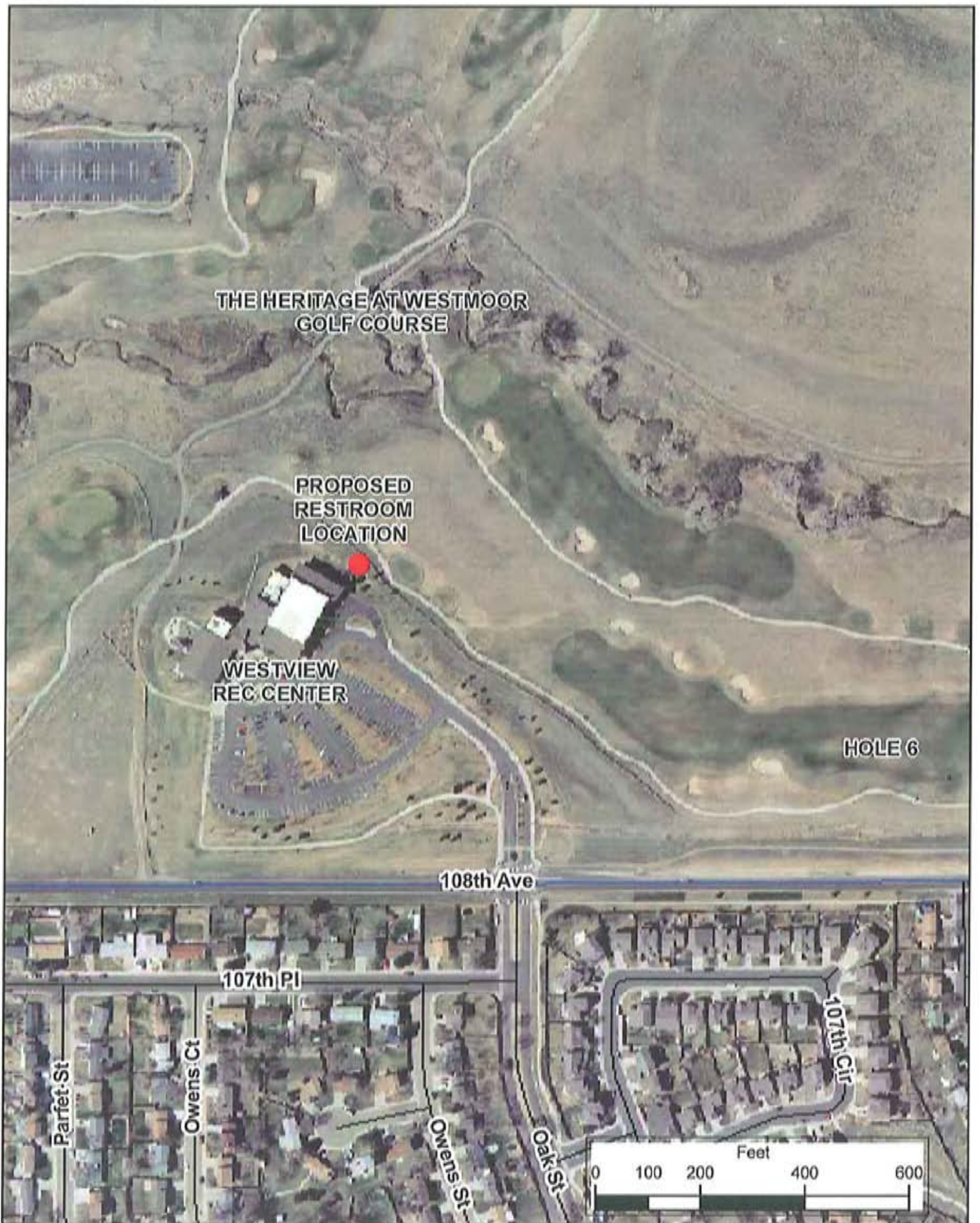
- Amenities:**
- ADA accessible
  - Baseboard heat
  - Hi/low chilled drinking fountain (all sites except Heritage North)
  - Electric hand dryer
  - Mirror, Soap dispenser
  - Vending area
  - Locking doors & roll-down exterior door
- Men's Amenities:**
- 1 toilet
  - 1 urinal
  - 1 sink
  - Electric hand dryer
  - Mirror, Soap dispenser, etc
- Women's Amenities:**
- 1 toilets
  - 1 sink
  - Electric hand dryer
  - Mirror, Soap dispenser, etc

# THE HERITAGE AT WESTMOOR GOLF COURSE - NORTH RESTROOM VICINITY MAP

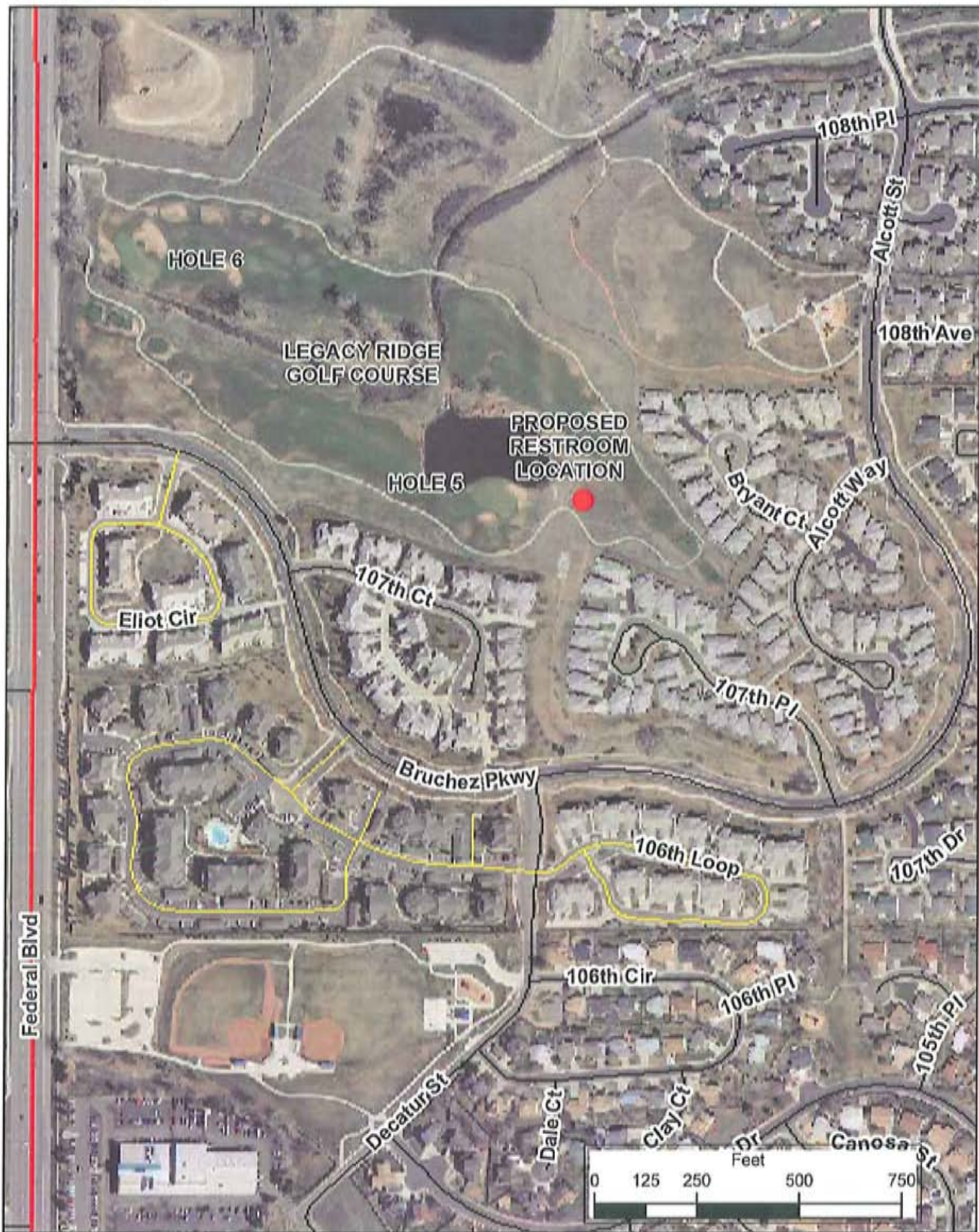




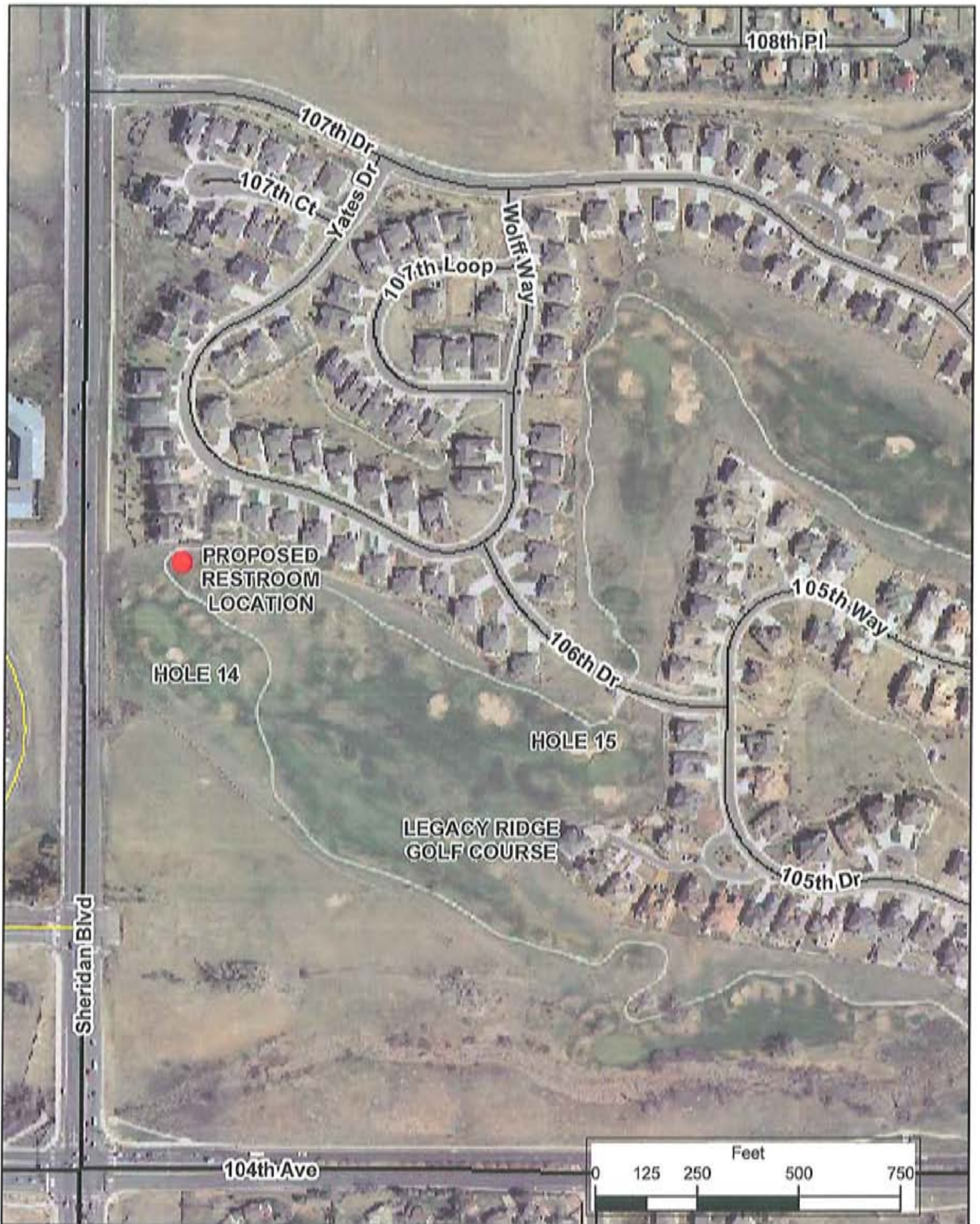
# THE HERITAGE AT WESTMOOR GOLF COURSE - SOUTH RESTROOM VICINITY MAP



# LEGACY RIDGE GOLF COURSE - EAST RESTROOM VICINITY MAP



**LEGACY RIDGE GOLF COURSE - WEST RESTROOM  
VICINITY MAP**



# STANDLEY LAKE REGIONAL PARK CAMPGROUND RESTROOM VICINITY MAP





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** 2009 Water Leases to FRICO-Standley Lake Irrigators

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

**Recommended City Council Action**

Authorize the City Manager to enter into short-term leases not to exceed 1,000 acre feet of surplus water in 2009 to Farmers Reservoir and Irrigation Company irrigators for \$27 per acre foot.

**Summary Statement**

- Due to full water storage accounts and forecasts of average or better streamflow this year due to sufficient snowpack, the City of Westminster's water supply is in good standing for 2009. Water Resources Staff has prepared an update of the current water supply status that will be presented to Council at the April 20 Study Session.
- Water Resources Staff uses a computer model to analyze current conditions and predicted water supply and demand in order to determine how much stored water may be considered surplus to the City's needs. Staff has determined that there are over 1,000 acre-feet of stored water surplus to the City's needs for 2009.
- Currently, several downstream Farmers Reservoir and Irrigation Company (FRICO) agricultural irrigators are facing a shortage in their year's water supply due to certain infrastructure repair projects being done by Northglenn that will limit exchange and storage potential normally relied on for leases. Northglenn and FRICO are fellow Standley Lake (Standley) shareholders.
- The City may benefit from leasing surplus water to the FRICO irrigators this year, mainly by establishing a good working relationship with individual Standley shareholders. Reimbursement of \$27 per acre foot of leased water can also be expected.
- City Staff is requesting authority to enact leases of surplus water at its discretion, subject to the standards in Section 14.3 as well as the additional limitations to 1,000 acre-feet and the 2009 calendar year.

**Expenditure Required:** \$0

**Source of Funds:** N/A

## **Policy Issues**

Does City Council wish to lease a total of up to 1,000 acre-feet of surplus water in 2009 for \$27 per acre foot?

## **Alternative**

City Council could recommend not leasing any of the City's surplus water this year. This alternative is not recommended. By offering water leases in 2009, the City stands to gain funds and at the same time support local agriculture. Opting not to lease surplus water would limit potential future opportunities with agricultural water rights holders and would forego revenue.

## **Background Information**

Water is a proven commodity and is becoming a scarcer resource on the Front Range as development continues. Due to responsible planning and diligent work of City Staff and Council over the decades, Westminster is privileged to have a strong water rights portfolio. At times, the City has water in excess of its needs. The water market in the South Platte River basin is such that water users often seek temporary sources of water to supplement their water supply systems. Westminster stands to benefit from these opportunities to market the City's surplus water, both from a financial standpoint and from a good-neighbor policy.

This year, Westminster has sufficient water storage coming into the runoff season. In addition, streamflow forecasts for the City's watershed are very promising, and Staff anticipates water supply for 2009 to be robust. Water Resources Staff has prepared an update of the current water supply status that will be presented to City Council at the April 20 Study Session.

In conjunction, this year a specific leasing opportunity has developed that Staff anticipates will have worthwhile benefits to the City's water supply system. Normally, the City of Northglenn leases water to FRICO-Standley Lake irrigators. This year, however, Northglenn had to draw down their Bull Reservoir in order to perform repairs. Northglenn has notified the FRICO-Standley Lake irrigators that it will not be able to lease water as normal. Westminster may fill this temporary gap in the leasing market to assist the irrigators and at the same time, generate good will among Standley shareholders and revenue.

Water Resources Staff uses a computer model to analyze current conditions and predicted water supply and demand in order to determine how much stored water may be considered surplus to the City's short-term needs. Staff has determined that there are over 1,000 acre feet of stored water surplus to the City's needs for 2009. Therefore, Staff proposes to lease surplus water up to 1,000 acre feet at FRICO irrigators' requests. Limiting the leases to this volume will ensure compliance with the Charter provision regarding avoidance of a water shortage within the City.

In staying consistent with the price these irrigators normally pay for water they lease from Northglenn, Staff proposes to lease the water at a rate of \$27 per acre foot. This price is consistent with the market price for agricultural water in the South Platte River basin. Agricultural water is notably less expensive than water leased to municipal and industrial entities because water used for agricultural purposes is not required to have undergone water court proceedings. It is therefore a more abundant commodity with a less competitive market than water guaranteed to be fully consumable.

The main benefit to the City of this lease is establishing a good working relationship with individual Standley shareholders, so charging the usual price is essential. This reimbursement rate is sufficient to meet operations and maintenance costs as well as to reduce water debt and adequately compensate the water fund, as required in Charter Section 14.3.

The FRICO-Standley irrigators' needs for water leases have a critical timeline, as their production for the year depends on availability of irrigation water. The irrigators' requests for leases have the potential to be very numerous and relatively minor in character. For these reasons, Staff proposes that Council agree to an appropriate quantity of water and an appropriate monetary reimbursement for leases in 2009 and in effect, define the limits under which surplus water lease agreements may be enacted by Staff so that individual water leases can be approved in a timely manner. With a strict set of guidelines by which to act, Water Resources Staff should be able to effectively negotiate and approve these critical leases as they arise. Specifically, Staff recommends that in 2009, up to 1,000 acre feet of surplus water may be leased to FRICO irrigators for a price of \$27 per acre foot. Any proposed water lease falling outside the limitations defined above must be considered for approval by City Council. As required by Charter Section 14.3, lease agreements shall retain the City's power to limit deliveries in order to prevent a water shortage within the City.

Approving the maximum volume of water to lease and the rate at which to offer leases in 2009, and allowing Staff to negotiate such lease agreements under the terms of Charter Section 14.3, supports City Council's goal of Financially Sustainable City Government Providing Exceptional Services by providing for efficient, cost-effective internal services. Allowance of surplus water leases in general supports City Council's goal of Financially Sustainable City Government Providing Exceptional Services by opening opportunities to secure and develop long-term water supply.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 G

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
April 13, 2009



**SUBJECT:** 2009 Wastewater Collection System Improvement Project/CIPP Lining

**Prepared By:** Richard A. Clark, P.E., Utilities Operations Manager  
Andy Mead, Utilities Operations Coordinator

### Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder, Western Slope Utilities, Inc., to complete the 2009 Wastewater Collection System Improvement Project/CIPP Lining and authorize a project budget of \$1,658,937 with a 10% contingency of \$165,893 for a total budget of \$1,824,830.

### Summary Statement

- This project consists of the rehabilitation of approximately 26,687 feet of 8 to 36 inch diameter sanitary sewer line using trenchless technology, cured-in-place pipe (CIPP) and the rehabilitation of 31 manholes.
- Formal bids were issued and a bid opening took place on March 25, 2009. Three contractors bid on this project. The lowest responsive bid was submitted by Western Slope Utilities, Inc. (WSU). This contractor has been utilized by the City in the past and has provided a satisfactory work product.
- Adequate funds were budgeted for this expenditure in the 2009 Utility Fund Capital Improvement Projects budget.

**Expenditure Required:** \$1,824,830

**Source of Funds:** Utility Fund Capital Improvements  
- Sanitary Sewer Line Trenchless Rehabilitation



**Policy Issue**

Should the City utilize Utility Fund Capital Improvement Project funds to complete this sewer line rehabilitation project, using an outside contractor, as specified in the contract documents?

**Alternative**

Delay this sanitary sewer lining rehabilitation project. This is not recommended as the City would risk additional sewer line failures and damages that may occur due to line collapse.

**Background Information**

Annually, the Utility Operations Division's budgets funds for the rehabilitation of deteriorated sanitary sewer lines utilizing the Cured-In-Place Process - CIPP (trenchless technology) to achieve the required pipe rehabilitation. Sewers are assigned a numerical condition rating during the annual inspection program and the most severely deteriorated lines are selected for rehabilitation first. Typically, hydrogen sulfide gas from the sewage has worn away the concrete mortar and caused joint leaks and crown corrosion along the sewer lines. This can eventually cause the sewer's structural support to fail and can cause a total line collapse. The selected sewer lines related to this lining project were identified as a priority for rehabilitation due to their advanced deteriorating condition.

In 2007, the sanitary sewer line rehabilitation program funding was expanded and moved from the Utilities Division Operating Budget to the Utility Fund Capital Improvements Program (CIP) portion of the Budget. Funding for these types of projects was significantly increased and has allowed for an accelerated schedule of rehabilitation of the sanitary sewer lines in need of repair throughout the city. The goal is to address all sanitary sewer lines rating poor or failing in the Pipe Assessment and Certification Program (PACP) over the next five years. For this year, there is \$2,000,000 budgeted in the Utility Fund Capital Improvements – Sewer Line Trenchless Rehabilitation account for CIPP Projects. This CIPP project - WW09-02 will utilize most of that funding with the remaining money being spent on additional sewer line repair work that will be identified by staff later this year. This project will include the completion of 26,687 feet of sewer line that has been identified as in need of repair or rehabilitation. The project work would commence later this month and be completed by October 31, 2009.

The project scope of work for this Wastewater Collection System Improvement Project/CIPP Lining consists of repairing 8-inch through 36-inch sanitary sewer lines using trenchless technology methods (internal cured-in-place lining of the existing sewer pipe). Trenchless technology has proven very successful and less disruptive for residents and traffic flows. This process of rehabilitating sewer lines has been successfully utilized by the City in past years and has been a reliable method of repair. There are also 31 manhole rehabilitations included in this project. The smaller diameter pipe lining work for this project will generally take place in the Little Dry Creek drainage basin area, which is the southern portion of the city. The larger pipe lining will take place generally north of 100<sup>th</sup> Avenue. Attached is a project area map that illustrates the specific areas to be completed within the scope of this project.

The 2009 Wastewater Collection System Improvement Project/CIPP Lining was advertised for notice and bids were accepted until March 25, 2009, at which time bids were opened and read aloud. Three contractors submitted bids. The City has utilized the services of the low bidder, Western Slope Utilities, Inc. in the past for sewer lining projects and has been satisfied with the quality of their work. The results of the submitted bids are as follows:

Western Slope Utilities	\$1,658,937
Wildcat Civil Services	\$1,740,979
Insituform Technologies Inc.	\$1,842,279

Staff anticipates that the contractor, Western Slope Utilities, Inc., would commence work about April 30 and would complete this sewer lining project by the end of October, 2009.

This project helps achieve the 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
- Maintain and improve neighborhood infrastructure and housing

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Map

# City of Westminster

## 2009 WASTEWATER COLLECTION SYSTEM IMPROVEMENTS CIPP PROJECT

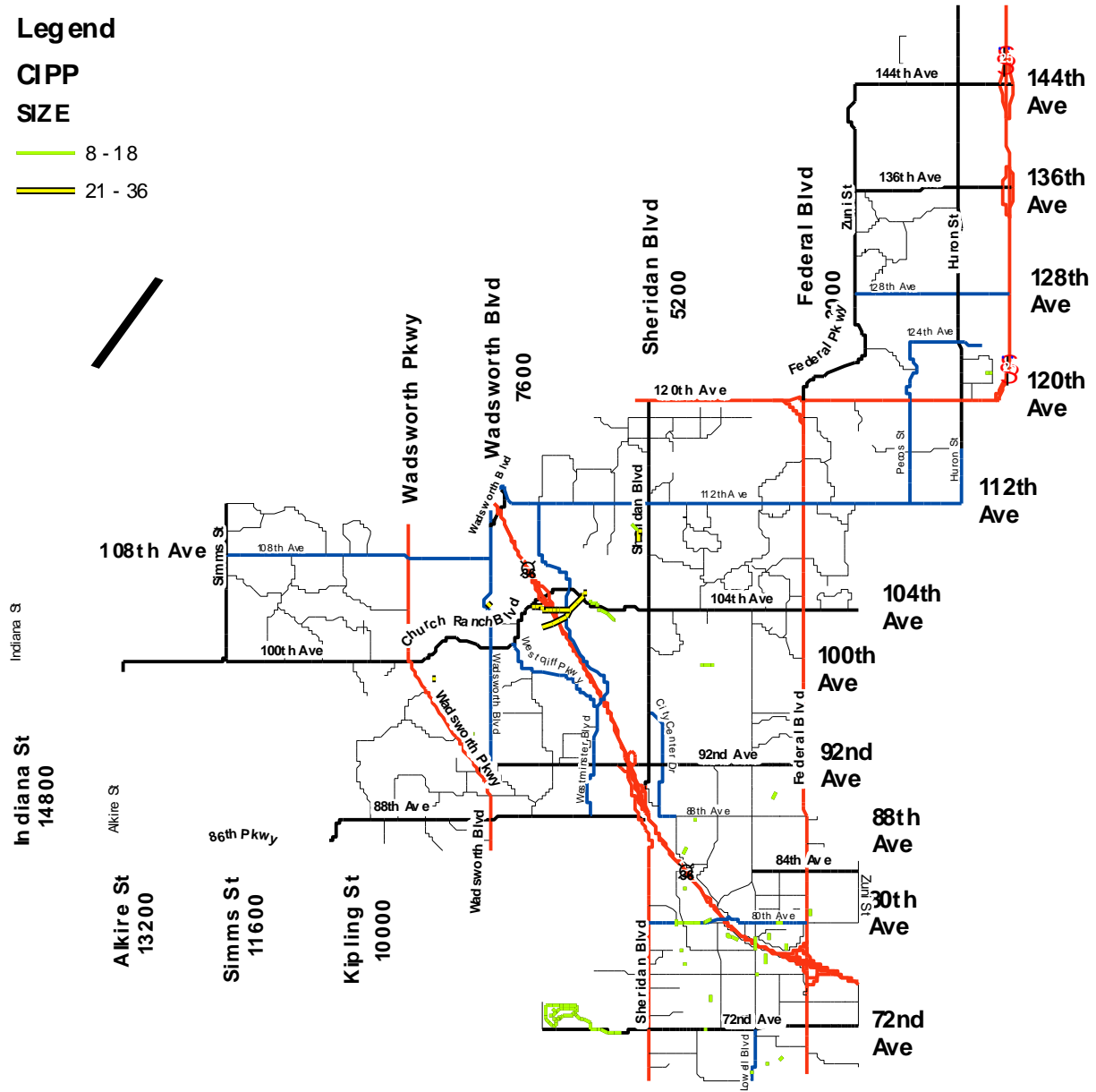
### Legend

CIPP

SIZE

8 - 18

21 - 36





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Hyland Village Off-Site Sanitary Sewer Upsizing and Traffic Signal Installation

**Prepared By:** Stephanie Bleiker, Senior Engineer  
Abel Moreno, Capital Projects and Budget Management Manager  
Dave Downing, City Engineer

**Recommended City Council Action**

Authorize payment to reimburse McStain Neighborhoods (Developer) in an amount not to exceed \$209,733 for City requested upgrades to the sanitary sewer collection system (\$59,183) and City participation in the installation of a traffic signal at the intersection of Sheridan Boulevard and 96<sup>th</sup> Avenue (\$150,550) constructed as part of a Public Improvements Agreement related to McStain’s Hyland Village Project located at 96<sup>th</sup> Avenue and Sheridan Boulevard.

**Summary Statement**

- The City and McStain Neighborhoods have executed a Public Improvements Agreement for offsite improvements, dated October 10, 2007, related to the development of the Hyland Village subdivision.
- Specific improvements addressed in the Agreement included the upsizing of an off-site sanitary sewer to convey wastewater flows in the right-of-way west of Sheridan Boulevard to the City’s existing interceptor and the installation of a traffic signal at the intersection of Sheridan Boulevard/96<sup>th</sup> Avenue.
- The City identified the need to increase the size of the interceptor in this area to convey flows from the 94<sup>th</sup> Avenue and Quitman Lift Station elimination project along with existing flows south of the project area on Sheridan Boulevard. Public Works and Utilities staff determined that the desired alignment for the new interceptor was along the west side of Sheridan Boulevard in the right of way. The Developer presented a cost proposal in the amount of \$59,183 to upsize the sanitary sewer. The sewer was upsized from a 10-inch sanitary sewer to an 18-inch sanitary sewer. It was also installed at a depth that avoided the need for lift stations that otherwise would have been tied to the sanitary sewer.
- The traffic study for the Hyland Village development indicated the eventual need for a signal at the main entrance to the subdivision. In accordance with standard City policy, McStain is responsible for one-half (i.e. the west side of Sheridan Boulevard) of the cost to signalize this intersection. The City previously budgeted for the cost of the other one-half (i.e. the east side of Sheridan Boulevard) of the traffic signal installation. A recovery of 25% of the total cost of the signal will be owed to the City by the future developer of the southeast quadrant of the intersection.
- Adequate funding for this work was previously appropriated by City Council as part of the 2007 Utility Fund Capital Project Budget and the 2008 General Capital Improvement Project Budget.

**Expenditure Required:** \$209,733

**Source of Funds:** \$ 59,183 - Utility Fund Capital Improvement Project  
- Hyland Village Sewer Upsize  
\$150,550 - General Capital Improvement Fund  
- New Development Participation Project

**Policy Issue**

Should the City reimburse the Developer of the Hyland Village subdivision for completing improvements to the City's wastewater collection system and a portion of the cost of a new traffic signal as agreed to in the Public Improvements Agreement?

**Alternative**

City Staff could attempt to negotiate a delayed payment to the Developer for these expenses. This alternative is not recommended due to the fact that certain contractors are awaiting this payment from the City to McStain in order to be reimbursed for their work on the project.

**Background Information**

McStain Neighborhoods received planning approval from the City for the Hyland Village subdivision located in the vicinity of 96<sup>th</sup> Avenue and Sheridan Boulevard (see attached location map). The City and the Developer have executed a Public Improvements Agreement that addresses, among other issues, the installation of utility infrastructure for dedication to the City. As required by the site development plan, the developer was required to design and construct a sanitary sewer that would convey the development's flows off-site to the north into the City's sanitary sewer main without the use of a lift station. Consequently the new sanitary sewer extended off-site approximately 1,500 feet north of the subdivision where it could tie into the existing wastewater collection system without the aid of a lift station.

The City identified the need to increase the size of the sewer main in this area to an 18-inch diameter pipe in order to provide more reliable conveyance for existing sanitary sewer flows generated further to the south on Sheridan Boulevard as well as flows generated from the 94<sup>th</sup> Avenue and Quitman Lift Station Elimination project. Department of Public Works and Utilities staff reviewed the proposed utility plan for the development and determined that the alignment for the recommended 18-inch sanitary sewer was best suited for the Sheridan Boulevard west right-of-way. Staff recommended that the Developer install the 18-inch sanitary sewer along Sheridan Boulevard in the west right-of-way, to keep it out of the Sheridan Boulevard median and roadway. By accomplishing the installation of the 18-inch sanitary sewer in this manner, the City only pays for the incremental cost difference between the 10-inch and 18-inch sanitary sewer.

The developer has presented the costs to upsize the 10-inch sanitary sewer and related work to an 18-inch line, for a total cost of \$59,183. Staff has reviewed the detailed breakdowns of these costs and has found them to be both reasonable and competitive for this work. City Council previously appropriated \$125,000 for this work as part of the Hyland Village Subdivision Public Improvements Agreement.

The long-term plan is to reduce the number of lift stations Utilities Operations needs to maintain and to relocate the sewer main outside of the roadway where it will be safer and easier to maintain. By consolidating the City's off-site sanitary sewer with the Hyland Village off-site sanitary sewer, Staff was able to meet both of these goals.

Obviously, the installation of a traffic signal at the intersection of 96<sup>th</sup> Avenue and Sheridan Boulevard was not an immediate necessity. However, it is not unusual for signals such as this one to be constructed early in the development of a large subdivision even though the need for the traffic control device will not be realized until several more residences are built. Developers do not wish to carry the financing for infrastructure improvements for lengthy periods of time, opting instead to install these items quickly so that City acceptance and maintenance responsibility can be gained as soon as possible.

This project achieves City Council's Strategic Plan Goals of "Financially Sustainable City Government" and "Safe and Secure Community" by contributing to the following objectives:

- Well-maintained City infrastructure and facilities
- Citizens are safe anywhere in the City

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

# Hyland Village Off-Site Sanitary Sewer Up-Sizing Project

Connection to existing downstream sanitary sewer

Abandoned existing sanitary sewer

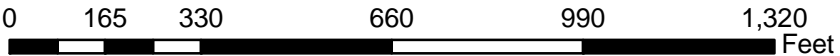
New up-sized 18-inch sanitary sewer

98th Avenue

98th Avenue

~ McStain Neighborhoods Property ~

Sheridan Blvd





WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
April 13, 2009



**SUBJECT:** Public Hearing and Resolution No. 12 re Westminster Center Urban Reinvestment Plan

**Prepared By:** Mac Cummins, AICP, Planning Manager

**Recommended City Council Action**

1. Hold a Public Hearing.
2. Adopt Resolution No. 12 adopting the Westminster Center Urban Reinvestment Plan and direct Staff to commence with the implementation of the Plan.

**Summary Statement**

- The redevelopment of what was previously referred to as the “Westminster Mall” is the City Council’s top strategic plan priority, as outlined in the City’s 5-year Strategic Plan that is updated and reviewed annually.
- One of the mechanisms viewed as appropriate for the area is a formal urban renewal area designation that will provide the ability to exercise the powers allowed for under urban renewal law. The adoption of the urban renewal plan will allow the Westminster Economic Development Authority (WEDA) to work with the existing owners and businesses and potential developers to better define the vision for the area and to develop an action plan for financing and property assemblage that can make redevelopment a reality. WEDA will also be able to identify those public infrastructure investments that will be needed to allow redevelopment to proceed.
- The City conducted a “blight study,” which concluded that the area within the study area supported the designation of the study area as an urban renewal area in accordance with Colorado State Statutes.
- The vision for the future Westminster Center is for a new transit-oriented mixed-use neighborhood including residential, retail, entertainment and employment uses, all adjacent to a new commuter rail transit station as well as the existing Westminster Center Park-n-Ride. This site will provide the City of Westminster with a unique opportunity to create a focal point, a district center for the community. The new mixed-use neighborhood will serve the needs of current and future Westminster residents to live close to new workplaces and have the opportunity to use convenient transit as part of their everyday lives. It will be a place to live, work, play, visit, entertain and be entertained, and will serve as a source of great community pride for the existing City residents and the new residents that it will attract.
- There are several major impediments to achieving the Council’s goal. First, there are legal restrictions in place that limit redevelopment to the current configuration of structures and parking. As a result, the current configuration of the Westminster Mall cannot be altered without the consent of all the major stores, even though some of these stores have closed. These limitations prevent redevelopment to better reflect modern multi-use development patterns. Secondly, there is a multiplicity of ownerships and tenancies in the area that prevent a unified and comprehensive redevelopment of the area. Thirdly, the existing development patterns do not complement anticipated mass transit improvements along U.S. 36 or the proposed RTD commuter rail station. Finally, there is inadequate public infrastructure, including parking facilities, roads, water utilities and sewage facilities, to support the type of urban development desired. Implementation of this Plan would remove these obstacles to development by allowing the removal of adverse conditions of title and the removal of other legal impediments to redevelopment.

**Expenditure Required:** None at this time  
**Source of Funds:** N/A



**Policy Issue**

Should the City pursue designation of the Westminster Center Urban Reinvestment Plan area as an urban renewal area, and proceed with the implementation of the urban renewal plan?

**Alternative**

Do not designate the Westminster Center Urban Reinvestment Plan area as an urban renewal area. This would not enable the City to pursue the use of urban renewal powers in the defined area. Staff does not recommend this option since urban renewal powers could be critical to facilitating redevelopment of infrastructure and commercial projects in the area.

**Background Information**

Leland Consulting Group and Matrix Design Group were retained to prepare a blight study for the Westminster Center Urban Reinvestment Area. The blight study (included as an attachment to the Urban Renewal Plan) evaluates properties within the proposed Urban Renewal Boundary, generally bounded by 92<sup>nd</sup> Avenue on the north, 88<sup>th</sup> Avenue on the south, Harlan Street on the west, and Benton Street on the east. A detailed map of the area is contained in the attached study. The blight study finds a number of substandard conditions that meet the definition of blight contained in the urban renewal law.

These conditions include:

- a) Faulty lot layout in relation to size, adequacy, accessibility and usefulness: Many of the lots lack appropriate access and are too small to be efficiently developed.
- b) Predominance of defective and inadequate street layout: Existing streets and roads are inadequate to support development patterns typical of modern urban centers.
- c) Deterioration of site conditions: There are widespread examples of parking lots, retaining walls, signage and trash or weeds that indicate a pattern of continuing deterioration and neglect.
- d) Conditions that endanger life and property by fire and other causes: The water pressure in existing water mains is minimally adequate for the existing sprinklers and is inadequate for major firefighting.
- e) Inadequate public improvements: Water, sewer, and transportation systems are inadequate for existing as well as projected uses in the Plan Area.
- f) Defective or unusual condition of title: A substantial proportion of the Plan Area is affected by restrictive conditions that limit alteration of the existing structures. In addition, the overlapping access easements restrict any potential redevelopment.
- g) Factors requiring high levels of municipal services or substantial underutilization or vacancy of sites or buildings: The Westminster Mall has consistently demanded a high level of municipal services and the Westminster Mall had a 49% vacancy rate that includes the space in the recently closed Macy's store.

As a result of these findings, the entire study area is being recommended for designation as an urban renewal area.

The urban renewal plan, which incorporates the blight determination, has been submitted to City Council for its review and adoption with a formal public input process. No formal comments have been received on the proposal; though staff has had some phone conversations with interested parties. Generally, most input can be characterized as inquisitive as to the status of the redevelopment effort.

If the urban renewal plan is adopted, the Westminster Economic Development Authority (WEDA) would be authorized to undertake projects within the urban renewal area that may include infrastructure improvements or redevelopment of specific properties. The public investment and/or financing of these improvements will be determined at a later date, once the scope of the project is more defined. Also, the scope and definition of the project will dictate whether any property must be acquired.

**Planning Commission Input**

On March 24, 2009, as required by the Urban Renewal Law, the Westminster Planning Commission reviewed the Urban Renewal Plan and made a unanimous recommendation to the City Council that the goals and vision contained in the Urban Renewal Plan were consistent with, and in conformity with, the City's Comprehensive Land Use Plan. At the hearing, there were three individuals present, but none spoke on the public record. In general, the Planning Commission members commented that they were excited to see progress being made in the process of redeveloping what was previously referred to as the Westminster Mall and looked forward to seeing the "land plan" in future public hearings.

City Staff for this project will be prepared to make a brief presentation and answer City Council's questions at the April 13, 2009 hearing.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments (2)

- Resolution
- Westminster Center Urban Reinvestment Plan

RESOLUTION

RESOLUTION NO. **12**

INTRODUCED BY COOUNCILLORS

SERIES OF 2009

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**A RESOLUTION**

**FOR APPROVAL OF THE WESTMINSTER CENTER URBAN REINVESTMENT PLAN AREA AND FINDING THAT THE WESTMINSTER CENTER URBAN REINVESTMENT PLAN AREA IS A BLIGHTED AREA, DESIGNATING SUCH AREA AS APPROPRIATE FOR AN URBAN RENEWAL PROJECT PURSUANT TO THE WESTMINSTER CENTER URBAN REINVESTMENT PLAN, AND FINDING THAT THE ACQUISITION, CLEARANCE, REHABILITATION, CONSERVATION, DEVELOPMENT, REDEVELOPMENT OR A COMBINATION THEREOF OF SUCH AREA IS NECESSARY IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY, MORALS, AND WELFARE OF THE CITIZENS OF THE CITY OF WESTMINSTER**

WHEREAS, an urban renewal plan for the Westminster Center Urban Reinvestment Plan Area has been submitted to the City Council of the City of Westminster for appropriate action pursuant to Part 1 of Article 25 of Title 31, C.R.S.; and

WHEREAS, the Westminster Center Urban Reinvestment Plan Area, which is subject to the Westminster Center Urban Reinvestment Plan, is described in Exhibit A to this Resolution; and

WHEREAS, the City Council of the City of Westminster adopted the Westminster Comprehensive Land Use Plan on June 14, 2004, which is the general plan for the development of the City of Westminster; and

WHEREAS, the Westminster Center Urban Reinvestment Plan has previously been submitted to the Westminster Planning Commission for its review and recommendations as to conformity with the Westminster Comprehensive Land Use Plan pursuant to C.R.S. §31-25-107(2); and

WHEREAS, the Westminster Planning Commission has determined that the Westminster Center Urban Reinvestment Plan does conform to the Westminster Comprehensive Land Use Plan; and

WHEREAS, no property in the Westminster Center Urban Reinvestment Plan has been included in an urban renewal plan previously submitted to the City Council of the City of Westminster; and

WHEREAS, the City Clerk of the City of Westminster has published the notice of the time, place, and purpose of the public hearing to consider the adopting of the Westminster Center Urban Reinvestment Plan in the Westminster Window in conformance with C.R.S. §31-25-107(3); and

WHEREAS the City of Westminster has provided written notice of the public hearing to consider the adoption of the Westminster Center Urban Reinvestment Plan to all property owners, residents, and business owners within the proposed Westminster Center Urban Reinvestment Plan Area at their last known addresses in conformance with C.R.S. §31-25-107(4)(c); and

WHEREAS, the Jefferson County Commissioners have received notification of and copies of the Westminster Center Urban Reinvestment Plan as well as such additional information as is required by C.R.S. §31-25-107(3.5); and

WHEREAS, the Jefferson County School District has received notification of and copies of the Westminster Center Urban Reinvestment Plan and has been given an opportunity to participate in an advisory capacity; and

WHEREAS, the City Council of the City of Westminster has considered the Westminster Mall Area Reinvestment Study prepared by Leland Consulting Group and Matrix Design Group and the proposed Westminster Center Urban Reinvestment Plan; and

WHEREAS, the City Council of the City of Westminster has conducted a public hearing and considered the public testimony received.

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

1. Blight, as defined by C.R.S. §31-25-103(2), is present in the Westminster Center Urban Reinvestment Plan Area as documented by the Westminster Mall Area Reinvestment Study prepared by Leland Consulting Group and Matrix Design Group and based on evidence presented at the public hearing. The following blight factors are present in the Westminster Center Urban Reinvestment Plan Area: predominance of defective or inadequate street layout; faulty lot layout; deterioration of site conditions, inadequate public improvements; defective or unusual conditions of title rendering the title non-marketable; and factors requiring high levels of municipal services or substantial underutilization or vacancy of sites or buildings.

2. The Westminster Center Urban Reinvestment Plan Area is a blighted area and is appropriate for an urban renewal project pursuant to Part 1 of Article 25 of Title 31, C.R.S.

3. The Westminster Center Urban Reinvestment Plan satisfies the requirements of C.R.S. §31-25-105.5(2).

4. The principal purpose for the adoption of the Westminster Center Urban Reinvestment Plan is to facilitate redevelopment in order to eliminate or prevent the spread of physically blighted areas.

5. The boundaries of the Westminster Center Urban Reinvestment Plan Area have been drawn as narrowly as feasible to accomplish the planning and development objectives for the Westminster Center Urban Reinvestment Plan Area.

6. The Westminster Center Urban Reinvestment Plan Area does not consist of an area of open land.

7. The Westminster Center Urban Reinvestment Plan conforms to the Westminster Comprehensive Land Use Plan, which is the general plan for the development of the City of Westminster.

8. Written notice of the public hearing to consider the adoption of the Westminster Center Urban Reinvestment Plan has been provided to all property owners, residents, and business owners within the proposed Westminster Center Urban Reinvestment Plan Area at their last known addresses in conformance with C.R.S. §31-25-107(4)(c).

9. The only public hearing to consider the Westminster Center Urban Reinvestment Plan was conducted on April 13, 2009.

10. The Westminster Center Urban Reinvestment Plan does not include any area previously considered for inclusion in an urban renewal area in the previous twenty-four months.

11. There exist feasible methods for the relocation of individuals, families and business concerns in accommodations or areas suitable for their relocation.

12. The Westminster Center Urban Reinvestment Plan does not include a provision for the collection of any portion of the property tax as may be provided pursuant to C.R.S. §31-25-107(9).

13. The Westminster Center Urban Reinvestment Plan will afford maximum opportunity, consistent with the sound needs of the City of Westminster as a whole, for the rehabilitation or redevelopment of the Westminster Center Urban Reinvestment Plan Area by private enterprise.

14. The acquisition, clearance, rehabilitation, conservation, development or redevelopment of a combination thereof of the Westminster Center Urban Reinvestment Plan Area pursuant to the Westminster Center Urban Reinvestment Plan is necessary in the best interests of the public health, safety, morals, and welfare of the citizens of the City of Westminster.

15. The Westminster Center Urban Reinvestment Plan is hereby approved.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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

**Exhibit A**

**Westminster Center Urban Reinvestment Plan**

**WESTMINSTER CENTER URBAN  
REINVESTMENT PLAN**

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**

**April 13, 2009**

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# WESTMINSTER CENTER URBAN REINVESTMENT PLAN

April 13, 2009

## I. INTRODUCTION

### 1.1 Preface

This Westminster Center Urban Reinvestment Plan ("Plan") has been prepared by the Westminster Economic Development Authority ("WEDA") for adoption by the City Council of the City of Westminster pursuant to provisions of the Urban Renewal Law of the State of Colorado, Article 25 of Title 31, Colorado Revised Statutes. This Plan is prepared and adopted to satisfy the requirements of § 31-25-107(1), C.R.S., that an urban renewal plan be adopted by the governing body of the municipality before an urban renewal authority undertakes an urban renewal project. The administration of this project and the enforcement and execution of this Plan shall be performed by WEDA.

### 1.2 Background

The Plan Area is the area generally bounded by West 92<sup>nd</sup> Avenue to the north, West 88<sup>th</sup> Avenue to the south, Benton Street to the east and Harlan Street to the west. The area is approximately 127 acres in size, including adjacent rights-of-way. It is currently the site of the Westminster Mall. The area is in the center of the City of Westminster and is located immediately across U.S. 36 from the Westminster City Hall. The Westminster Comprehensive Land Use Plan adopted by the City of Westminster in July, 2004, designates this area as "District Center" which anticipates extensive office, retail, residential, and mixed use developments.

The Westminster Comprehensive Land Use Plan has the following goals:

- Goal D2: Continue to enhance Westminster Center as a vibrant and unique regional shopping and entertainment experience.
- Goal F1: Continue to promote redevelopment of targeted areas as a pathway to economic revitalization and improved physical conditions.
- Goal D1: Preserve, maintain, and improve a variety of shopping facilities offering all necessary goods and services to community residents and businesses.
- Goal I2: Continue enhancements and improvements of transportation facilities within District Centers and Traditional Mixed-Use Neighborhood developments.

There are several major impediments to achieving these goals. First, there are legal restrictions in place that limit redevelopment to the current configuration of structures and parking. As a result, the current configuration of the Westminster Mall cannot be altered without the consent of all the major stores, even though some of these stores have closed. These limitations prevent redevelopment to better reflect modern multi-use

development patterns. Secondly, there is a multiplicity of ownerships and tenancies in the area that prevents a unified and comprehensive redevelopment of the area. Thirdly, the existing development patterns do not complement anticipated mass transit improvements along U.S. 36 or the proposed RTD rail station. Finally, there is inadequate public infrastructure, including parking facilities, roads, water utilities and sewage facilities, to support the type of urban development desired.

Implementation of this Plan would remove these obstacles to development by allowing the removal of adverse conditions of title and the removal of other legal impediments to redevelopment.

### **1.3 Definitions**

Cooperation Agreement: Any agreement between WEDA and the City of Westminster or any other public body respecting action taken pursuant to any of the powers set forth in the Urban Renewal Law, or in any other provision of Colorado law, for the purpose of facilitating public undertakings deemed necessary or appropriate by WEDA under this Plan.

Westminster Comprehensive Land Use Plan: The comprehensive land use plan adopted by the City of Westminster.

Plan: This Westminster Center Urban Reinvestment Plan as it may be amended from time to time.

Development Agreement: An agreement between WEDA and a developer or developers respecting the development of property within the Westminster Center Urban Reinvestment Plan Area.

Plan Area: The property described in Section 2.5 of this Plan which has been found to be blighted and for which the undertaking of urban renewal projects is declared to be necessary.

## **2. LEGISLATIVE FINDINGS**

### **2.1 Qualifying Conditions**

Based on the Westminster Mall Area Reinvestment Study prepared by Leland Consulting Group and Matrix Design Group, dated February, 2009, and evidence presented at the public hearing, the City Council finds that there exists blight, as defined by § 31-25-103(2), C.R.S., in the Plan Area.

The Westminster Mall Area Reinvestment Study found multiple conditions of blight which indicate that more than five factors of blight are present in the Plan Area, as required by § 31-25-103(2), C.R.S. The factors found to exist include:



- a) Faulty lot layout in relation to size, adequacy, accessibility and usefulness: Many of the lots lack appropriate access and are too small to be efficiently developed.
- b) Predominance of defective and inadequate street layout: Existing streets and roads are inadequate to support development patterns typical of modern urban centers.
- c) Deterioration of site conditions: There are widespread examples of parking lots, retaining walls, signage and trash or weeds that indicate a pattern of continuing deterioration and neglect.
- d) Conditions that endanger life and property by fire and other causes: The water pressure in existing water mains is minimally adequate for the existing sprinklers and is inadequate for major firefighting.
- e) Inadequate public improvements: Water, sewer, and transportation systems are inadequate for existing as well as projected uses in the Plan Area.
- f) Defective or unusual condition of title: A substantial proportion of the Plan Area is affected by restrictive conditions that limit alteration of the existing structures. In addition, the overlapping access easements restrict any potential redevelopment.
- g) Factors requiring high levels of municipal services or substantial underutilization or vacancy of sites or buildings: The Westminster Mall has consistently demanded a high level of municipal services and the Westminster Mall has a 49% vacancy rate that will be exacerbated by the announced closure of Macy's.

The City Council finds that the presence of these factors in the Plan Area substantially impairs or arrests the sound growth of the City of Westminster, retards the provision of housing accommodations, constitutes an economic and social liability and is a menace to the public health, safety, morals and welfare of the City of Westminster.

## **2.2 Development Projects**

The City Council finds that the Plan Area is appropriate for one or more projects and other undertakings of WEDA as authorized by the Urban Renewal Law.

## **2.3 Planning Approval**

A general plan for the City of Westminster, known as the Westminster Comprehensive Land Use Plan, has been adopted by the City Council. This Plan has been submitted to the Planning Commission for review and recommendations as to its conformity with the Westminster Comprehensive Land Use Plan. The Westminster Planning Commission met on \_\_\_\_\_ and has submitted its written recommendations to the City Council.

This Plan has also been submitted to the Board of County Commissioners of Jefferson County as required by the Urban Renewal Law.

## **2.4 Public Hearing**

The City Council of the City of Westminster held a public hearing to consider this Plan after public notice thereof in compliance with the Urban Renewal Law in the Westminster Window newspaper, describing the time, date, and purpose of the public hearing, identifying the Plan Area and outlining the general scope of the projects being considered for implementation pursuant to this Plan. Notice of the public hearing has been mailed to all property owners, residents, and owners of business concerns in the proposed Plan Area at their last known address of record at least 30 days prior to the public hearing.

## **2.5 Boundaries of the Westminster Center Urban Reinvestment Plan Area**

The boundaries of the Westminster Center Urban Reinvestment Plan Area are set forth in Appendix 1 attached hereto. The Plan Area is designated as an urban renewal area by this Plan. The Plan Area is drawn as narrowly as feasible to accomplish the planning and development objectives of the Plan for the Plan Area.

## **2.6 Other Findings**

- 2.6.1 This Plan conforms to and is consistent with the Westminster Comprehensive Land Use Plan.
- 2.6.2 One or more of the projects may require the demolition and clearance, subject to other restrictions, of certain property within the Plan Area as provided in this Plan. Such actions may be necessary to eliminate unhealthy, unsanitary, and unsafe conditions, eliminate obsolete and other uses detrimental to the public welfare, and otherwise remove and prevent the spread of deterioration.
- 2.6.3 Other portions of the Plan Area may be conserved or rehabilitated through appropriate public action, as authorized or contemplated by the Urban Renewal Law, and through the cooperation and voluntary action of the owners and tenants of such property.
- 2.6.4 In order to eliminate or reduce the qualifying conditions currently existing within the Plan Area, it is the intent of the City Council in adopting this Plan that WEDA exercise all powers authorized to be exercised by WEDA under the Urban Renewal Law and which are necessary, convenient, or appropriate to accomplish the objectives of this Plan. It is the intent of this Plan that except as otherwise provided herein, WEDA shall exercise all such powers as may now be possessed or hereafter granted to WEDA for the elimination of qualifying conditions within the Plan Area. Acquisition of property or any interest in property by WEDA within the

Plan Area may be undertaken by any means authorized by WEDA, including condemnation as provided in C.R.S. § 31-25-105.5.

- 2.6.5 A feasible method exists for the relocation of individuals, families, and business concerns that may be displaced by an urban renewal project through the adoption of a relocation policy by WEDA insuring that adequate substitute business locations can be made available and that adequate relocation assistance is available.
- 2.6.6 The powers conferred by the Urban Renewal Law are for public uses and purposes for which public money may be expended and the police powers exercised, and this Plan is in the public interest and necessity, such finding being a matter of legislative determination by the City Council.
- 2.6.7 The uses contemplated under this Plan are necessary and appropriate to facilitate the sound growth and development of the City of Westminster in accordance with sound planning standards and local community objectives, and any acquisitions within the Plan Area which may require the exercise of governmental action are necessary because of the presence of blight in the Plan Area.
- 2.6.8 The Plan Area does not contain property that was included in a previously submitted urban renewal plan that the City Council failed to approve in past twenty-four months.

### **3. DESCRIPTION OF PLAN OBJECTIVES**

This Plan is an important tool to address the problems confronting the Plan Area. The Plan is intended to achieve the goals for the area previously outlined in the Westminster Comprehensive Land Use Plan through a project or projects that will create a new Westminster Center. The vision for the future Westminster Center is a new transit-oriented mixed-use neighborhood including residential, retail, entertainment and employment uses, all adjacent to a new multi-modal transit station. This neighborhood will provide the City of Westminster with a unique opportunity to create a new downtown, a district center for the community. The new mixed-use neighborhood will serve the needs of current and future Westminster residents to live close to new workplaces and have the opportunity to use convenient transit as part of their everyday lives. It will be a place to live, work, play, visit, entertain and be entertained, and will serve as a source of great community pride for the existing city residents and the new residents that it will attract.

### **4. PLAN IMPLEMENTATION**

In order to accomplish the objectives of this Plan and to fully implement this Plan, WEDA shall be authorized to undertake the following activities:

#### **4.1 Development Activities**

Development activities within the Plan Area may include such undertakings and activities as are in accordance with this Plan and the Urban Renewal Law, including without limitation: demolition and removal of buildings and improvements; installation, construction and reconstruction of public improvements; elimination of unhealthful, unsanitary or unsafe conditions; and other actions to remove or to prevent the spread of deterioration or to provide land for needed public facilities. WEDA is authorized to solicit interest from developers in development projects and to negotiate with landowners, developers, and investors regarding appropriate projects within the Plan Area.

#### **4.2 Property Acquisition and Land Assemblage**

It is the principal intent of this Plan that property for projects in the Plan Area be voluntarily acquired by private individuals and entities. While WEDA is authorized to acquire real property or any interest in real property by purchase, gift, donation, lease or other conveyance, this principal intent is the foundation upon which this Plan has been developed. If necessary, WEDA is authorized to acquire property or interests in property by condemnation as provided in Article 1 and Article 7 of Title 38 of the Colorado Revised Statutes. Any exercise of the power of condemnation shall be in accordance with requirements of C.R.S. § 31-25-105.5.

#### **4.3 Relocation Assistance and Payments**

In the event it is necessary to relocate or displace any businesses or other commercial establishments as a result of any property acquisition, WEDA shall adopt relocation policies for payment of relocation expenses. Such expenses may include moving expenses, actual direct losses of property for business concerns, and goodwill and lost profits that are reasonably related to relocation of the business, resulting from its displacement for which reimbursement or compensation is not otherwise made.

#### **4.4 Demolition, Clearance and Site Preparation**

With respect to property acquired by WEDA, it may demolish and clear, or contract to demolish and clear, those buildings, structures and other improvements from property pursuant to this Plan if in the judgment of WEDA, such buildings, structures and other improvements are not to be rehabilitated in accordance with this Plan.

#### **4.5 Public Improvements and Facilities**

WEDA may undertake certain actions which would make the Plan Area more attractive for private investment. These actions may include street and traffic improvements, streetscape improvements, landscaping, park and recreation facilities, utility improvements and public art projects.

#### **4.6 Property Disposition**

WEDA may sell, lease, or otherwise transfer real property or any interest in real property subject to such covenants, conditions and restrictions, including architectural and design controls, time restrictions on development, and building requirements, in addition to zoning and building code regulations. Real property or interests in real property may be sold, leased or otherwise transferred for uses in accordance with this Plan.

#### **4.7 Redevelopment Agreements**

WEDA is authorized to enter into one or more Development Agreements with developer(s) and such other entities as are determined by WEDA to be necessary or desirable by WEDA to carry out the purposes of this Plan. Such Development Agreements may contain such terms and provisions as shall be deemed necessary or appropriate by WEDA for the purpose of undertaking the activities contemplated by this Plan or the Urban Renewal Law, and may further provide for such undertakings by WEDA, including financial assistance, as may be necessary for the achievement of the objectives of this Plan or as may otherwise be authorized by the Urban Renewal Law.

#### **4.8 Interagency Cooperation**

WEDA may enter into one or more Cooperation Agreements with the City of Westminster or other public bodies pursuant to the Urban Renewal Law. Cooperation Agreements may provide, without limitation, for financing, for construction of public improvements, for administration, for technical assistance and for other purposes.

### **5. PROJECT FINANCING**

#### **5.1 Tax Increment Financing**

WEDA is not authorized to utilize tax increment financing as provided by C.R.S. § 31-25-107(9) at this time. Mechanisms for the financing of the redevelopment will be determined at such time as redevelopment projects have been identified.

#### **5.2 Additional Taxing Entities**

The Westminster City Council recognizes that Colorado law allows the creation of additional political subdivisions within a municipality to provide services within a defined area. These entities include downtown development authorities, metropolitan districts, general improvement districts and other special districts as well as business improvement districts. These districts have available certain taxing powers that can generate revenues to support redevelopment.

WEDA shall explore a variety of strategies and mechanisms to finance necessary public improvements. It is imperative that financing mechanisms be flexible and creative to provide necessary assistance to a broad range of redevelopment activities.

### **5.3 Participating Interest in Projects**

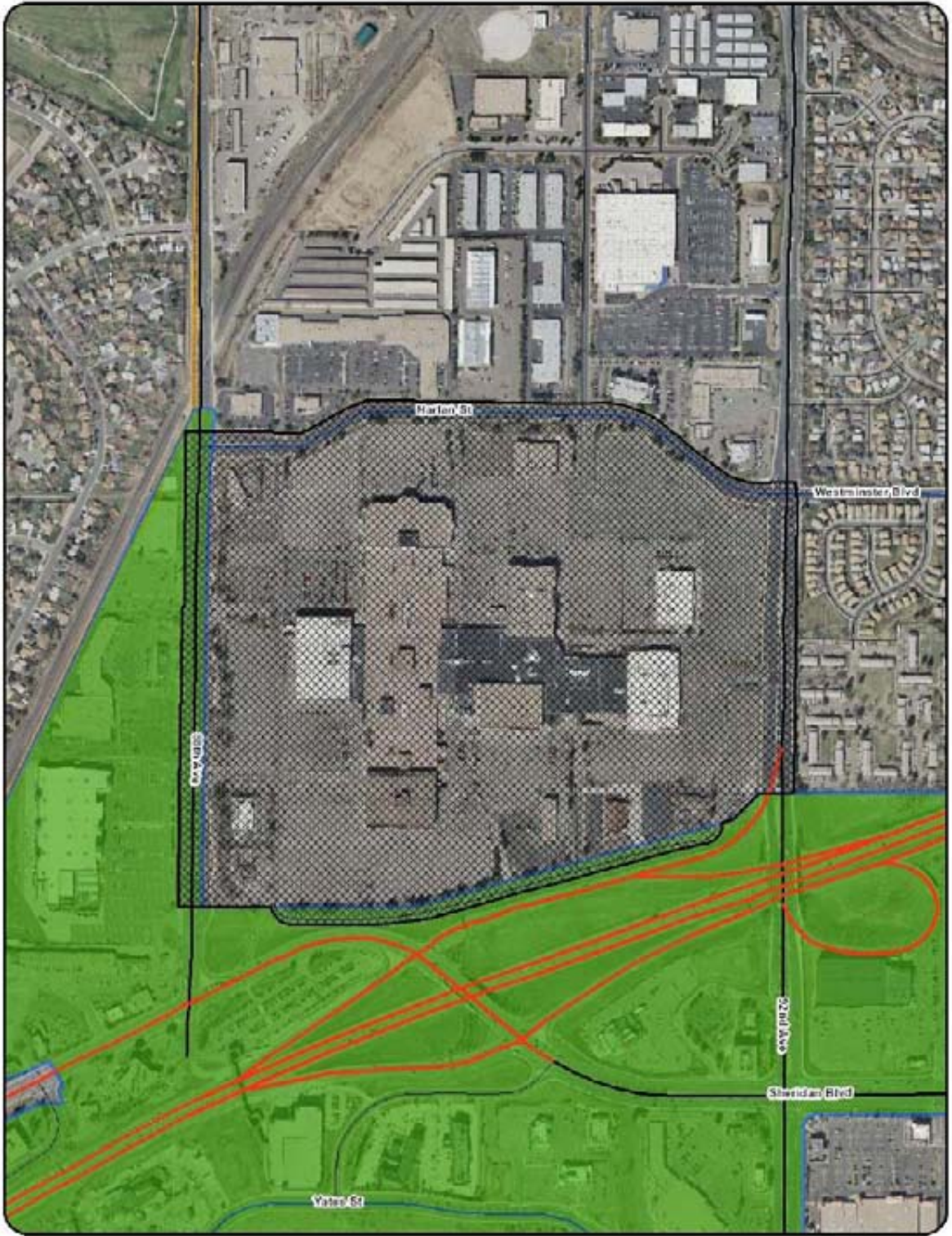
WEDA may require a participating interest in private development projects for which it provides financial assistance. Public assistance is frequently needed for redevelopment projects in order to fill the gap between traditional equity and debt financing and the additional costs of a redevelopment project. In the event the project generates revenues at or greater than market return, the public should share in the success of the project. The terms of the participating interest will be specified in the Redevelopment Agreement at a level and on terms appropriate for each project.

## **6. AMENDMENTS TO THIS PLAN**

This Plan may be amended or modified pursuant to provision of the Urban Renewal Law as provided in § 31-25-107, C.R.S.

## **Appendix 1**

Westminster Center Urban Reinvestment Plan Area





## **Appendix 2**

### Westminster Mall Area Reinvestment Study

# Westminster Mall Area Reinvestment Study

February 2009



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## Section 1: Study Overview

### Purpose

The *Westminster Mall Area Reinvestment Study* (“Study”) is an examination and analysis of various conditions found within a defined geographic area to determine if the area qualifies as “blighted” within the meaning of the Colorado Urban Renewal Law.

The Study is a necessary step if urban renewal, as defined and authorized by Colorado statutes, is to be used as a tool by the Westminster Economic Development Authority (“WEDA”) to remedy and prevent conditions of blight. The findings and conclusions presented in this report are intended to assist the Westminster City Council in making a final determination as to whether the Study Area qualifies as blighted and, consequently, the feasibility and appropriateness of using urban renewal as a reinvestment tool.

To conduct the Study and prepare the Study report, the City of Westminster (“City”) under the direction of WEDA, retained the services of Denver-based consulting firms Leland Consulting Group (market, economic, and financial analysis) and Matrix Design Group (planning, environmental, engineering, and design services).

### Methodology

The defined geographic area (“Study Area”) examined in this reinvestment study is within Westminster municipal boundaries as defined by the City in September of 2008. A map depicting the exact boundaries of the Study Area is presented in Section 4 of this report as **Exhibit 2: Study Area Boundary and Parcel Map**.

To conduct this Study, the project team conducted multiple field investigations in the Fall of 2008 and the Winter of 2008/2009 for the purpose of documenting factors of blight as identified in the Colorado Urban Renewal statutes. Pertinent Geographic Information Systems (GIS) data were obtained from Jefferson County and from the City of Westminster and subsequently analyzed by the team. Additional information was obtained through interviews with local officials and representatives from the Westminster Fire, Police, and Public Works and Utilities departments. Aerial photography of the site was also consulted in assessing certain blight factors.

In order to organize the blight data and prepare supporting graphic illustrations of the findings, the Survey Area's 36 legal parcels were used as the primary units of observation. These parcels were assigned a unique identification number for purposes of this Study, as reflected in **Exhibit 9: Parcel Ownership Map**, which can be found in **Section 5**, as well as the field survey ledger located in the **Appendix**.

Finally, the survey results and the information gathered from the City and Jefferson County were categorized and analyzed as to their applicability to the blight factors outlined in the Colorado Urban Renewal statutes, and were prepared and presented in this report for consideration by WEDA and the Westminster City Council.

## Section 2: Colorado Urban Renewal Statutes and Blighted Areas

In the Colorado Urban Renewal Law, Colo. Rev. Stat. § 31-25-101 et seq. (the “Urban Renewal Law”), the legislature has declared that an area of blight “constitutes a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state in general and municipalities thereof; that the existence of such areas contributes substantially to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of public policy and statewide concern....”

Under the Urban Renewal Law, the term “blighted area” describes an area with an array of urban problems, including health and social deficiencies, and physical deterioration. See Colo. Rev. Stat. § 31-25-103(2). Before remedial action can be taken, however, the Urban Renewal Law requires a finding by the appropriate governing body that an area such as the Study Area constitutes a blighted area. Id. § 107(1).

The blight finding is a legislative determination by the municipality’s governing body that, as a result of the presence of factors enumerated in the definition of “blighted area,” the area is a detriment to the health and vitality of the community requiring the use of the municipality’s urban renewal powers to correct those conditions or prevent their spread. In some cases, the factors enumerated in the definition are symptoms of decay, and in some instances, these factors are the cause of the problems. The definition requires the governing body to examine the factors and determine whether these factors indicate a deterioration that threatens the community as a whole.

For purposes of the Study, the definition of a blighted area is articulated in the Urban Renewal Law as follows:

*“Blighted area” means an area that, in its present condition and use and, by reason of the presence of at least **four** of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:*

- a. *Slum, deteriorated, or deteriorating structures;*
- b. *Predominance of defective or inadequate street layout;*
- c. *Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;*
- d. *Unsanitary or unsafe conditions;*
- e. *Deterioration of site or other improvements;*
- f. *Unusual topography or inadequate public improvements or utilities;*
- g. *Defective or unusual conditions of title rendering the title non-marketable;*
- h. *The existence of conditions that endanger life or property by fire or other causes;*
- i. *Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;*
- j. *Environmental contamination of buildings or property; or*
- k.5. *The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements”*

In addition, paragraph (l.) states, *“if there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, ‘blighted area’ also means an area that, in its present condition and use and, by reason of the presence of any **one** of the factors specified in paragraphs (a) to (k.5) of this subsection....”*

The statute also states a separate requirement for the number of blight factors that must be present if private property is to be acquired by eminent domain. At § 31-25-105.5(5), paragraph (a.) states, *“‘Blighted area’ shall have the same meaning as set forth in section 31-25-103 (2); except that, for purposes of this section only, ‘blighted area’ means an area that, in its present condition and use and, by reason of the presence of at least **five** of the factors specified in section 31-25-103 (2)(a) to (2)(l)....”*

Thus, the state statutes require, depending on the circumstances, that a minimum of either **one, four, or five** blight factors be present for an area to be considered a “blighted area.”

Several principles have been developed by Colorado courts to guide the determination of whether an area constitutes a blighted area under the Urban Renewal Law. First, the absence of widespread violation of building and health codes does not, by itself, preclude a finding of blight. According to the courts, “the definition of ‘blighted area’

contained in [the Urban Renewal Law] is broad and encompasses not only those areas containing properties so dilapidated as to justify condemnation as nuisances, but also envisions the prevention of deterioration.”

Second, the presence of one well-maintained building does not defeat a determination that an area constitutes a blighted area. Normally, a determination of blight is based upon an area “taken as a whole,” and not on a building-by-building, parcel-by-parcel, or block-by-block basis.

Third, a city’s “determination as to whether an area is blighted... is a legislative question and the scope of review by the judiciary is restricted.” A court’s role in reviewing such a blight determination is simply to verify independently if the conclusion is based upon factual evidence and consistent with the statutory definition.

Based upon the conditions identified in the Study Area, this report makes a recommendation as to whether the Study Area qualifies as a blighted area. The actual determination itself remains the responsibility of the Westminster City Council.



## Section 3: Conditions Indicative of the Presence of Blight

As discussed in **Section 2**, the Colorado Urban Renewal statutes provide a list of 11 factors that, through their presence, may allow an area to be declared as blighted. This section elaborates on those 11 factors by describing some of the conditions that might be found within a Study Area that would indicate the presence of those factors.

### **Slum, Deteriorated, or Deteriorating Structures:**

During the field reconnaissance of the Study Area, the general condition and level of deterioration of a building is evaluated. This examination is limited to a visual inspection of the building's exterior condition and is not a detailed engineering or architectural analysis, nor does it include the building's interior. The intent is to document obvious indications of disrepair and deterioration to the exterior of a structure found within the Study Area. Some of the exterior elements observed for signs of deterioration include:

- Primary elements (exterior walls, visible foundation, roof)
- Secondary elements (fascia/soffits, gutters/downspouts, windows/doors, façade finishes, loading docks, etc.)
- Ancillary structures (detached garages, storage buildings, etc.)

### **Predominance of Defective or Inadequate Street Layout:**

The presence of this factor is determined through a combination of both field observation as well as an analysis of the existing transportation network and vehicular and pedestrian circulation patterns in the Study Area by persons with expertise in transportation planning and/or traffic engineering. These conditions include:

- Inadequate street or alley widths, cross-sections, or geometries
- Poor provisions or unsafe conditions for the flow of vehicular traffic
- Poor provisions or unsafe conditions for the flow of pedestrians
- Insufficient roadway capacity leading to unusual congestion of traffic
- Inadequate emergency vehicle access
- Poor vehicular/pedestrian access to buildings or sites
- Poor internal vehicular/pedestrian circulation
- Excessive curb cuts/driveways in commercial areas

These conditions can affect the adequacy or performance of the transportation system within the Study Area, creating a street layout that is defective or inadequate.

**Faulty Lot Layout in Relation to Size, Adequacy, Accessibility, or Usefulness:**

This factor requires an analysis of the parcels within the Study Area as to their potential and usefulness as developable sites. Conditions indicative of the presence of this factor include:

- Lots that are long, narrow, or irregularly shaped
- Lots that are inadequate in size
- Lots with configurations that result in stagnant, misused, or unused land

This analysis considers the shape, orientation, and size of undeveloped parcels within the Study Area and if these attributes would negatively impact the potential for development of the parcel. This evaluation is performed both through observation in the field and through an analysis of parcel boundary maps of the Study Area.

**Unsanitary or Unsafe Conditions:**

Conditions observed within the Study Area that qualify under this blight factor include:

- Floodplains or flood prone areas
- Inadequate storm drainage systems/evidence of standing water
- Poor fire protection facilities
- Above average incidences of public safety responses
- Inadequate sanitation or water systems
- Existence of contaminants or hazardous conditions or materials
- High or unusual crime statistics
- Open trash dumpsters
- Severely cracked, sloped, or uneven surfaces for pedestrians
- Illegal dumping
- Vagrants/vandalism/graffiti/gang activity
- Open ditches, holes, or trenches in pedestrian areas

These represent situations in which the safety of individuals, especially pedestrians and children, may be compromised due to environmental and physical conditions considered to be unsanitary or unsafe.

**Deterioration of Site or Other Improvements:**

The conditions that apply to this blight factor reflect the deterioration of various improvements made on a site other than building structures. These conditions may represent a lack of general maintenance at a site, the physical degradation of specific

improvements, or an improvement that was poorly planned or constructed. Overall, the presence of these conditions can reduce a site's usefulness and desirability and negatively affect nearby properties.

- Neglected properties or evidence of general site maintenance problems
- Deteriorated signage or lighting
- Deteriorated fences, walls, or gates
- Deterioration of on-site parking surfaces, curb & gutter, or sidewalks
- Poorly maintained landscaping or overgrown vegetation
- Poor parking lot/driveway layout
- Unpaved parking lot on commercial properties

#### **Unusual Topography or Inadequate Public Improvements or Utilities:**

The focus of this factor is on the presence of unusual topographical conditions that could make development prohibitive, such as steep slopes or poor load-bearing soils, as well as deficiencies in the public infrastructure system within the Study Area that could include:

- Steep slopes/rock outcroppings/poor load-bearing soils
- Deteriorated public infrastructure (street/alley pavement, curb, gutter, sidewalks, street lighting, storm drainage systems)
- Lack of public infrastructure (same as above)
- Presence of overhead utilities or billboards
- Inadequate fire protection facilities/hydrants
- Inadequate sanitation or water systems

#### **Defective or Unusual Conditions of Title Rendering the Title Non-Marketable:**

Certain properties can be difficult to market or redevelop if they have overly restrictive or prohibitive clauses in their deeds or titles, or if they involve an unusually complex or highly divided ownership arrangement. Examples include:

- Properties with covenants or other limiting clauses that significantly impair their ability to redevelop
- Properties with disputed or defective title
- Multiplicity of ownership making assemblages of land difficult or impossible

**Existence of Conditions that Endanger Life or Property by Fire and Other Causes:**

A finding of blight within this factor can result from the presence of the following conditions, which include both the deterioration of physical improvements that can lead to dangerous situations as well as the inability for emergency personnel or equipment to provide services to a site:

- Buildings or sites inaccessible to fire and emergency vehicles
- Blocked/poorly maintained fire and emergency access routes/frontages
- Insufficient fire and emergency vehicle turning radii
- Buildings or properties not in compliance with fire codes, building codes, or environmental regulations

**Buildings that are Unsafe or Unhealthy for Persons to Live or Work In:**

Some of the conditions that can contribute to this blight factor include:

- Buildings or properties not in compliance with fire codes, building codes, or environmental regulations
- Buildings with deteriorated elements that create unsafe conditions
- Buildings with inadequate or improperly installed utility components

**Environmental Contamination of Buildings or Property:**

This factor represents the presence of contamination in the soils, structures, water sources, or other locations within the Study Area.

- Presence of hazardous substances, liquids, or gasses found at a site

**Existence of Factors Requiring High Levels of Municipal Services or Substantial Physical Underutilization or Vacancy of Sites, Buildings, or Other Improvements:**

The physical conditions that would contribute to this blight factor include:

- Sites with a high incidence of fire, police, or emergency responses
- Sites adjacent to streets/alleys with a high incidence of traffic accidents
- Sites with a high incidence of code enforcement responses
- An undeveloped parcel in a generally urbanized area
- A parcel with a disproportionately small percentage of its total land area developed
- Vacant structures or vacant units in multi-unit structures

## Section 4: Study Area Location, Definition, and Description

The Westminster Mall Area Reinvestment Study Area is located in the City of Westminster, Colorado within the general vicinity of the Westminster Mall, located in the northeast quadrant of the intersection of Harlan Street and West 88th Avenue. The present Study Area is adjacent to the City Center East Urban Renewal Area to the south and east. **Exhibit 1: Study Area Context**, shows the location of the Study Area within the context of the City of Westminster and surrounding municipalities.

The Study Area is approximately 126.5 acres in size. Generally, it is bounded by West 92nd Avenue to the north, West 88th Avenue to the south, a Harlan Street to the west, and Benton Street to the east. The full rights-of-way of the bounding streets are included in the Study Area, except on the eastern side, where the Study Area meets but does not include Benton Street. **Exhibit 2: Study Area Boundary and Parcel Map** visually depicts the layout and configuration of the Study Area and the boundaries of the individual real property parcels within.

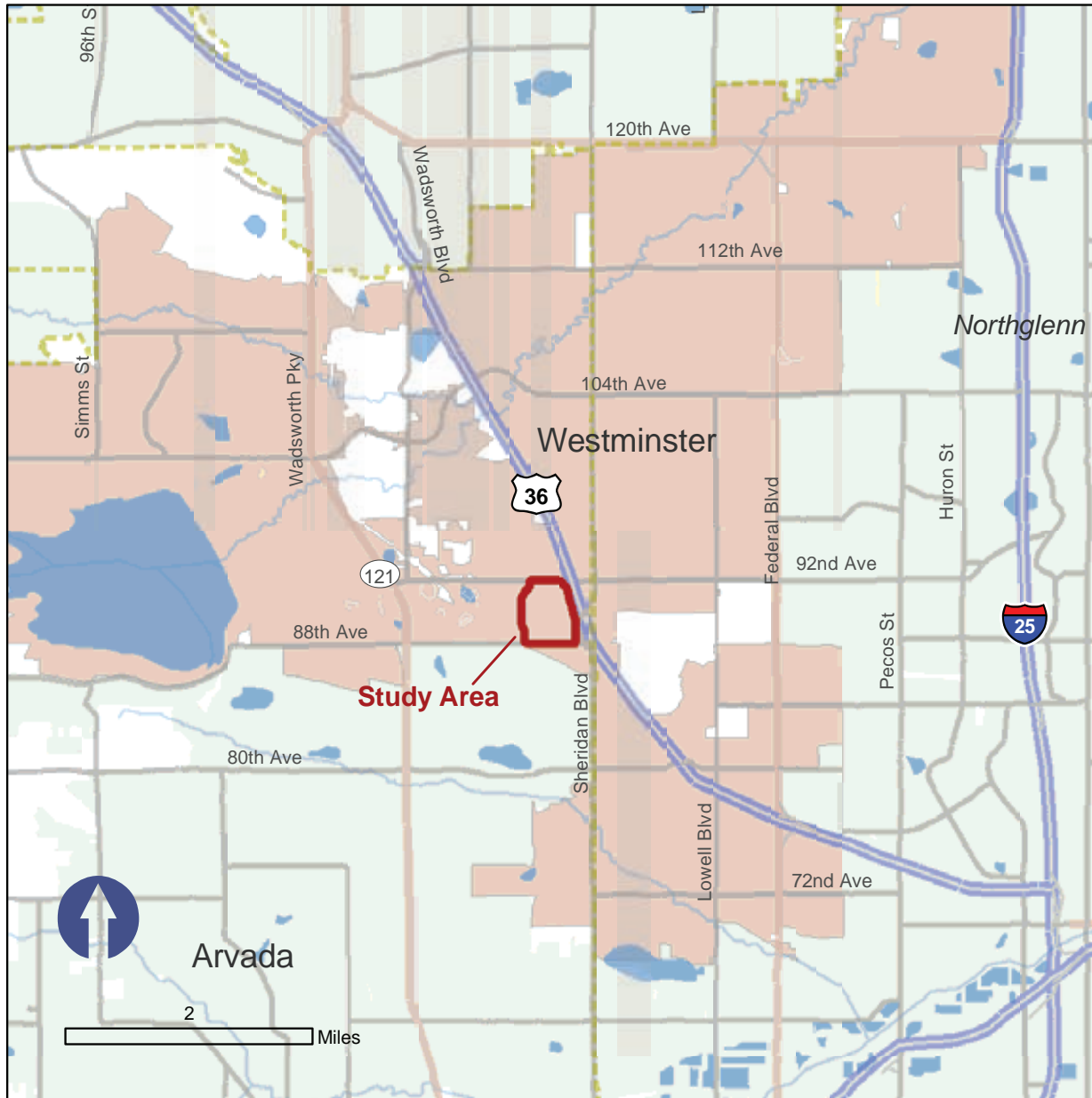


Exhibit 1: Study Area Context



## Section 5: Study Findings

The overall findings of the Westminster Mall Area Reinvestment Study are presented in this section. These findings are based on the analysis of data collected and field studies conducted in the Fall of 2008 and the Winter of 2008/2009.

### **Slum, Deteriorated or Deteriorating Structures:**

As described in **Section 3**, *Slum, Deteriorated or Deteriorating Structures* is a factor that focuses on the physical condition of structures within the Study Area. The assessment of this factor was primarily performed during the field survey, and identified five parcels that were judged to exhibit these conditions to some degree.

Despite these five instances of deteriorated building elements found within the Study Area, the project team felt that these conditions were neither severe enough nor widespread enough to warrant citing the *Slum, Deteriorated or Deteriorating Structures* blight factor as a contributing factor. Consequently, this factor is *not* included in the final tally of blight factors identified in the Study Area.

### **Predominance of Defective or Inadequate Street Layout:**

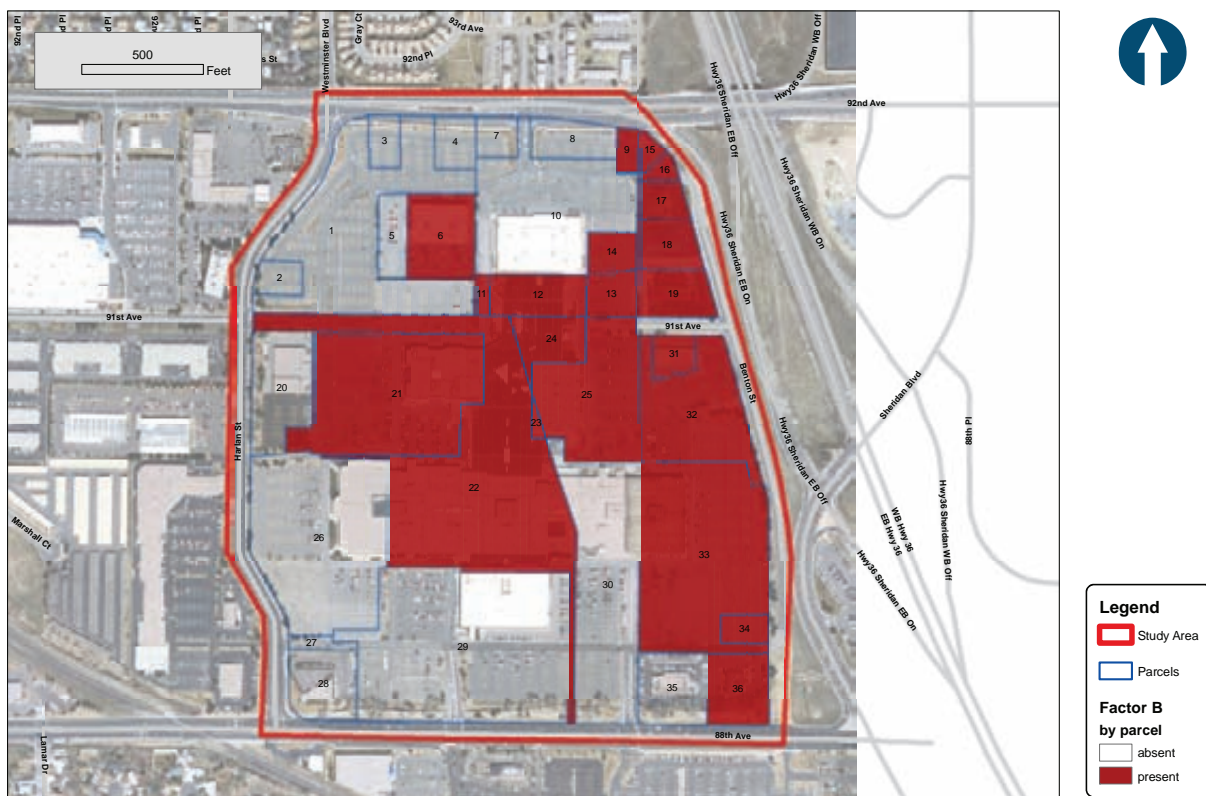
As a large, physically continuous enclosed structure, the Westminster Mall itself presents an awkward and sometimes confusing barrier to normal vehicular through-traffic. This problem is exacerbated for parcels on the east side of the Mall, where there is no possibility of east-west movement without first circumventing the mall. The combination of U.S. 36 highway lanes, jogs in Sheridan Boulevard, access roads, and on/off ramps east of the mall make for a distracting and unclear approach to the mall area for highway travelers. Furthermore, 88th Avenue, which facilitates east/west access along the southern border of the mall, dead ends shortly after its intersection with Sheridan Boulevard. This forces eastbound drivers to make a left onto Sheridan in order to continue across US 36, complicating access and circulation in this portion of the site.

Road access throughout the study area is provided by the four public rights of way surrounding the Study Area; (West 92nd Avenue, Benton Street, Harlan Street, and West 88th Avenue); and by the Mall's interior road network. Motorists must use the minimal internal street network or drive through parking lots to make any north-south or east-west connections in between the surrounding public roads. Benton Street, on the eastern side of the Study Area, is essentially a free-standing public road, connected



only to a dead end stub of West 91st Avenue and to private mall roads. In short, the Study Area relies on an interior network of private vehicular paths, with little signage or signalization, to provide circulation within a wide framework of public roads that is poorly connected to any broader public street grid. The result is a disorienting and uninviting situation for motorists and an unfriendly, unsafe environment for pedestrians.

The following graphic, **Exhibit 3: Predominance of Defective or Inadequate Street Layout Parcel Map** is a visual representation of this road layout as well as the parcels that are most affected by it. Parcels that are cited for *Defective or Inadequate Street Layout* are generally those that border the public rights-of-way described above, contain the internal roads providing access around the site, or are most affected by the access issued described, such as the parcels in the eastern portion of the Study Area. (Red shaded parcels indicate a positive finding of blight in this and all future maps.)



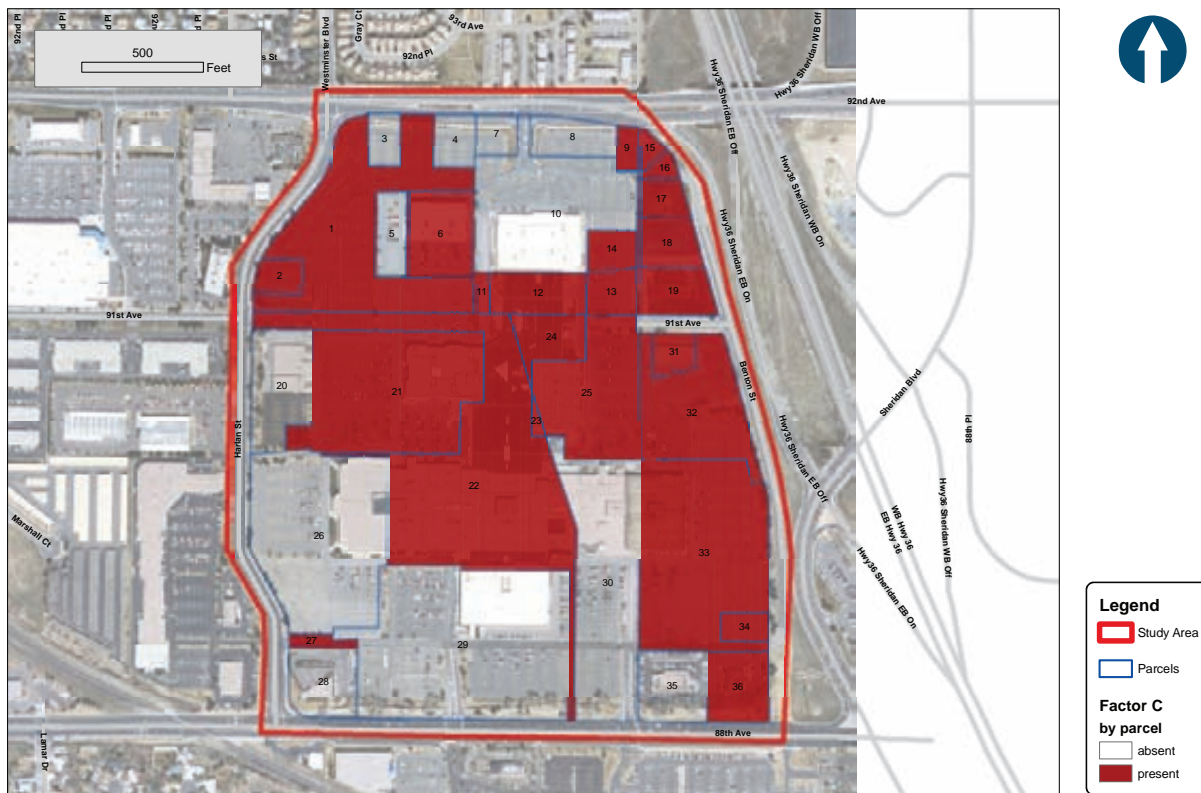
*Exhibit 3: Predominance of Defective or Inadequate Street Layout Parcel Map*

In total, 21 parcels within the Study Area are documented as exhibiting this blight factor. The circulation issues described for both automobile and pedestrian traffic are both sufficient and widespread enough to justify a finding of *Predominance of Defective or Inadequate Street Layout* within the Study Area.

**Faulty Lot Layout in Relation to Size, Adequacy, Accessibility, or Usefulness:**

The layout of parcels within the Study Area is impacted by the same physical features listed in the discussion under *Predominance of Defective or Inadequate Street Layout*. In fact, all parcels found to have defective street layout due to inadequate vehicular access also have a faulty lot layout, since adequate access is a necessary characteristic of adequate lot layout. Parcel shape and size are also adversely affected by the sometimes unusual ad-hoc parcelization of the mall area, resulting in lots too small or too oddly aligned to be considered for redevelopment without assemblage.

The following map shows the parcels cited for *Faulty Lot Layout* due to access, road layout, odd physical shape, or insufficient physical size.



*Exhibit 4: Faulty Lot Layout Parcel Map*

The proliferation of parcels that are considered to have a faulty layout (23 parcels total) is extensive enough to conclude that the Study Area as a whole exhibits this blight factor.

**Unsanitary or Unsafe Conditions:**

The presence of the *Unsanitary or Unsafe Conditions* factor is usually associated with instances of deteriorating, neglected properties or in cases where safety precautions are not taken. In the Study Area, the following conditions were found to be generally unsafe and unsanitary:

- Five instances of poorly lit areas creating unfavorable conditions for pedestrians
- Two instances of unscreened trash and/or mechanical equipment creating unsanitary and potentially unsafe conditions
- One parcel with cracked or uneven sidewalks resulting in pedestrian hazards
- At least one case of poor drainage, which creates unsanitary pools of standing water

In all, six separate parcels were considered to show signs of the *Unsanitary or Unsafe Conditions* factor. However, despite these findings, the Study Area as a whole has been deemed not to exhibit this blight factor because, as with the *Deteriorated Structures* factor, such findings were *not* considered to be severe or widespread enough to warrant an overall finding of blight under this factor.

**Deterioration of Site or Other Improvements:**

The most common and prolific occurrence of neglect under this blight factor in the Study Area is parking surface deterioration. This problem is fairly widespread, covering 12 separate parcels. Other notable issues found that fall within this blight factor include three parcels exhibiting general site neglect, and two parcels with signage problems.

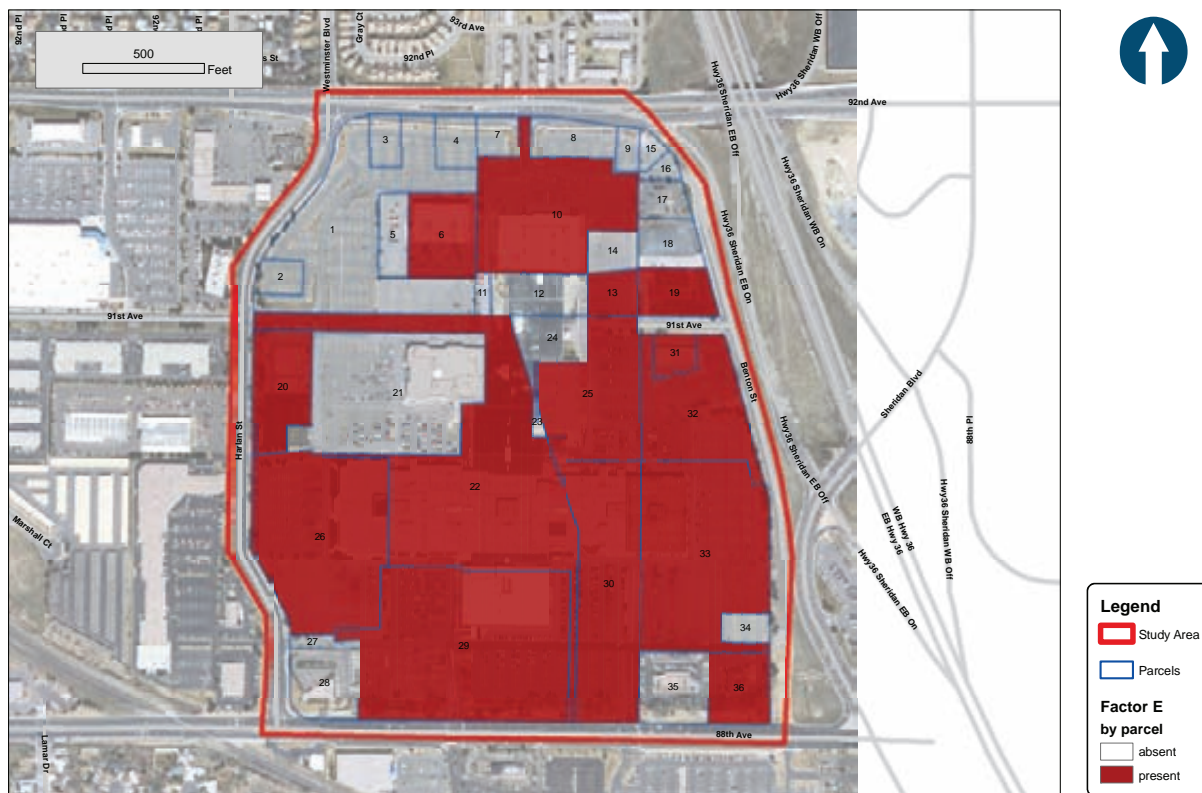
The photographs below show examples of instances of site deterioration and neglect.



*Uneven and Deteriorating Parking Surfaces*



A more detailed inventory of types and instances of *Deterioration of Site or Other Improvements* can be found in the Field Survey ledger in the **Appendix**. The following map is a geographical depiction of parcels that were deemed to exhibit this blight factor within the Study Area.



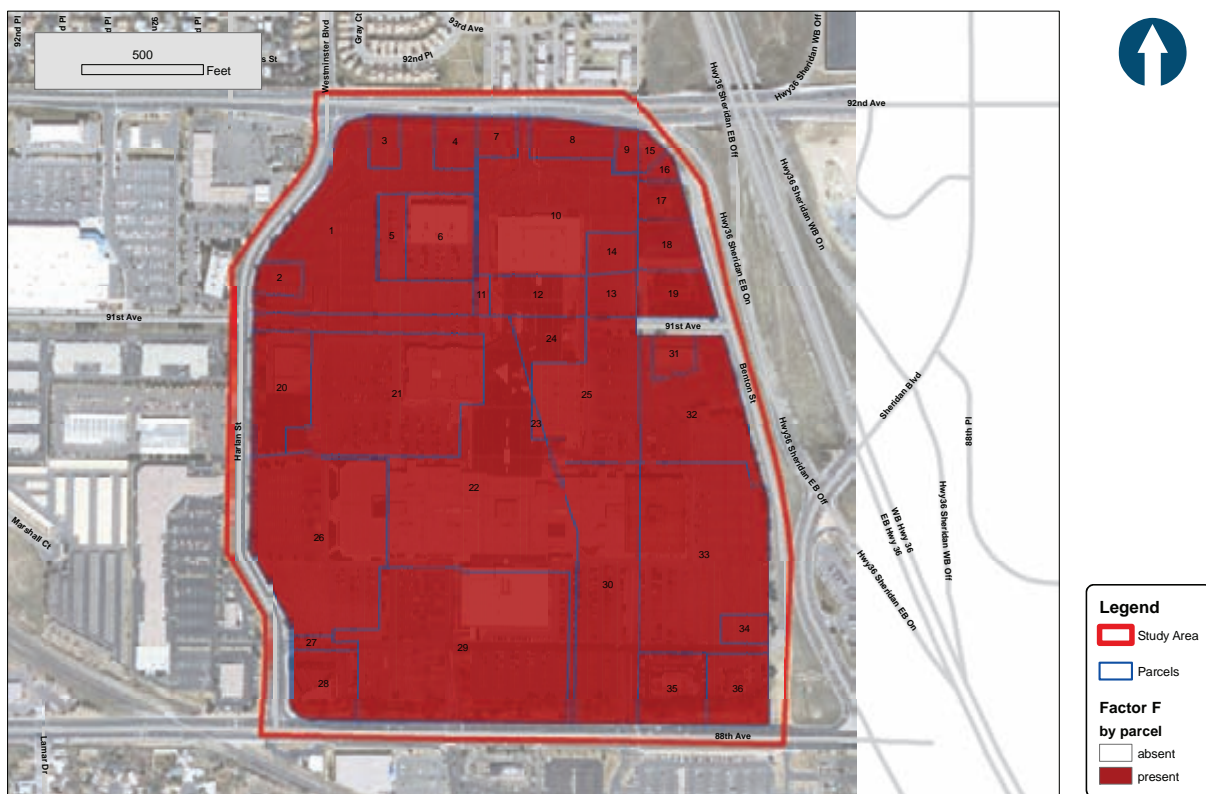
*Exhibit 5: Deterioration of Site or Other Improvements Parcel Map*

In total, 14 parcels showed some form of deteriorating site improvements. Conditions pertaining to this factor are prevalent enough in the Study Area for a finding of *Deterioration of Site or Other Improvements* to be made.

### Unusual Topography or Inadequate Public Improvements

In the Study Area, problems with vehicular roads are generally confined to private car paths within the mall property. Electric utility lines are generally up to date and located underground. Sidewalks and street lighting are in place (at least along the perimeter of the mall), as are curbs and gutters. While water and sewer lines are in place for all properties, water supplies are considered inadequate throughout the Study Area in terms of water pressure for major firefighting and sprinkler operations. This negatively impacts fire safety for all parcels and presents a constraint to any future development or expansion within the Study Area, as new public water infrastructure would be required to bring line pressures up to required levels for firefighting.

The following map shows the parcels that fall under this blight category. *Note: due to the water pressure issue, every parcel is shown as having this factor.*



*Exhibit 6: Unusual Topography or Inadequate Public Improvements/Utilities Parcel Map*

Because all 36 parcels are considered to have inadequate public improvements, the Study Area as a whole has been documented with this factor.

**Defective or Unusual Conditions of Title Rendering the Title Non-marketable:**

The Westminster Mall is encumbered by the Reciprocal Construction, Operation, and Easement Agreement, dated February 7, 1986, and recorded in the records of the Clerk and Recorder of Jefferson County, at Reception No. 86016389. Parties to the Agreement include the Westminster Mall Company; J.C. Penney Properties, Inc.; Carter Hawley Hales Stores, Inc.; the May Department Stores Company; and Mervyn's, Inc. Even though some of the parties have changed, the Agreement is still in full force and effect. It requires that all parties consent to any alteration or modification of the Westminster Mall. The restrictions in the Agreement make it difficult, if not impossible, for the Westminster Mall property to be improved or redeveloped. It therefore constitutes an unusual condition of title rendering title unmarketable.

The multiplicity of ownerships present in the Study Area also creates a significant barrier to redevelopment as it complicates the assemblage of properties into a parcel suitable for redevelopment. Many of the parcels in the Westminster Mall area are subject to joint and reciprocal easement agreements which limit the uses and redevelopment of adjacent properties. The multiplicity of ownerships and the associated reciprocal easements thus constitute a defective or unusual condition of title.

**Exhibit 7** is a map of the Study Area which shows parcel boundaries and includes a unique number assigned to each parcel, which can be used with the accompanying table to identify the owner of the lot as of January 2008. A cursory glance at the table shows the multitude of owners controlling the properties that comprise the Study Area.

The map has various parcels that with a red hatched pattern, which are owned by either the Mersco Realty Company or the Westminster Mall Company, which both represent the current owners of the mall. The remaining parcels without hatching are owned by different entities and would likely need to be assembled for any large-scale redevelopment project in the Study Area. This gives the reader an overall impression of the fragmented ownership that exists in the area.

Because of these issues, a finding of *Defective or Unusual Conditions of Title Rendering the Title Non-Marketable* has been found within the Study Area.

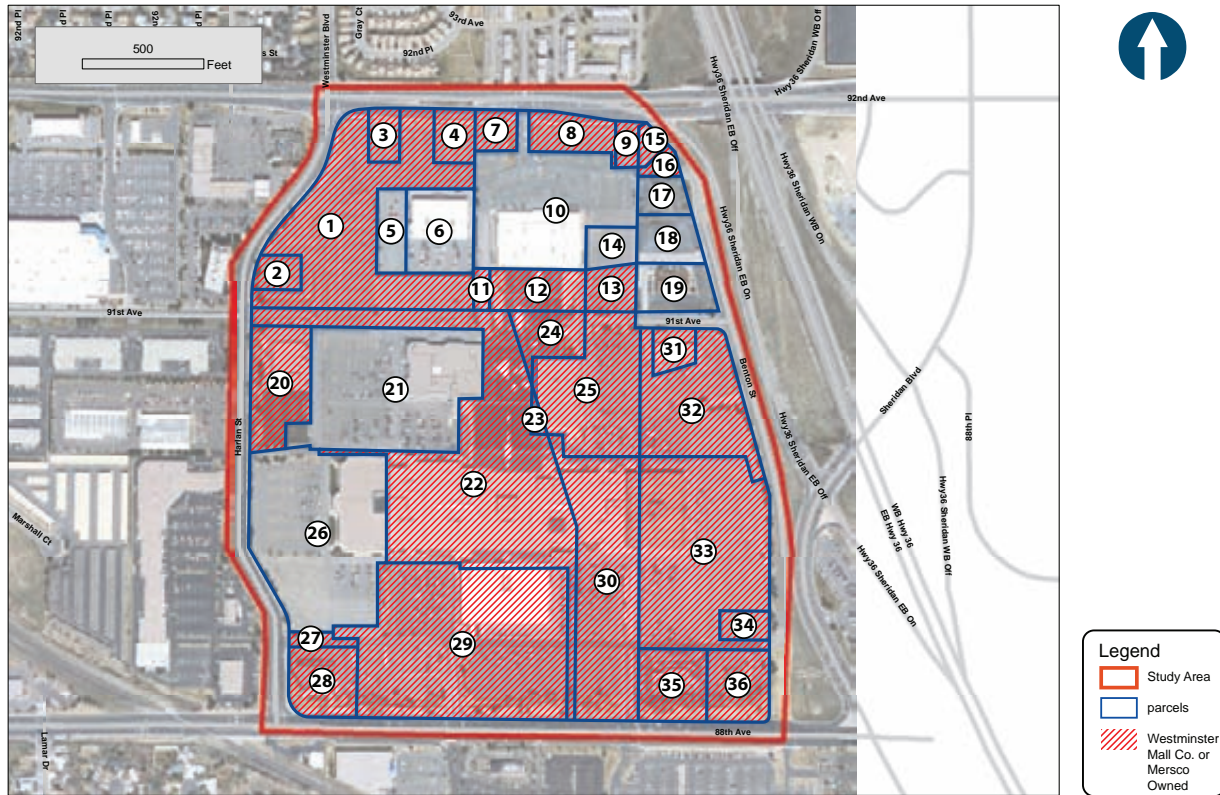


Exhibit 7: Parcel Ownership Map

Map ID	Owner	Map ID	Owner
1	MERSCO REALTY CO	19	LAKE ARBOR VENTURES LLC
2	MERSCO REALTY CO	20	WESTMINSTER MALL COMPANY
3	MERSCO REALTY CO	21	SEARS DEVELOPMENT CO
4	MERSCO REALTY CO	22	WESTMINSTER MALL COMPANY
5	SPORTS GARDEN INC	23	WESTMINSTER MALL COMPANY
6	SPORTS GARDEN INC	24	MERSCO REALTY CO
7	MERSCO REALTY CO	25	MERSCO REALTY CO INC
8	MERSCO REALTY CO	26	MAY CENTERS ASSOCIATES CORPORATION
9	MERSCO REALTY CO	27	WESTMINSTER MALL COMPANY
10	MDS REALTY II LLC	28	WESTMINSTER MALL COMPANY
11	MERSCO REALTY CO	29	WESTMINSTER MALL COMPANY
12	MERSCO REALTY CO	30	MERSCO REALTY CO
13	MERSCO REALTY CO	31	MERSCO REALTY CO INC
14	MORGAN FRANK S	32	MERSCO REALTY CO
15	MERSCO REALTY CO	33	MERSCO REALTY CO INC
16	MERSCO REALTY CO	34	MERSCO REALTY CO
17	MCMURTREY AND BENCH GROUP LLC	35	MERSCO REALTY CO INC
18	LAKE ARBOR VENTURES LLC	36	MERSCO REALTY CO INC

Exhibit 8: Parcel Ownership Table

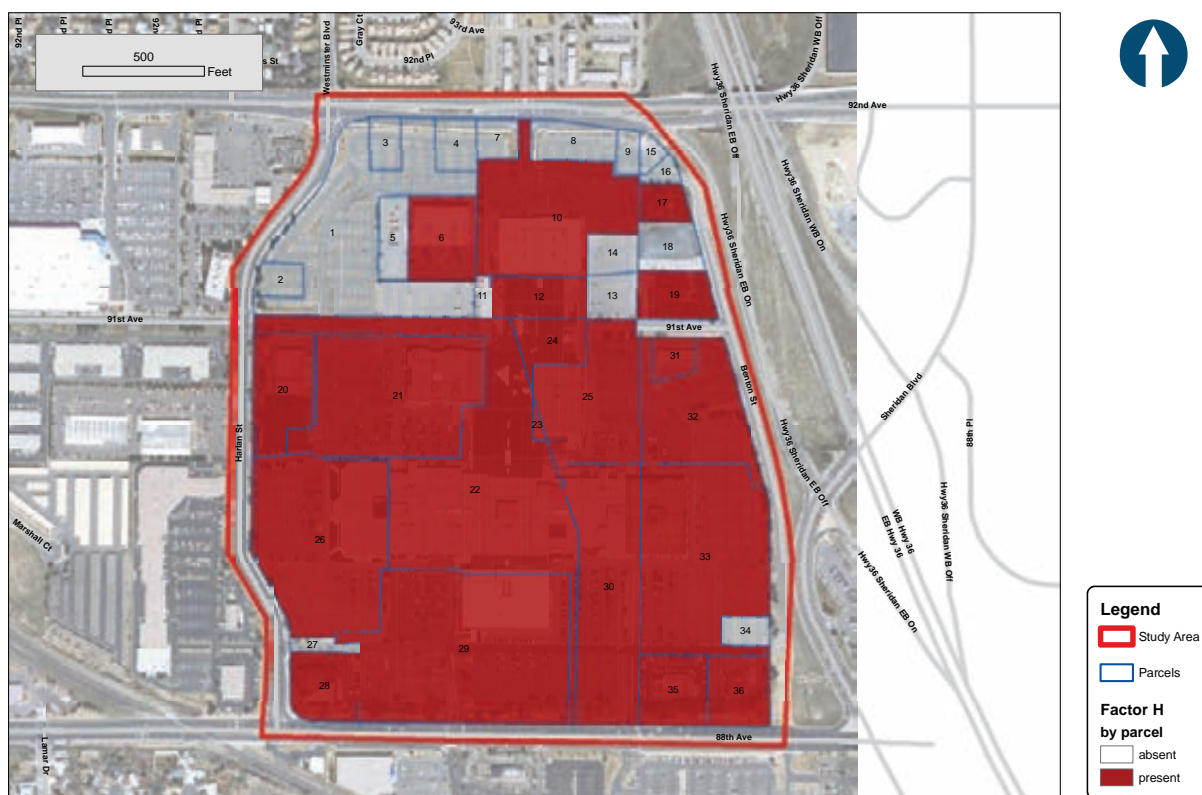


**Existence of Conditions that Endanger Life or Property by Fire and Other Causes:**

Discussions with Fire Department officials indicate that the Study Area includes a mix of sprinklered and non-sprinklered buildings. A broader fire safety issue exists, however, given the lack of sufficient firefighting water pressure discussed previously. According to the Fire Department, incoming water pressure, as tested on October 21, 2008, was measured at 42 pounds per square inch (static pressure). Normal static pressures in most areas of the city range from the 70s to the 100s. The existing pressure is minimally adequate to supply the fire sprinkler systems and inadequate for major firefighting. Any additions, expansions or modifications to the mall or any major surrounding properties would be difficult due to low water pressure.

The mall's main fire sprinkler riser does not have back flow protection, as required by City of Westminster codes. Frequent false fire alarms occur at the mall due to the age of the system. Since January 2006, the Fire Department has responded to 493 alarms of all types, including false fire alarms, actual fires, hazardous material spills, emergency medical incidents and other calls for service. Although calls for service have declined along with business in the mall, 2008 still had 130 fire department alarms through late October of 2008.

Following is **Exhibit 9**, which represents parcel-by-parcel findings related to this blight factor.



*Exhibit 9: Endangerment from Fire or Other Causes Parcel Map*

A total of 20 parcels have been cited for *Existence of Conditions that Endanger Life or Property by Fire and Other Causes*. As a result, the Study Area as a whole is considered to show this factor.

**Buildings that are Unsafe or Unhealthy for Persons to Live or Work In:**

*Buildings that are Unsafe or Unhealthy for Persons to Live or Work In* results in similar findings to those found under the previous category, *Existence of Factors that Endanger Life or Property by Fire or Other Causes*, and relates specifically to factors of design and construction of buildings that impact their safety. Because the fire safety issues discussed in the previous section do not rise to the level of rendering the buildings unsafe for day-to-day operation, no parcels are said to have this factor present.

This blight factor was therefore *not* found to be present in the Study Area.

**Environmental Contamination of Buildings or Property:**

There are no specific statutory requirements for this factor in the urban renewal legislation. However, the factor is generally considered present where there is documented evidence of the existence of hazardous contaminants in the soils, water or structures of an area.

There are no known instances of environmental contamination in the Study Area. Consequently, *no* finding of this blight factor has been made.

**Existence of Factors Requiring High Levels of Municipal Services or Substantial Physical Underutilization or Vacancy of Sites, Buildings, or Other Improvements:**

The Westminster Mall, with 493 alarms for fire services since 2006, certainly appears to require a “high level of municipal services”. Areas characterized by this factor, including vacant lots, parcels with vacant structures, or parcels with improvements that are disproportionately low in value relative to the land itself are also considered to have a “blighting” impact.

While the Study Area does not contain parcels of vacant land (other than surface parking lots), it includes several buildings which are partially vacant (at least 20 percent) or completely vacant. Westminster Mall itself is largely vacant: excluding independently owned anchors, 183,728 square feet of the mall’s 372,514 total rentable square feet are vacant, giving the mall a 49% vacancy rate. Similarly, two of the three restaurant pad locations surrounding the mall are vacant.

Additionally, on January 9, 2009, the *Rocky Mountain News* reported the announcement by Macy’s of their intent to close their Westminster Mall store in 2009. When the closure of this anchor store occurs as planned, it would represent an additional significant example of *Substantial Physical Underutilization or Vacancy of Sites, Buildings, or Other Improvements*.

The following photos exemplify vacant retail spaces that were found throughout the Study Area.

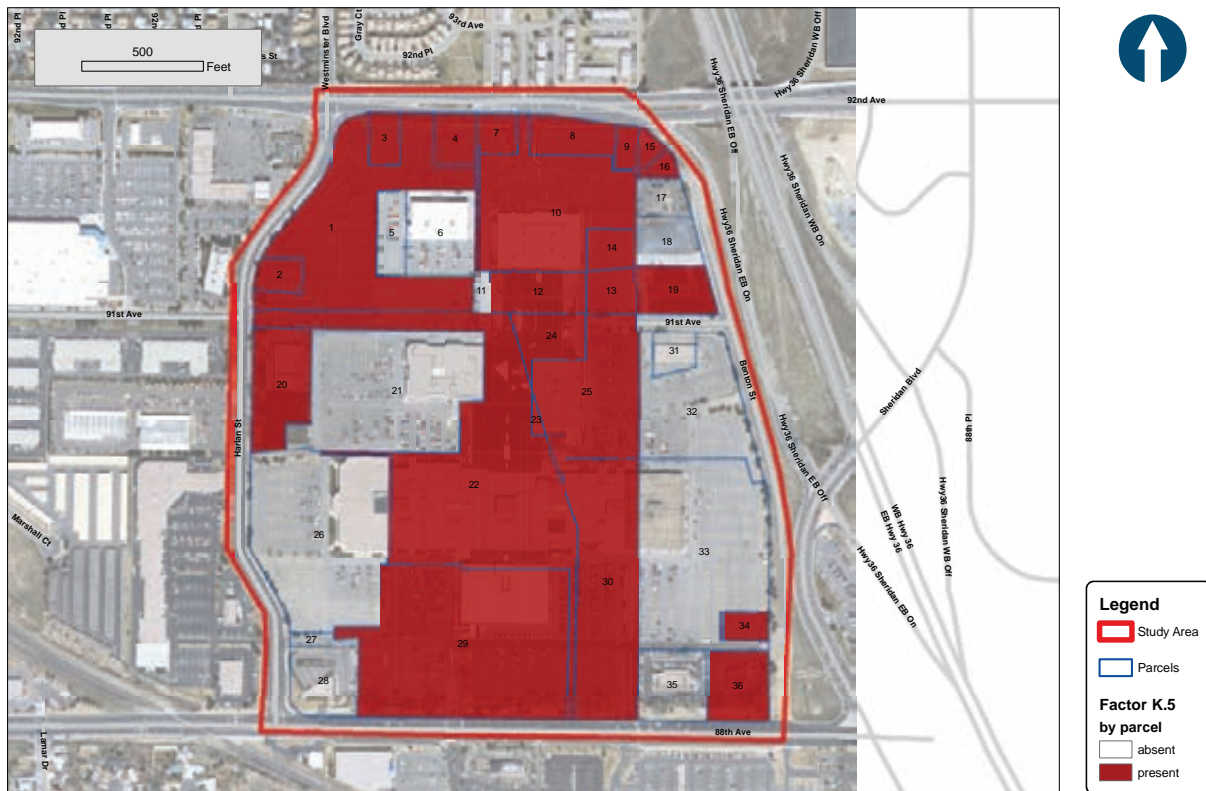


*Retail Spaces Inside the Mall have a High Vacancy Rate*



*Large Exterior Retail Spaces Sit Vacant*

Exhibit 10 shows the parcels that have this factor, due to either vacancies or high levels of municipal services.



*Exhibit 10: High Levels of Municipal Services or Substantial Physical Underutilization or Vacancy Parcel Map*

In total, 23 separate parcels show high levels of vacancy. Of those, eight parcels also require high levels of municipal services, giving the Study Area as a whole a positive finding of this blight factor.

## Section 6: Study Summary and Recommendation

Within the entire Study Area, seven of the eleven blight factors were identified. The blight factors identified are:

- Predominance of Defective or Inadequate Street Layout
- Faulty Lot Layout in Relation to Size, Adequacy, or Usefulness
- Deterioration of Site or Other Improvements
- Unusual Topography or Inadequate Public Improvements or Utilities
- Defective or Unusual Conditions of Title
- Endangerment by Fire or Other Causes
- High Levels of Municipal Services or Underutilization or Vacancy of Sites, Buildings, or Other Improvements

As discussed in **Section 2**, in order for an area to be declared blighted, a certain number of the eleven blight factors must be found within the Study Area. **Four** of the eleven factors is the required minimum, unless none of the property owners or tenants object to being included within an urban renewal area; then, the required minimum is only **one** of the eleven factors. In the event, however, that eminent domain is to be used to acquire property within the urban renewal area, the required minimum is **five** of the eleven factors. Since seven blight factors were identified within the Study Area, a sufficient number of blight factors exist under any of the above scenarios.

### Conclusion

It is the recommendation of this blight study report to the Westminster City Council and the Westminster Economic Development Authority that the Study Area, in its present condition, contains a sufficient number of blight factors as required by the Colorado urban renewal laws for the Study Area to be declared a “blighted area.” Whether or not the documented blight *“substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare”* is a determination that must be made by the Westminster City Council.



## Agenda Item 10 C

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Resolution No. 13 re Edward Byrne Memorial Justice Assistance Grant Formula Program

**Prepared By:** Lee Birk, Chief of Police  
Jeri Elliott, Senior Management Analyst

**Recommended City Council Action:**

Adopt Resolution No. 13 authorizing the Police Department to pursue a 2009 Recovery Act Grant (Edward Byrne Memorial Justice Assistance Grant) with the U.S. Department of Justice to hire 2.0 FTE Police Officer positions, which are currently frozen, and to fund salaries and benefits associated with these two positions.

**Summary Statement**

- The Police Department is requesting authorization to apply for an Edward Byrne Memorial Justice Assistance Grant (JAG). This is a local solicitation, one-time grant award from the Department of Justice. Westminster has been identified as eligible for an allocation of \$186,864 based on the grant allocation formula.
- The grant will be used to hire 2.0 FTE Police Officers and to fund salaries and benefits associated with these two positions (1.0 FTE for two years and 1.0 FTE for approximately one year). These 2.0 FTE were approved in City Council's Adopted 2009/2010 Budget, but they are currently unfilled, "frozen" positions. Earlier this year, the City implemented a hiring freeze to help address a projected revenue shortfall in 2009.
- Staff recommends requesting the full grant allocation of \$186,864 from the Department of Justice.
- The grant requires review by City Council prior to application and the application deadline is May 18, 2009.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A



**Policy Issue**

Should the City attempt to seek assistance from the Department of Justice through the Edward Byrne Memorial Justice Assistance Grant (JAG) for the 2.0 FTE Police Officers?

**Alternative**

Council could choose not to pursue funding from the JAG grant. However, Staff recommends pursuing this funding for the purpose of filling 2.0 FTE Police Officer positions that are currently vacant and frozen due to the City's hiring freeze. These grant funds have no requirement for a City match.

**Background Information**

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"). The Recovery Act provides the U.S. Department of Justice with funding to assist state, local, and tribal law enforcement. The Police Department has been successful in the past in applying for and receiving grants from the Department of Justice. Recently, the department received a solicitation from the Department of Justice JAG Grant for the amount of \$186,864. The main purpose of the grant is to maximize "job creation and job retention." The Police Department proposes to apply the total grant amount of \$186,864 to fund salary and benefit costs of 2.0 FTE Police Officers (1.0 FTE Police Officer for a two years and 1.0 FTE Police Officer for approximately one year). The base annual salary for an entry-level officer is \$46,492.

In addition, the Police Department is also applying for the 2009 Community Oriented Policing Services (COPS) Hiring Recovery Program, which is also part of the Recovery Act, but distinct from the Department of Justice JAG Grant. The timeline set by the federal government for this grant application was extremely short, thus the application has already been submitted.

COPS is a competitive grant that provides funding to law enforcement agencies for entry level sworn Police Officers. The Police Department will be requesting funding of up to \$245,814 for a 1.0 FTE Police Officer position for a three-year period and there are no matching funds required. The funding will provide 100% of the salary and benefits for a Police Officer position; however, the City must agree to retain the Police Officer position for a one-year period after the three-year period has expired, and the City must assume responsibility for salary and benefit costs for that position for the continuing one-year period.

If both grant applications are successful, the Police Department will receive funding for a total of 3.0 FTE Police Officer positions. The grants would provide funding to fill vacant, frozen positions that were approved in City Council's Adopted 2009/2010 Budget. The Police Department currently has 6.0 FTE frozen Police Officer vacancies out of 185 FTE authorized.

These grant requests support the City's Strategic Plan Goals of "Safe and Secure Community" and "Financially Sustainable City Government Providing Exceptional Services" by ensuring adequate police staffing and resources to maintain efficient and quality police services to the community.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **13**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**GRANT REQUEST FOR THE U.S. DEPARTMENT OF JUSTICE EDWARD BYRNE  
MEMORIAL JUSTICE ASSISTANCE GRANT FORMULA PROGRAM**

WHEREAS, on February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), which provides the U.S. Department of Justice with funding to assist state, local, and tribal law enforcement; and

WHEREAS, the City of Westminster has been solicited to apply for funding through the Department of Justice Edward Byrne Memorial Justice Assistance Grant ("JAG") Program; and

WHEREAS, the Police Department has 6.0 FTE Police Officer positions that are currently vacant, due to the City of Westminster's 2009 hiring freeze; and

WHEREAS, the funds received from the JAG Grant will be allocated for salary and benefits for 2.0 FTE Police Officers.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the City of Westminster shall submit a grant application to the Department of Justice for the Edward Byrne Memorial Justice Assistance Grant Formula Program for the funding of 2.0 FTE Police Officers in the amount of up to \$186,864.

PASSED AND ADOPTED this 13th day of April, 2009.

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Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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City Clerk

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City Attorney



## Agenda Item 10 D

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Resolution No. 14 re Purchase of Shoenberg Farm Lots 5 and 14A

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

**Recommended City Council Action**

Adopt Resolution No. 14 authorizing the purchase of Lots 5 and 14A, Shoenberg Farm Commercial Center, for \$637,500; and authorizing the City Manager to execute all documents required to close on the purchase of the property.

**Summary Statement**

- City Council approved an agreement on October 9, 2006, that provided the City an option to purchase parcels of land that included up to ten buildings that previously were used as Shoenberg Farm.
- The City was awarded a State Historical Fund grant in August 2008 providing \$438,125 to be applied toward the \$637,500 purchase price of Lots 5 and the proposed Lot 14A, which lots together include seven Shoenberg Farm structures.
- Further State Historical Fund grants have been awarded to fund the exterior rehabilitation of the dairy barn and for construction documents for the rehabilitation of the concrete silo and the milk and ice house.
- The parcels proposed to be acquired are an integral part of a larger commercial development and will be subject to a prior recorded declaration that pertains to rights and obligations of adjacent parcels such as cross access easements, utility easements, and common areas.
- Due to the state source of the funding, the parcels proposed to be acquired will be required to be subject to a preservation easement held by the Colorado Historical Foundation that will regulate the exterior appearance of the structures.

**Expenditure Required:** \$637,500, plus closing costs not to exceed \$2,795

**Source of Funds:** \$478,125 - State Historical Fund Grant  
\$162,170 - General Capital Improvement Fund  
– Shoenberg Farm Restoration

**Policy Issue**

Should City Council approve the purchase of Shoenberg Farm Lots 5 and 14A using a State Historical Fund grant and General Fund money?

**Alternative**

City Council could choose not to authorize the acquisition or the expenditure at this time. Staff does not recommend this because the State Historical Fund grant will be lost, the City's option to purchase will expire, and the historic structures could potentially be demolished by the owner.

**Background Information**

In 2005, Shoenberg Farm owner Jerry Tepper entered into a contract to allow a developer to plan for commercial development that would require demolition of some or all of the remaining ten Shoenberg Farm buildings. Due to the historical significance of these dairy and egg farm buildings, the City negotiated a two-year option to study whether the historic buildings could be purchased and rehabilitated. The developer had agreed to a particular purchase price formula with the owner. In order to gain the purchase option, the City was required to pay the same price that the developer agreed to pay.

Based on this option, the City applied for a \$25,000 State Historical Fund (SHF) grant that was combined with a \$30,000 cash advance by the owner and developer that allowed a complete architectural and structural assessment of eight of the buildings and also included a schematic design for the rehabilitation of the dairy barn. The cash advance was refunded by the City to the developer pursuant to an Economic Redevelopment Agreement after use taxes and permit fees were received from the commercial development.

In order to access SHF funding, it was necessary for the City Council to designate a portion of Shoenberg Farm as a local historic landmark, which was accomplished in March 2008. Just before this action occurred, the developer arranged to relocate the 1911 garage so that it is positioned on the north side of the farmhouse. The landmark designation recognizes the garage's new location.

Using this detailed assessment and cost estimates, as well as the unit price stated in the option agreement, the City applied for further SHF grants. A grant in the amount of \$478,125 was awarded for the proposed acquisition of Lots 5 and 14A, as well as a \$300,000 grant to be applied toward the exterior and structural rehabilitation of the dairy barn. Based upon this grant funding, City staff has been working through a variety of details with the owner and developer to allow the transaction to be closed. The rehabilitation money is available only if the City closes on the acquisition.

The option agreement required the City to pay \$8.00/square foot plus a pro rata share of the cost of public improvements that benefit the entire commercial project. These costs include public improvements such as the new extension of West 73<sup>rd</sup> Avenue, sidewalks, landscaping and drainage detention. The SHF grant application was premised on an anticipated cost of \$15.00/square foot. City Sales Tax Auditor Josh Pens audited the books of the owner and developer and was able to verify the legitimacy of the public improvement costs included in the proposed purchase price, which ultimately turned out to be \$14.85/square foot.

Based on this unit price of \$14.85, the City is able to purchase 42,929 square feet of property pursuant to the option agreement (see map). This acquisition will include the following:

Parcel	Size	Buildings	Notes
Lot 5	7,490 SF	1911 two-story brick farmhouse 1911 two-story brick former garage	7331 Sheridan Blvd.
Lot 14A	35,439 SF	1911 two-story brick dairy barn 1911 milk & ice house 1950 concrete silo 1911 wooden stave silo 1911 underground brick power plant	5202 W. 73 <sup>rd</sup> Avenue Includes five structures and a parking area sufficient to serve all structures on both parcels

In order to allow this acquisition to occur, it is necessary to replat the three-acre Lot 14 platted by the developer, which replat is being completed administratively.

No definite uses have been proposed for the buildings to be acquired by the City. A music recording studio is believed to be preparing a letter of intent to acquire and improve the dairy barn and milk and ice house. An inquiry has been received concerning use of the dairy barn as an event center. A number of artists and musicians have visited the Lot 5 buildings as a potential live-work opportunity. A master plan proposes an arts and history district as a concept to guide future uses.

As a condition of receiving SHF grant funding, this acquisition will require the structures and site to be subject to the protection of a preservation easement owned and monitored by the Colorado Historical Foundation. The State Historical Fund will pay a separate endowment amount to the Foundation that supports its ongoing monitoring program. The Foundation will monitor rehabilitation progress, review any proposals for exterior modifications, and also provides financial assistance in the form of short-term loans for rehabilitation projects.

If approved, the closing will occur as soon as possible. Work is underway on construction documents for the dairy barn rehabilitation project, which is expected to be completed by the end of 2009. Grants have been awarded to allow the City to prepare construction documents for the rehabilitation of the 1911 brick milk and ice house and the 1950 concrete silo. Matching grant funding has been provided by the Westminster Legacy Foundation. The City has invested small sums to make cosmetic improvements to some farm buildings in order to keep them looking acceptable to the public and the City is further studying improvements that can be made to create an accessible entrance to what will eventually be the main entrances on the west façade of the farmhouse and garage on Lot 5.

Acquisition of these parcels will require the City to keep the grounds in an acceptable condition pending final rehabilitation and adaptive reuse by occupants and future owners. The landscape is being planned in a simple inexpensive way and will rely on some volunteer assistance to install and maintain the grounds in the short term. Common area maintenance fees will eventually need to be paid to support the regional detention facilities and some other management costs. Based on the budget provided by the Tepper ownership, it appears that these costs will be about \$2,000 annually.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

- Resolution
- Site Map
- Purchase Agreement

RESOLUTION

RESOLUTION NO. **14**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**A RESOLUTION  
AUTHORIZING THE PURCHASE OF LOTS 5 AND 14A, SHOENBERG FARM  
COMMERCIAL CENTER**

WHEREAS, the City of Westminster has negotiated to purchase Lot 5 and Lot 14A (proposed replat of existing Lot 14), Shoenberg Farm Commercial Center (the "Property") for \$637,500,

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

1. The City Council hereby authorizes the purchase of the Property for up to \$637,500.
2. The City Manager is hereby authorized to acquire such property interests consistent with applicable law, including the execution of all documents necessary to complete these purchases.
3. The City Manager shall be further authorized to incur reasonable costs associated with acquiring the properties in question, including, without limitations, contractual services, the cost of title examination, title insurance, appraisal fee payments mandated by statute or grant conditions, normal closing costs, filing fees and charges and all other related or incidental costs or expenses customarily associated with the acquisition of property.
4. This Resolution to be in full force and effect from and after its passage and approval.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2009.

ATTEST:

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Mayor Nancy McNally

APPROVED AS TO LEGAL FORM:

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Linda Yeager, City Clerk

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City Attorney's Office



THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE  
(ALL TYPES OF PROPERTIES)**

Date: 3-\_\_-98 MEC  
Purchase Price: \$637,500.00

**1. AGREEMENT.** Buyer agrees to buy, and Seller agrees to sell, the Property defined below on the terms and conditions set forth in this contract (Contract).

**2. DEFINED TERMS.**

**a. Buyer.** Buyer, **CITY OF WESTMINSTER**, will take title to the real property described below as  **Joint Tenants**  **Tenants In Common** X **Other** – a municipal corporation.

**Seller.** Seller is **TEPPER PARTNERS**, a limited liability company.

**b. Property.** The Property is the following legally described real estate in the County of Jefferson, Colorado: See Exhibit “A” attached hereto and incorporated herein by this reference, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

**c. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 4a	Alternative Earnest Money Deadline	N/A
2	§ 5a	Loan Application Deadline	N/A
3	§ 5b	Loan Conditions Deadline	N/A
4	§ 5c	Buyer’s Credit Information Deadline	N/A
5	§ 5c	Disapproval of Buyer’s Credit Information Deadline	N/A
6	§ 5d	Existing Loan Documents Deadline	N/A
7	§ 5d	Existing Loan Documents Objection Deadline	N/A
8	§ 5d	Loan Transfer Approval Deadline	N/A
9	§ 6a(2)	Appraisal Deadline	Tentative 3-30-09
10	§ 7a	Title Deadline	3-30-09
11	§ 8a	Title Objection Deadline	4-3-09
12	§ 7c	Survey Deadline	4-3-09
13	§ 8c(2)	Survey Objection Deadline	3 business days after 12
14	§ 7b	Document Request Deadline	N/A
15	§ 7d(5)	CIC Documents Objection Deadline	N/A
16	§ 8b	Off-Record Matters Deadline	Tentative 3-30-09
17	§ 8b	Off-Record Matters Objection Deadline	3 business days after 17
18	§ 8f	Right of First Refusal Deadline	N/A
19	§ 10a	Seller’s Property Disclosure Deadline	N/A
20	§ 10b	Inspection Objection Deadline	4-3-09
21	§ 10c	Resolution Deadline	5 days before closing
22	§ 10d	Property Insurance Objection Deadline	N/A
23	§ 25e	<b>Approval Deadline</b>	N/A
24	§ 12	<b>Closing Date</b>	April __, 2009
25	§ 17	Possession Date	April __, 2009
26	§ 17	Possession Time	5 p.m.



27	§ 30	Acceptance Deadline Date	N/A
28	§ 30	Acceptance Deadline Time	5 p.m.

**d. Attachments.** The following are a part of this Contract: Exhibit "A" (Legal Description); [other, if any: \_\_\_\_\_].

**e. Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable when inserted on any line in **Dates and Deadlines** (§ 2c), and it means that the corresponding provision of the Contract to which reference is made is deleted. The abbreviation "MEC" (mutual execution of this contract) means the latest date upon which both parties have signed this Contract.

### 3. INCLUSIONS AND EXCLUSIONS.

**a. Inclusions.** The Purchase Price includes the following items (Inclusions):

(1) **Fixtures.** If attached to the Property on the date of this Contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including remote controls; and  all utility lines, if any.

(2) **Personal Property.** The following are included if on the Property whether attached or not on the date of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included:  **Water Softeners**  **Smoke/Fire Detectors**  **Security Systems**  **Satellite Systems** (including satellite dishes)

(3) **Other Inclusions.** All contents, equipment, furnishings, etc., in the buildings and silos located on the Property, including without limitation the items on the attached list.

The Personal Property to be conveyed at Closing shall be conveyed, by Seller, free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except NONE. Conveyance shall be by bill of sale or other applicable legal instrument.

(4) **Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows: Trade Fixtures are included under "equipment" in (3), above.

The Trade Fixtures to be conveyed at Closing shall be conveyed, by Seller, free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except none. Conveyance shall be by bill of sale or other applicable legal instrument.

(5) **Parking and Storage Facilities.**  **Use Only**  **Ownership** of the following parking facilities:

N/A; and  **Use Only**  **Ownership** the following storage facilities: N/A.

(6) **Water Rights.** The following legally described water rights: all rights tributary to the Property.

Any water rights shall be conveyed by N/A deed or other applicable legal instrument. The Well Permit # is N/A.

(7) **Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows: N/A.

**b. Exclusions.** The following items are excluded: N/A.

**4. PURCHASE PRICE AND TERMS.** The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4	Purchase Price	\$ 637,500	
2	§ 4a	Earnest Money		\$ 0
3	§ 4d(1)	New First Loan		0
4	§ 4d(2)	New Second Loan		0
5	§ 4e	Assumption Balance		0
6	§ 4f	Seller or Private Financing		0
7				

8				
9	§ 4b	Cash at Closing		637,500
10		<b>TOTAL</b>	\$ 637,500	\$ 637,500

Note: If there is an inconsistency between the Purchase Price on the first page and this § 4, the amount in § 4 shall control.

**a. Earnest Money.** N/A. The Earnest Money set forth in this section, in the form of Good Funds is part payment of the Purchase Price and shall be payable to and held by Chicago Title Company (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** (§ 2c) for its payment. The parties authorize delivery of the Earnest Money deposit to the closing company, if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

**b. Cash at Closing.** All amounts paid by Buyer at Closing including cash at Closing, plus Buyer's closing costs, shall be in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

**c. Down Payment Assistance; Seller Paid Costs.** Seller, at Closing, shall credit \$ N/A to Buyer to assist with Buyer's down payment. Seller shall also, at Closing, credit to Buyer the amount of \$ N/A to assist with Buyer's closing costs, not to exceed the amount due from Buyer for such costs. These amounts are in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

**d. New Loan. N/A**

**(1) New First Loan.** Buyer shall obtain a new loan set forth in this section as follows:

**Conventional**  **FHA**  **VA**  **Other** \_\_\_\_\_.

This loan will be secured by a \_\_\_\_\_ (1st, 2nd, etc.) deed of trust.

The loan may be increased to add the cost of mortgage insurance, VA funding fee and other items for a total loan amount, not in excess of \$ \_\_\_\_\_, which shall be amortized over a period of  **Years**  **Months** at approximately \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and interest not to exceed \_\_\_\_% per annum, plus, if required by Buyer's lender, a deposit of \_\_\_\_\_ of the estimated annual real estate taxes, property insurance premium, and mortgage insurance premium. If the loan is an adjustable interest rate or graduated payment loan, the payments and interest rate initially shall not exceed the figures set forth above.

Loan discount points, if any, shall be paid to lender at Closing and shall not exceed \_\_\_\_\_% of the total loan amount. Notwithstanding the loan's interest rate, the first \_\_\_ loan discount points shall be paid by \_\_\_\_\_, and the balance, if any, shall be paid by \_\_\_\_\_.

Buyer shall timely pay Buyer's loan costs and a loan origination fee not to exceed % of the loan amount. If the loan is an FHA/VA insured or guaranteed loan, Seller shall pay closing costs and fees, not to exceed \$ \_\_\_\_\_, that Buyer is not allowed by law to pay for tax service and \_\_\_\_\_.

**(2) New Second Loan.** Buyer shall obtain a new loan set forth in this section as follows:

This loan will be secured by a \_\_\_ (2nd, etc.) deed of trust.

The total loan amount, not in excess of \$ \_\_\_\_\_, shall be amortized over a period of  **Years**  **Months** at approximately \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and interest not to exceed \_% per annum. If the loan is an adjustable interest rate or graduated payment loan, the payments and interest rate initially shall not exceed the figures set forth above.

Loan discount points, if any, shall be paid to lender at Closing and shall not exceed % of the total loan amount. Notwithstanding the loan's interest rate, the first \_\_\_\_\_ loan discount points shall be paid by \_\_\_\_\_, and the balance, if any, shall be paid by \_\_\_\_\_.

Buyer shall timely pay Buyer's loan costs and a loan origination fee not to exceed % of the loan amount.

**e. Assumption. N/A** Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance set forth in this section, presently payable at \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and interest presently at \_\_\_\_\_% per annum, and

also including escrow for the following as indicated:  **Real Estate Taxes**  **Property Insurance Premium**  **Mortgage Insurance Premium** and  \_\_\_\_\_.

Buyer agrees to pay a loan transfer fee not to exceed \$\_\_\_\_\_. At the time of assumption, the new interest rate shall not exceed \_\_\_% per annum and the new payment shall not exceed \$\_\_\_\_\_ per \_\_\_ principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than \$\_\_\_\_\_, then  **Buyer May Terminate** this Contract effective upon receipt by Seller of Buyer's written notice of termination or  \_\_\_\_\_.

Seller  **Shall**  **Shall Not** be released from liability on said loan. If applicable, compliance with the requirements for release from liability shall be evidenced by delivery at Closing of an appropriate letter of commitment from lender. Cost payable for release of liability shall be paid by \_\_\_ in \_\_\_ an amount not to exceed \$\_\_\_\_\_.

**f. Seller or Private Financing.** N/A Buyer agrees to execute a promissory note payable to: , as  **Joint Tenants**  **Tenants in Common**  **Other** \_\_\_\_\_, on the note form as indicated:  **(Default Rate)** NTD 81-10-06  **Other** secured by a \_\_\_\_\_ (1st, 2nd, etc.) deed of trust encumbering the Property, using the form as indicated:  **Strict – Due On Sale** (TD 72-10-06)  **Creditworthy** (TD 73-10-06)  **Assumable - Not Due On Sale** (TD 74-10-06)  **Other** \_\_\_\_\_.

The promissory note shall be amortized on the basis of \_\_\_  **Years**  **Months**, payable at \$ per \_\_\_\_\_ including principal and interest at the rate of \_\_\_% per annum. Payments shall commence \_\_\_\_\_ and shall be due on the \_\_\_ day of each succeeding \_\_\_\_\_. If not sooner paid, the balance of principal and accrued interest shall be due and payable \_\_\_\_\_ after Closing. Payments  **Shall**  **Shall Not** be increased by \_\_\_ of estimated annual real estate taxes, and  **Shall**  **Shall Not** be increased by \_\_\_\_\_ of estimated annual property insurance premium. The loan shall also contain the following terms: (1) if any payment is not received within \_\_\_\_\_ calendar days after its due date, a late charge of \_\_\_\_\_% of such payment shall be due, (2) interest on lender disbursements under the deed of trust shall be \_\_\_% per annum, (3) default interest rate shall be \_\_\_\_\_% per annum, (4) Buyer may prepay without a penalty except \_\_\_\_\_, and (5) Buyer  **Shall**  **Shall Not** execute and deliver, at Closing, a Security Agreement and UCC-1 Financing Statement granting the holder of the promissory note a \_\_\_\_\_ (1st, 2nd, etc.) lien on the personal property included in this sale.

Buyer  **Shall**  **Shall Not** provide a mortgagee's title insurance policy, at Buyer's expense.

## 5. FINANCING CONDITIONS AND OBLIGATIONS. N/A

**a. Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining a new loan, or if an existing loan is not to be released at Closing, Buyer, if required by such lender, shall make a verifiable application by **Loan Application Deadline** (§ 2c). Buyer shall cooperate with Seller and lender to obtain loan approval, **DILIGENTLY AND TIMELY PURSUE SAME IN GOOD FAITH**, execute all documents and furnish all information and documents required by lender, and, subject to subsections 4d(1) and (2) and § 4e, timely pay the costs of obtaining such loan or lender's consent. Buyer agrees to satisfy the reasonable requirements of lender, and shall not withdraw the loan or assumption application, nor intentionally cause any change in circumstances that would prejudice lender's approval of the loan application or funding of the loan. Buyer may obtain different financing provided Seller incurs no additional delay, cost or expense, and provided Buyer is approved for such substitute loan.

**b. Loan Conditions.** If Buyer is to pay all or part of the Purchase Price by obtaining a new loan as specified in § 4b, this Contract is conditional upon Buyer's approval of the availability, terms, conditions and cost for the new loan. This condition is for the benefit of Buyer and shall be deemed waived unless Seller receives from Buyer, no later than **Loan Conditions Deadline** (§ 2c), written notice of Buyer's election to terminate this Contract as such loan was not satisfactory to Buyer, Buyer shall not have the right to terminate under this § 5b based on the terms or conditions of any loan that is the same as set forth in § 4. If Buyer so notifies Seller, this Contract shall terminate. **IF SELLER DOES NOT RECEIVE WRITTEN NOTICE TO TERMINATE AND BUYER DOES NOT CLOSE, BUYER SHALL BE IN DEFAULT.**

**c. Credit Information and Buyer's New Senior Loan.** If Buyer is to pay all or part of the Purchase Price by executing a promissory note in favor of Seller, or if an existing loan is not to be released at Closing, this Contract is conditional (for the benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval shall be at Seller's sole and absolute

discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit Information Deadline** (§ 2c), at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; (3) any such information and documents received by Seller shall be held by Seller in confidence, and not released to others except to protect Seller's interest in this transaction; (4) in the event Buyer is to execute a promissory note secured by a deed of trust in favor of Seller, this Contract, for the benefit of Seller, is conditional upon Seller's approval of the terms and conditions of any new loan to be obtained by Buyer if the deed of trust to Seller is to be subordinate to Buyer's new loan (**Buyer's New Senior Loan**); Seller shall not have the right to terminate under this § 5c for any loan when all such specific terms and provisions (e.g., interest rate, principal, payments, prepayment penalties, due date, etc.) are met as set forth in § 4 or elsewhere in this Contract; and (5) if Seller does not deliver written notice of Seller's disapproval of Buyer's financial ability and creditworthiness or of **Buyer's New Senior Loan** to Buyer by **Disapproval of Buyer's Credit Information Deadline** (§ 2c), then Seller waives the conditions set forth in this section. If Seller does deliver written notice of disapproval to Buyer on or before said date, this Contract shall terminate.

**d. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller shall deliver copies of the loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§ 2c). For the benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. If written notice of objection to such loan documents, signed by Buyer, is not received by Seller by **Existing Loan Documents Objection Deadline** (§ 2c), Buyer accepts the terms and conditions of the documents. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan, except as set forth in § 4e. If lender's approval is not obtained by **Loan Transfer Approval Deadline** (§ 2c), this Contract shall terminate on such date. If Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4e, this Contract may be terminated at Seller's option.

## 6. APPRAISAL PROVISIONS.

### a. Appraisal Condition.

(1) **Not Applicable.** This § 6a. shall not apply.

(2) **Conventional.** Buyer shall have the sole option and election to terminate this Contract if the Purchase Price exceeds the Property's valuation determined by an appraiser engaged by Buyer and approved by the Colorado State Historical Fund. This Contract shall terminate by Buyer delivering to Seller written notice of termination and either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price, received on or before **Appraisal Deadline** (§ 2c). If Seller does not receive such written notice of termination on or before **Appraisal Deadline** (§ 2c), Buyer waives any right to terminate under this subsection.

(3) **FHA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the Purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the Purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than \$\_\_\_\_\_. The Purchaser (Buyer) shall have the privilege and option of proceeding with the consummation of the Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The Purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.

(4) **VA.** It is expressly that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

b. **Cost of Appraisal.** Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by  **Buyer**  **Seller**.

**7. EVIDENCE OF TITLE.**

a. **Evidence of Title.** On or before **Title Deadline** (§ 2c), Seller shall cause to be furnished to Buyer, at Seller's expense, a current commitment for owner's title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked,  **An Abstract** of title certified to a current date. At Seller's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a title insurance commitment is furnished, it  **Shall**  **Shall Not** commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters,
- (4) any unrecorded mechanic's liens,
- (5) gap period (effective date of commitment to date deed is recorded), and
- (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by  **Buyer**  **Seller**.

b. **Copies of Exceptions.** On or before **Title Deadline** (§ 2c), Seller, at Seller's expense, shall furnish to Buyer and N/A, (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a title insurance commitment is required to be furnished, and if this box is checked  **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall have the obligation to furnish these documents pursuant to this subsection if requested by Buyer any time on or before **Document Request Deadline** (§ 2c). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder where the Property is located. The abstract or title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

c. **Survey of Lot 5.** On or before **Survey Deadline** (§ 2c),  **Seller**  **Buyer** shall cause Buyer (and the issuer of the Title Commitment or the provider of the opinion of title if an abstract) to receive a current  **Improvement Survey Plat**  **Improvement Location Certificate**  Survey shall meet ALTA/ASCM standards (the description checked is known as Survey). An amount not to exceed \$ N/A for Survey shall be paid by  **Buyer**  **Seller**. If the cost exceeds this amount,  **Buyer**  **Seller** shall pay the excess on or before Closing unless Buyer delivers to Seller before Survey is ordered, Buyer's written notice allowing the exception for survey matters.

d. **Replat of Lot 14.** Buyer shall cause a replat of Lot 14, Shoenberg Farms Commercial Subdivision, to be prepared at its expense, dividing Lot 14 into Lots 14A and 14B, so that Buyer may legally acquire the Property. In regards to such subdivision, the following shall apply:

(1) On or before March 30, 2009, Buyer shall deliver to Seller a draft of the plat for the subdivision of the Lot 14 prepared by Buyer's architects and engineers promptly after such document is prepared and accepted by Buyer ("**Draft Plat**"). Seller shall have five (5) business days after receipt of the Draft Plat (the "**Draft Plat Review Period**") to review the Draft Plat and determine whether it is acceptable to Seller. Seller shall provide Buyer written notice of any objections to the Draft Plat prior to the expiration of the Draft Plat Review Period, and such notice shall provide specific comments to the Draft Plat necessary to make the Draft Plat acceptable to Seller and Developer ("**Draft Plat Objections**").

(2) If Seller provides Buyer with its Draft Plat Objections in accordance with the terms hereof, then Seller and Buyer shall meet within three (3) business days after Buyer's receipt of Seller's or Developer's objections to resolve the issues contained in Seller's or Developer's Draft Plat Objections. If Seller, Developer and Buyer are unable to resolve the Draft Plat Objections, Seller and/or Developer may either (a) elect to terminate this Agreement, and the parties hereto shall be released from any and all obligations hereunder, except as may otherwise expressly survive termination, or (b) waive any unresolved Draft Plat Objections by providing Buyer written notice of such election ("**Plat Election Notice**"). If Seller or Developer fails to provide Buyer with its Plat Election Notice within the foregoing time period, then Seller and Developer shall be deemed to have disapproved the Draft Plat and this contract shall terminate.

e. **Common Interest Community Documents.**

(1) **Not Applicable.** This § 7d. shall not apply.

(2) **Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**

(3) **Not Conditional on Review.** Buyer acknowledges that Buyer has received a copy of the owners' association (Association) declarations, bylaws, rules and regulations, party wall agreements, minutes of most recent annual owners' meeting and minutes of any directors' meetings during the 6-month period immediately preceding Title Deadline, if any (Governing Documents), most recent financial documents consisting of (a) annual balance sheet, (b) annual income and expenditures statement, and (c) annual budget (Financial Documents), if any (collectively CIC Documents). Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions that they impose upon the Property and its owners and waives any right to terminate this Contract due to such documents, notwithstanding the provisions of § 8e.

(4) **CIC Documents to Buyer.**

- (a) **Seller to Provide CIC Documents.** Seller shall cause the CIC Documents to be provided to Buyer, at Seller's expense, on or before **Title Deadline** (§ 2c).
- (b) **Seller Authorizes Association.** Seller authorizes the Association to provide the CIC Documents to Buyer, at Seller's expense.
- (c) **Seller's Obligation.** Seller's obligation to provide the CIC Documents shall be fulfilled upon Buyer's receipt of the CIC Documents, regardless of who provides such documents.

(5) **Conditional on Buyer's Review.** If the box in either subsection 7d(4)(a) or subsection 7d(4)(b) is checked, the provisions of this subsection 7d(5) shall apply. Written notice of any unsatisfactory provision in any of the CIC Documents, in Buyer's subjective discretion, signed by Buyer, or on behalf of Buyer, and delivered to Seller on or before **CIC Documents Objection Deadline** (§ 2c), shall terminate this Contract.

Should Buyer receive the CIC Documents after **Title Deadline** (§ 2c), Buyer shall have the right, at Buyer's option, to terminate this Contract by written notice delivered to Seller on or before ten calendar days after Buyer's receipt of the CIC Documents. If Buyer does not receive the CIC Documents, or if such written notice to terminate would otherwise be required to be delivered after the Closing Date, Buyer's written notice to terminate shall be received by Seller on or before three calendar days prior to **Closing Date** (§ 2c). If Seller does not receive written notice from Buyer within such time, Buyer accepts the provisions of the CIC Documents, and Buyer's right to terminate this Contract pursuant to this subsection is waived, notwithstanding the provisions of § 8e.

NOTE: If no box in this § 7d is checked, the provisions of subsection 7d(4)(a) shall apply.

## 8. TITLE AND SURVEY REVIEW.

a. **Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Title Objection Deadline** (§ 2c), or within five calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment

together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

**b. Matters Not Shown by the Public Records.** Seller shall deliver to Buyer, on or before **Off-Record Matters Deadline** (§ 2c) true copies of all leases (including, without limitation, the Sembrar and cell tower company leases) and surveys in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to investigate if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Off-Record Matters Objection Deadline** (§ 2c). If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

**c. Survey Review.**

**(1) Not Applicable.** This § 8c shall not apply.

**(2) Conditional on Survey.** If the box in this subsection 8c(2) is checked, Buyer shall have the right to inspect the Survey. If written notice by or on behalf of Buyer of any unsatisfactory condition shown by the Survey, notwithstanding § 8b or § 13, is received by Seller on or before **Survey Objection Deadline** (§ 2c) then such objection shall be deemed an unsatisfactory title condition. If Seller does not receive Buyer's notice by **Survey Objection Deadline** (§ 2c), Buyer accepts the Survey as satisfactory.

**d. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

In the event the Property is located within a special taxing district and Buyer desires to terminate this Contract as a result, if written notice, by or on behalf of Buyer, is received by Seller on or before **Off-Record Matters Objection Deadline** (§ 2c), this Contract shall terminate. If Seller does not receive Buyer's notice by such date, Buyer accepts the effect of the Property's inclusion in such special taxing district and waives the right to terminate for that reason.

**e. Right to Object, Cure.** Buyer's right to object shall include, but not be limited to, those matters listed in § 13. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in §§ 8a, b, c and d above, Seller shall use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition is not corrected to Buyer's satisfaction on or before Closing, this Contract shall terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

**f. Right of First Refusal or Approval.** Seller warrants there are no rights of first refusal on the Property or any rights to approve this Contract held by others.

**g. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property.**

Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., **Title Objection Deadline** [§ 2c] and **Off-Record Matters Objection Deadline** [§ 2c]).

**9. LEAD-BASED PAINT.** N/A Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, this Contract shall be void unless a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensees, which must occur prior to the parties signing this Contract. Buyer acknowledges timely receipt of a completed Lead-Based Paint Disclosure (Sales) form signed by Seller and the real estate licensees.

**10. PROPERTY DISCLOSURE, INSPECTION, INSURABILITY AND BUYER DISCLOSURE.**

**a. Seller's Property Disclosure Deadline.** On or before **Seller's Property Disclosure Deadline** [§ 2c], Seller agrees to deliver to Buyer the most current version of the Seller's Property Disclosure form completed by Seller to the best of Seller's actual knowledge, current as of the date of this Contract.

**b. Inspection Objection Deadline.** Buyer shall have the right to have inspections of the physical condition of the Property and Inclusions, at Buyer's expense. If the physical condition of the Property or Inclusions is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 2c):

- (1) notify Seller in writing that this Contract is terminated, or
- (2) deliver to Seller a written description of any unsatisfactory physical condition which Buyer requires Seller to correct (Notice to Correct).

If written notice is not received by Seller on or before **Inspection Objection Deadline** (§ 2c), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

**c. Resolution Deadline.** If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Resolution Deadline** (§ 2c), this Contract shall terminate one calendar day following **Resolution Deadline** (§ 2c), unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

**d. Insurability.** Intentionally omitted.

**e. Damage, Liens and Indemnity.** Buyer is responsible for payment for all inspections, tests, surveys, engineering reports, or any other work performed at Buyer's request and shall pay for any damage which occurs to the Property and Inclusions as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, tests, surveys, engineering reports, or any other work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney and legal fees. The provisions of this subsection shall survive the termination of this Contract.

**f. Buyer Disclosure.** Buyer represents that Buyer  **Does**  **Does Not** need to sell and close a property to complete this transaction.

**Note:** Any property sale contingency should appear in **Additional Provisions** (§ 25).

**11. METHAMPHETAMINE LABORATORY DISCLOSURE.** The parties acknowledge that Seller is required to disclose whether Seller knows that the Property was previously used as a methamphetamine laboratory. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. In the event that the Property has been used as a methamphetamine laboratory, Buyer may deliver written notice to Seller, on or before Closing, to terminate this Contract.

**12. CLOSING.** Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 2c) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by  Buyer  Seller.



**13. TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

- a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with § 8a (Title Review),
- b. distribution utility easements (including cable TV),
- c. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with § 8b (Matters Not Shown by the Public Records) and § 8c (Survey Review),
- d. inclusion of the Property within any special taxing district,
- e. the benefits and burdens of any recorded declaration and party wall agreements, if any, and
- f. other. None.

**14. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

**15. CLOSING COSTS, DOCUMENTS AND SERVICES.**

a. **Good Funds.** Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

b. **Closing Documents.** Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

c. **Closing Services Fee.** Fees for real estate Closing services shall be paid at Closing by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller.**

d. **Status Letter and Transfer Fees.** Any fees incident to the issuance of Association's statement of assessments (Status Letter) shall be paid by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller.** Any fees incident to the transfer from Seller to Buyer assessed by the Association (Association's Transfer Fee) shall be paid by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller.** N/A.

e. **Local Transfer Tax.** N/A The local transfer tax of % of the Purchase Price shall be paid at Closing by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller.** N/A.

f. **Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction shall be paid when due by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller.**

**16. PRORATIONS.** The following shall be prorated to **Closing Date** (§ 2c), except as otherwise provided:

a. **Taxes.** Personal property taxes, if any, and general real estate taxes for the year of Closing, based on  **Taxes for the Calendar Year Immediately Preceding Closing**  **Most Recent Mill Levy** and **Most Recent Assessed Valuation**  **Other** \_\_\_\_\_.

b. **Rents.** Rents based on  **Rents Actually Received**  **Accrued.** Security deposits held by Seller shall be credited to Buyer. Seller shall assign all leases to Buyer and Buyer shall assume such leases.

c. **Maintenance Assessments.** Current regular assessments for maintenance paid in advance shall be credited to Seller at Closing. Any special assessment for improvements that have been installed as of the date of Buyer's signature hereon shall be the obligation of Seller. Any other special assessment assessed prior to **Closing Date** (§ 2c) shall be the obligation of  Buyer  Seller. Seller represents that the amount of the Assessments is currently payable at **[\$[to be filled in by Tepper]** per month and that there are no unpaid regular or special assessments against the Property except the current regular assessments and except \_\_\_\_\_. Such assessments are subject to change as provided in the Governing Documents.

d. **Other Prorations.** None.

e. **Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.

**17. POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date** at **Possession Time** (§ 2c), subject to the following leases or tenancies:

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$100 per day (or any part of a day) from the **Possession Date** and **Possession Time** (§ 2c) until possession is delivered.

Buyer  **Does**  **Does Not** represent that Buyer will occupy the Property as Buyer's principal residence.

**18. ASSIGNABILITY.** This Contract  **Shall**  **Shall Not** be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

**19. INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS.** Except as otherwise provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

**a. Casualty Insurance.** In the event the Property or Inclusions shall be damaged by fire or other casualty prior to Closing, in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same before **Closing Date** (§ 2c). In the event such damage is not repaired within said time or if the damages exceed such sum, this Contract may be terminated at the option of Buyer by delivering to Seller written notice of termination on or before Closing. Should Buyer elect to carry out this Contract despite such damage, at Closing, Buyer shall be entitled to a credit for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, then Seller shall assign such proceeds, at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but not to exceed the total Purchase Price.

**b. Damage, Inclusions and Services.** Should any Inclusion or service (including systems and components of the Property, e.g. heating, plumbing, etc.) fail or be damaged between the date of this Contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion or service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion, service or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions. The risk of loss for damage to growing crops by fire or other casualty shall be borne by the party entitled to the growing crops as provided in subsection 3a(7) and such party shall be entitled to such insurance proceeds or benefits for the growing crops.

**c. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

**20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer and Seller acknowledge that the respective broker has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

**21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

**a. If Buyer is in Default:**  
 **(1) Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller and retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this

Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

**(2) Liquidated Damages.** All Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller, and retained by Seller. Both parties shall thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in § 4 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10e, 19, 21c, 22, 23), said forfeiture shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

**b. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

**c. Cost and Expenses.** In the event of any arbitration or litigation relating to this Contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

**22. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.

**23. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder shall release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole discretion, may (a) await any proceeding, (b) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (c) deliver written notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller), containing the case number of the lawsuit (Lawsuit) within 120 calendar days of Earnest Money Holder's written notice is delivered to the parties, Earnest Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of Mediation (§ 22).

**24. TERMINATION.** In the event this Contract is terminated, all Earnest Money received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10e, 22 and 23.

**25. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

**a. Prior Approvals.** This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all the terms set forth herein. In the event this Agreement is not approved in its entirety by City Council, neither Party shall be bound to the terms of this Agreement. Further, this Agreement is subject to the approval of the Colorado State Historical Fund.

**b. Representations And Warranties.** Seller represents and warrants to Buyer both as of the date hereof and as of the date of Closing that:

(1) Seller is not a "foreign Person" but is a "United States person" as such terms are defined in Section 1445 and 7701 of the Internal Revenue Code of 1986 as amended.

(2) As of the date of Closing there shall be no parties in possession of any portion of the Property, except Seller.

(3) No work shall have been performed or shall be in progress by Seller, and no materials shall have been furnished to the Property or any portion thereof in connection with such work that might give rise to mechanic's liens against the Property or any portion thereof. At Closing, there will be no unpaid bills or claims in connection with any such work on the Property.

(4) No portion of the Property is subject to an earnest money contract, right of first refusal or similar contractual right.

(5) To the best of Seller's actual knowledge, there is no suit, action, legal or other proceeding pending, or to Seller's best knowledge, threatened which affects the Property.

(6) Seller has received no notice from any governmental authority of zoning, building, fire, water, use, health, environmental or other statutory or regulatory violation issued in respect of the Property which has not been heretofore corrected.

(7) No action in condemnation, eminent domain or public taking proceedings are now pending or contemplated against the Property;

(8) No ordinance or hearing is now before any local governmental body which either contemplates or authorizes any public improvements or special tax levies, the cost of which may be assessed against the Property;

(9) The Property is in compliance with all City of Westminster subdivision and platting regulations and with applicable rules, regulations, ordinances, and requirements of the City;

(10) (i) To the best of Seller's actual knowledge, the Property does not contain asbestos or underground storage tanks and has not been used for the purpose of receiving, handling, using, storing, treatment, transporting owned or disposing of (A) any hazardous material as defined in any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses and permits of any governmental authorities relating to environmental matters (being hereinafter collectively referred to as the "Environmental Laws"), (B) other toxic, dangerous or hazardous chemicals, materials, substances, pollutants and wastes, or any chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or (C) petroleum products (all the foregoing being hereinafter collectively referred to as "Hazardous Materials");

(ii) To the best of Seller's actual knowledge, there are no existing or pending remedial actions or other work, repairs, construction or capital expenditures with respect to the Property in connection with the Environmental Laws, nor has Seller received any notice of the same;

(iii) To the best of Seller's actual knowledge, no Hazardous Materials have been or will be released into the environment, or have been or will be deposited, spilled, discharged, placed or disposed of at, on or adjacent to the Property, nor has the Property been used at any time by any person as a landfill or a disposal site for Hazardous Materials or for garbage, waste or refuse of any kind; and

(iv) To the best of Seller's actual knowledge, no notices of any violation of any of the matters referred to in the foregoing subsections relating to the Property or its use have been received by Seller and there are no writs, injunctions, decrees, orders or judgments outstanding, no lawsuits, claims, proceedings or investigations pending or threatened, relating to the ownership, use, maintenance or operation of the Property, nor, is there any basis for any such lawsuit, claim, proceeding or investigation being instituted or filed.

The representations and warranties set forth in this Section 25(b) shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time. Seller shall not be responsible for any liabilities assumed by the title company under the title policy to be issued to Buyer, nor shall Seller be liable for any indirect or consequential damages in the event of a breach of any of the foregoing representations and warranties. In the event of such breach by Seller, Seller's liability shall be limited to the actual cost of remedying the breach.

**c. Time of Performance.** If any date for performance falls on a Saturday, Sunday or legal holiday, then the date for performance shall be extended to the next day which is not a Saturday, Sunday or holiday.

**d. Authorization.** Except as provided in **a.** above, Buyer and Seller represent to each other that all necessary steps have been taken to authorize this Contract and that each has the requisite authority to enter into and perform this Contract in accordance with its terms.

**e. Amended Declaration.** Seller and Buyer have agreed to a First Amendment to Declaration of Easements, Covenants and Restrictions affecting Lots 5-14, Shoenberg Farms Commercial Center. Prior to the recordation of the Special Warranty Deed from Seller to Buyer, Seller shall execute and record said First Amendment in the Jefferson County Office of Clerk and Recorder.

**f. Future Use Restrictions.** Seller agrees to include, in the Special Warranty Deed to Buyer, a covenant not to place any further restrictions upon the future uses of Lots 5 and 14A, pursuant to Paragraph 13(c) of the Declaration of Easements, Covenants, and Restrictions, than currently existing as of the date of Closing. Seller agrees, consistent with §8.b. above, to affirmatively notify Buyer of any use restrictions applicable to the Property as of the date of Closing.

**26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL.** This agreement constitutes the entire Contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

**27. FACSIMILE.** Signatures   X   may \_\_\_\_\_ may not be evidenced by facsimile. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

**28. FORECLOSURE DISCLOSURE AND PROTECTION.** Seller acknowledges that, to Seller's current actual knowledge, the Property  IS  IS NOT in foreclosure. In the event this transaction is subject to the provisions of the Colorado Foreclosure Protection Act (the Act) (i.e., generally the Act requires that the Property is residential, in foreclosure, and Buyer does not reside in it for at least 1 year), a different contract that complies with the provisions of the Act is required, and this Contract shall be void and of no effect unless the Foreclosure Property Addendum is executed by all parties concurrent with the signing of this Contract. The parties are further advised to consult with their own attorney.

**29. NOTICE, DELIVERY, AND CHOICE OF LAW.**

**a. Physical Delivery.** Except for the notice requesting mediation described in § 22, delivered after Closing, and except as provided in § 28b below, all notices must be in writing. Any notice to Buyer shall be effective when received by Buyer or by Selling Brokerage Firm, and any notice to Seller shall be effective when physically received by Seller or Listing Brokerage Firm.

**b. Electronic Delivery.** As an alternative to physical delivery, any signed document and written notice may be delivered in electronic form by the following indicated methods only:  Facsimile  E-mail  No Electronic Delivery. Documents with original signatures shall be provided upon request of any party.

**c. Choice of Law.** This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

**30. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 29 on or before **Acceptance Deadline Date** (§ 2c) and **Acceptance Deadline Time** (§ 2c). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

Date: \_\_\_\_\_

Buyer

Date: \_\_\_\_\_

Buyer

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

**[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 31]**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Seller

Seller

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

**31. COUNTER; REJECTION.** This offer is  **Countered**  **Rejected.**

**Initials only of party (Buyer or Seller) who countered or rejected offer** \_\_\_\_\_

**END OF CONTRACT**

**Note: Closing Instructions and Earnest Money Receipt should be signed on or before Title Deadline (§ 2c).**

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**SELLING BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Selling Broker)

Selling Broker  **Does**  **Does Not** acknowledge receipt of Earnest Money deposit specified in § 4 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 22.

Selling Broker is working with Buyer as a  **Buyer's Agent**  **Transaction-Broker** in this transaction.  This is a Change of Status.

Seller  **IS**  **IS NOT** a customer working with Selling Broker as a Buyer's Agent.

Selling Brokerage Firm's compensation or commission is to be paid by  **Listing Brokerage Firm**

**Buyer**

**Other** \_\_\_\_\_

Selling Brokerage Firm's Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Broker

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

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**LISTING BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Listing Broker)

Listing Broker  **Does**  **Does Not** acknowledge receipt of Earnest Money deposit specified in § 4 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 22.

Listing Broker is working with the Seller as a  **Seller's Agent**  **Transaction-Broker** in this transaction.  This is a Change of Status.

Buyer  **IS**  **IS NOT** a customer working with Listing Broker as a Seller's Agent.

Listing Brokerage Firm's compensation or commission is to be paid by  **Seller**  **Buyer**  
 **Other** \_\_\_\_\_

Listing Brokerage Firm's Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ Broker

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Resolution No. 15 re Intergovernmental Agreement with the State of Colorado re Historic Preservation Grant for Shoenberg Farm Milk and Ice House Construction Documents

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

**Recommended City Council Action**

Adopt Resolution No. 15 authorizing the City Manager to execute an intergovernmental agreement with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for construction documents for the Shoenberg Farm milk and ice house rehabilitation.

**Summary Statement**

- The City has applied for and has been awarded a grant in the amount of \$16,814 from the State Historical Fund for construction documents for the Shoenberg Farm milk and ice house rehabilitation, located at 5202 West 73<sup>rd</sup> Avenue, west of Sheridan Boulevard.
- In order to complete this acquisition, the City is required to provide a 25% cash match of up to \$5,605. This cash match has been paid by the Westminster Legacy Foundation pursuant to a grant awarded in December 2008.
- To regulate the use and accounting of the funds the State of Colorado requires intergovernmental agreements (IGAs) to be executed before funds are disbursed.

**Expenditure Required:** \$22,419

**Source of Funds:** \$16,814 – State Historical Fund  
\$ 5,605 – Legacy Foundation Grant



**Policy Issue**

Should City Council authorize an IGA with the State of Colorado concerning the use of State Historical Fund grant money awarded for construction documents for the Shoenberg Farm milk and ice house rehabilitation?

**Alternative**

Do not enter into the IGA with the State of Colorado and decline the grant money awarded by the State Historical Fund for the City historic preservation project. Staff does not recommend this alternative as no other funding is available to complete the construction documents for the Shoenberg Farm milk and ice house rehabilitation.

**Background Information**

The attached intergovernmental agreement with the State Historical Fund (SHF) would provide a grant of \$16,814 for construction documents for the Shoenberg Farm milk and ice house rehabilitation and requires a City cash match of \$5,605. The Westminster Legacy Foundation has chosen to fund the cash match through its grant program. A separate grant was awarded for construction drawings for the concrete silo rehabilitation. The dairy barn rehabilitation is already underway this year. The State Historical Fund has thus far awarded five grants for Shoenberg Farm, totaling \$853,516.

The IGA consists of a State-prescribed format that is used with all State Historical Fund projects and it has been reviewed by the City Attorney's Office.

Respectfully submitted,

J. Brent McFall  
City Manager

**Attachments**

- Resolution
- Contract

RESOLUTION

RESOLUTION NO. **15**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**A RESOLUTION  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE  
STATE OF COLORADO CONCERNING THE USE OF  
A GRANT FOR CONSTRUCTION DOCUMENTS FOR THE SHOENBERG FARM  
MILK AND ICE HOUSE REHABILITATION**

WHEREAS, the City of Westminster has been awarded the following grant from the State Historical Fund of the Colorado Historical Society in support of a historic preservation project within the City:

Shoenberg Farm Milk and Ice House Rehabilitation Construction Drawings - \$16,814

WHEREAS, the State of Colorado requires Intergovernmental Agreements to be executed before funds are disbursed, which contracts regulate the use of funds and the grant award.

NOW, THEREFORE, the City Council of the City of Westminster resolves that the City Manager is authorized to execute and carry out the provisions of the attached Intergovernmental Agreement with the State of Colorado concerning the use of a grant for historic preservation purposes awarded to the City.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2009.

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Mayor

ATTEST:

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City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office

Colorado Historical Society	
CHS	
APPROVED WAIVER FORM	#37-D

CONTRACT #2009-M2-021

THIS CONTRACT, Made this \_\_\_\_\_ day of \_\_\_\_\_, by and between the State of Colorado for the use and benefit of the Department of Higher Education, Colorado Historical Society, 1300 Broadway, Denver, Colorado 80202, hereinafter referred to as the State and/or the Society, and the City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031, hereinafter referred to as the "Contractor",

WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number \_\_\_\_\_ in Fund Number 401, Appropriation Account 401 and Organization SITPC; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, Article 12.47.1 1201 of the Colorado Revised Statutes and Subsection (5) (b) (III) of Section 9 of Article XVIII of the state constitution, provide for the annual distribution of monies from the State Historical Fund; and

WHEREAS, the Contractor is eligible in accordance with law to receive a State Historical Fund preservation grant award for acquisition and development projects, survey and planning projects, and education projects; and

WHEREAS, this Contract (hereinafter "Contract" or "Agreement") sets forth the Scope of Work, Budget and List of Submittals, hereinafter referred to as the "Project",

NOW THEREFORE, it is hereby agreed that:

1. The Contractor shall use funds subject to this Contract in support of Project #2009-M2-021 "Construction Documentation". In accordance with the *Scope of Work* attached hereto as Exhibit A, including all applicable plans and specifications developed prior to or during the contract period, which are hereby made a part of this Contract by reference.
2. APPLICABLE STANDARDS. The Contractor agrees that it will perform the activities and produce the deliverables listed in Exhibit C in accordance with the pertinent sections of the applicable Secretary of the Interior's *Standards for Archaeology and Historic Preservation*. Contractor shall perform any and all survey activities and submittals in accordance with the *Survey Manual and How to Complete Colorado Cultural Resources Inventory Forms, Volumes 1 and 2, June 1998 (Revised December 2001)* for any and all survey activities and projects (copies of which are available through the Society).
3. RIGHT OF USE: All copyrightable materials and/or submittals developed or produced under this contract are subject to a royalty free, nonexclusive, and irrevocable license to the Society to reproduce, publish, display, perform, prepare derivative works or otherwise use, and authorize others to reproduce, publish, display, perform, prepare derivative works, or otherwise use, the work or works in Society and/or State Historical Fund purposes.
4. CONTRACT EFFECTIVE DATE: The term of this Contract shall be from May 1, 2009 through May 1, 2011.

The performance of the work must be commenced within sixty (60) days of the Contract beginning date unless a longer period is approved in writing by the State Historical Fund Administrator. The performance of the work must be completed no later than thirty (30) days prior to the Contract ending date.

5. COMPENSATION AND METHOD OF PAYMENT: In consideration of the project described in Exhibit A and subject to on time delivery or completion of the milestones contained in the *List of Submittals* set forth in Exhibit C, the State shall pay to the Contractor a grant not to exceed sixteen thousand, eight hundred thirteen dollars (\$16,813.00).

Unless otherwise specified in Exhibit C, the State shall advance forty-percent (40%) of the total grant amount upon proper execution of this contract and upon submission of a SITP Payment Request, fifty percent (50%) will be paid to the Contractor upon submission and approval of the Interim SITP Financial Report. The remaining ten-percent (10%) of the grant amount shall be paid following Contractor's submission and the State's approval of the Final SITP Financial Report and SITP Payment Request Forms (*Attachments 1 and 2*). All payments are subject to the satisfactory completion of milestones described in Exhibit C and submission by Contractor of either documented proof or certification of expenditures with each financial report.

Expenditures incurred by the Contractor prior to execution of this Contract are not eligible expenditures for State reimbursement. If the Project involves matching funds the SDF may allow prior expenditures in furtherance of the *State of Park* to be counted as part of such matching funds.

6. **ACCOUNTING:** At all times from the effective date of this Contract until completion of this Project, the Contractor shall maintain properly segregated books of State funds, matching funds, and other funds associated with this Project. All receipts and expenditures associated with said Project shall be documented in a detailed and specific manner, and shall accord with the Budget set forth in Exhibit B. Contractor may adjust budgeted expenditure amounts up to ten percent (10%) within said Budget without approval of the State and document the adjustments in the next financial report. Adjustments of budget expenditure amounts in excess of ten percent (10%) must be authorized by the State. In no event shall the State's total financial obligation exceed the amount shown in Paragraph 5 above. Interest earned on funds advanced by the State shall be applied to eligible project expenditures, and will be deducted from the final payment.
7. **AUDIT:** The State or its authorized representative shall have the right to inspect, examine, and audit Contractor's records, books, and accounts, including the right to hire an independent Certified Public Accountant of the State's choosing and at the State's expense to do so. Such discretionary audit may be called for at any time and for any reason from the effective date of this Contract until three (3) years after the date final payment for this Project is received by the Contractor provided that the audit is performed at a time convenient to the Contractor and during regular business hours.
8. **PARTY RELATIONSHIP:** CONTRACTOR IS A GRANTEE AND NOT AN EMPLOYEE OR AGENT OF THE STATE. THE CONTRACTOR SHALL, HAVING NO AUTHORITY, EXPRESS OR IMPLIED, BIND THE STATE TO ANY AGREEMENTS OR UNDERSTANDINGS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE STATE. CONTRACTOR REPRESENTS THAT IT HAS OR SHALL SECURE AT ITS OWN EXPENSE ALL PERSONNEL BY THE CONTRACTOR UNDER THIS CONTRACT. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING WORKMEN'S COMPENSATION COVERAGE AND UNEMPLOYMENT COMPENSATION COVERAGE FOR ALL OF ITS EMPLOYEES TO THE EXTENT REQUIRED BY LAW, AND FOR ENSURING THAT ALL SUBCONTRACTORS MAINTAIN SUCH INSURANCE. THE CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDINGS. ALL OF THE SERVICES REQUIRED HEREUNDER SHALL BE PERFORMED BY THE CONTRACTOR OR UNDER HIS SUPERVISION.
9. **REPRESENTATIVES AND NOTICES:** All notices required to be given by the parties heretofore shall be given by certified or registered mail to the individuals at the addresses set forth below, who are also the designated representatives for the project. Any party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

To the State: Steven W. Turner  
Director  
Colorado Historical Society  
State Historical Fund  
225 East 16th Avenue, Suite 950  
Denver, Colorado 80203-1620

To the Contractor: Ms. Vicki Brunen  
Community Development Programs Coordinator  
City of Westminster  
4800 West 92nd Avenue  
Westminster, Colorado 80031

10. **ADA COMPLIANCE:** The Contractor assures the State that at all times during the performance of this contract no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefit of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance the State relies. Further, all real property improvements shall conform to applicable ADA requirements.
11. **DISSEMINATION OF ARCHAEOLOGICAL SITE LOCATIONS:** Contractor agrees to provide the Society with copies of any archaeological survey developed during the course of, or under a project financed either wholly or in part by the Society. The Contractor agrees to otherwise restrict access to such archaeological surveys, as well as access to any other information concerning the nature and location of archaeological resources, in strict accordance with the provisions of the Colorado Historical Society, Office of Archaeology and Historic Preservation, Dissemination of Cultural Resources Policy and Procedures, adopted October 1991 (Revised Nov. 2002), a copy of which is available from the Society.
12. **REPORTS:** Contractor shall deliver project progress reports to the State every six (6) months during the project which document the progress of the Project, and *SDF Financial Reports* (Attachment 1) as described and at the times in the *List of Submittals* (Exhibit C).
13. **MATCHING FUNDS:** Contractor agrees to make available the necessary funds to complete the Project and provide matching funds, if applicable, in accordance with the Project Budget as set forth in Exhibit B. In the event that said matching funds become unavailable, the State may, in its sole discretion, reduce its total funding commitment to the Project in proportion to the reduction in matching funds.

If the total funding set forth in the Project Budget is not expended on completion of the Project, the State may reduce its pro rata share of the unexpended budget.

14. **CONSULTANTS/SITE VISITS:** The State may:
- Review any project planning documents and methods for conformity with the applicable standards, manuals, and guidelines;
  - Make site visits as determined necessary by the State before, during and/or at the conclusion of the Project to provide on-site technical advice and to monitor progress.
- Any exercise of the State's rights under this Paragraph 14 shall not relieve the Contractor of any of its Contract obligations.

15. **PUBLIC ACKNOWLEDGMENT OF FUNDING SOURCE:** In all publications and similar materials funded under this Contract, a credit line shall be included that reads: "This project is/was paid for in part by a State Historical Fund grant from the Colorado Historical Society." In addition, the Society reserves the right to require that the following sentence be included in any publication or similar material funded through this program: "The contents and opinions contained herein do not necessarily reflect the views or policies of the Colorado Historical Society".

16. **REMEDIES:** In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant, insufficient, incorrect, or unoptimal performance, activities, or inaction by the Contractor. These remedial actions are as follows:

- Suspend the Contractor's performance pending necessary corrective action as specified by the State, without Contractor's entitlement to adjustment in price/cost or schedule, and/or
  - Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed in accordance with the standards, the SHP Grants Manual and/or the terms and conditions of this Contract; and/or
  - Request the removal from work on the contract of employees or agents of the Contractor whom the State justifies as being incompetent, careless, insubordinate, unmitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
  - Deny payment for those services or obligations which have not been performed and which due to circumstances caused by the Contractor cannot be performed, or if performed would be of no value to the State. Details of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
  - Declare all or part of the work ineligible for reimbursement, and/or
  - In the event of a violation of this Agreement, and in addition to any remedy now or hereafter provided by law, the Society may, following reasonable notice to the Contractor institute suit to enjoin said violation or to require the restoration of the Property to its condition at the time of this Agreement or condition at the time of the most recent satisfactory suspension by the Society. The Society shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.
- g. Terminate the contract for default.

17. **CUMULATIVE EFFECT:** The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

18. **TERMINATION OF CONTRACT FOR DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall, in addition to other remedies, thereupon have the right to terminate this Contract for default by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, products, submittals, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the State from the Contractor are determined.

19. **TERMINATION BY STATE:** The State may terminate this Contract at any time the State determines that the purposes of the distribution of State monies under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials paid for with State funds shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the

services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the project covered by this Contract has been completed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the project covered by this Contract. If this Contract is terminated due to the fault of the Contractor, Paragraph 18 hereof relative to termination shall apply.

20. **CHANGES:** This Contract is intended as the complete integration of all understandings between the parties, at this time, and no prior or contemporaneous addition, deletion, or other amendment hereto, including an increase or decrease in the amount of monies to be paid to the Contractor, shall have any force or effect whatsoever, unless embodied in a written contract amendment incorporating such changes executed and approved pursuant to the State's Fiscal Rules. Notwithstanding this provision, modifications to Exhibit A (Scope of Work) and/or to Exhibit C (List of Submittals) may be approved by letter of agreement, agreed to in writing by all parties, providing that no such letter of agreement may alter either the total amount of funds payable under the contract, as set forth in Paragraph 5, or the contract period, as set forth in Paragraph 4, unless such changes are embodied in a written contract amendment executed and approved pursuant to the State's Fiscal Rules.
21. **CONFLICT OF INTEREST:** Contractor agrees not to engage in any conduct, activity, or transaction related to this contract which would constitute a conflict of interest under any applicable State or Federal law.
22. **COMPLIANCE WITH APPLICABLE LAWS:** At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.
23. **SEVERABILITY:** To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become unoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.
24. **BINDING ON SUCCESSORS:** Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.
25. **ASSIGNMENT:** No party, nor any subcontractors hereto, may assign its rights or duties under this Contract without the prior written consent of the other parties.
26. **SURVIVAL OF CERTAIN CONTRACT TERMS:** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance of compliance beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Contractor or their subcontractors.

## SPECIAL PROVISIONS

(The Special Provisions apply to all contracts except where noted in italics.)

1. **CONTROLLER'S APPROVAL.** CRS 24-30-203 (1).  
This contract shall not be valid until it has been approved by the Colorado State Controller as designer.
2. **FUND AVAILABILITY.** CRS 24-30-1005.5).  
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.**  
No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.**  
Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes assessed pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide paid sick leave as required by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.**  
Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and equal employment practices.
6. **EFFECT OF LAW.**  
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to regulate the use of any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROVISIONS.**  
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PATENT PROHIBITION.** Governor's Executive Order 11-012.03.  
State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **IMPEACHING FINANCIAL INTEREST / CONFLICT OF INTEREST.** CRS 24-30-201 and 24-30-509.  
The signatories hereto that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS 24-30-202 (1) and 24-30-202.4. *(Not Applicable to Intergovernmental contracts)*  
Subject to CRS 24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset / intercept system for debts owed to State agencies for: (a) unpaid child support orders or child support arrears; (b) unpaid balances of tax, assessed interest, or other charges specified in CRS 39-21-101, et seq.; (c) unpaid taxes due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS 8-17.5-201. *(Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services)*  
Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS 8-17.5-104(3)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall verify E-Verify Program or Department program participation to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS 8-17.5-104(3), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or public institution a written, sworn affidavit, affirming that Contractor has ascertained the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the contracting State agency, institution of higher education or public institution may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS 24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby agrees and agrees under penalty of perjury that he or she (a) is a citizen or alien lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS 24-76.5-101 et seq., and (c) has produced one form of identification required by CRS 24-76.5-101 prior to the effective date of this contract.

Revised January 1, 2009  
24 Revision March 10, 2010

**CONTRACT SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

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

CONTRACTOR:  
(Grant Recipient)

STATE OF COLORADO  
Bill Ritter, Jr., GOVERNOR

City of Westminster  
Legal Name of Contracting Entity

BY: \_\_\_\_\_  
Executive Director or Designee  
Edward C. Nichols, President

\_\_\_\_\_  
\*Signature of Authorized Officer

Colorado Historical Society

\_\_\_\_\_  
Date

Date: \_\_\_\_\_

Department of Higher Education

\_\_\_\_\_  
Print Name of Authorized Officer

STATE HISTORICAL FUND

BY: \_\_\_\_\_  
Steven W. Turner, Director

\_\_\_\_\_  
Print Title of Authorized Officer

Date: \_\_\_\_\_

WAIVER CONTRACT REVIEWER

BY: \_\_\_\_\_  
Contracts Officer or Designee  
Janette Vogel, State Historical Fund

Date: \_\_\_\_\_

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

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

STATE CONTROLLER  
David J. McDermott, CPA

BY: \_\_\_\_\_  
Susan S. Riehl  
CHS, Chief Financial Officer

Date: \_\_\_\_\_

Revised June 30, 2008  
X:\Document\14862300.doc  
Approval/Contract ID



### SCOPE OF WORK

- I. **Project Purpose:** The purpose of this project is to complete construction documents for the exterior, structural and limited interior rehabilitation Shoenberg Farm Milk & Ice House.
- II. **Scope of Work is as follows:**
  - A. **Architecture and Engineering:**
    1. Obtain detailed field measurements of the existing conditions affected by the rehabilitation.
    2. Establish a scope of work for the rehabilitation with owner and SHP approval.
    3. Coordinate with structural engineer for any necessary structural modifications to stabilize the building.
    4. Coordinate with general contractor to provide pricing based on the approved scope of work and construction documents.
    5. Create construction documents.

In accordance with Section 12-47.1 12-1 C.R.S. (1999) The Limited Gaming Act which authorizes the Colorado Historical Society to administer the State Historical Fund as a statewide grants program.

21:\Contracts\2009\09M2021 Exhibit A.doc

PROJECT BUDGET

TASK	GRANT REQUEST	CASH MATCH	PROJECT TOTAL
Professional Services			
A. Architects Fees			
1. Schematic Design	\$1,620	\$540	\$2,160
2. Design/Development/Construction Drawings	\$9,450	\$3,150	\$12,600
3. Travel Reimbursement (3 trips @ 40 miles x .50/mile)	\$45	\$15	\$60
B. Structural Engineering Fees			
1. Design/Development/Construction Drawings	\$5,273	\$1,758	\$7,031
2. Travel Reimbursement (2 trip @ 60 miles x .50/mile)	\$45	\$15	\$60
C. Related Direct Expenses	\$381	\$127	\$508
<i>Subtotal A (Professional Services)</i>	<i>\$16,814</i>	<i>\$5,605</i>	<i>\$22,419</i>
Grant Administration			
A. City Staff Salaries & Overhead			
1. Management	\$0	\$1,000	\$1,000
2. Clerical	\$0	\$300	\$300
<i>Subtotal B (Grant Administration)</i>	<i>\$0</i>	<i>\$1,300</i>	<i>\$1,300</i>
<b>PROJECT TOTALS</b>	<b>\$16,814</b>	<b>\$6,905</b>	<b>\$23,719</b>
Grant/Cash Match Ratio	71%	29%	

LIST OF SUBMITTALS

Project Reports		
Project Reports	Due Date	Society Response
a. Payment Request Form (Attachment 2). Deliverables #1-2, #7 below must be reviewed and approved before Advance payment is made.	N/A	Advance payment of grant award \$6,725.
b. Progress Report # 1	August 1, 2009	Review*
c. Progress Report # 2	November 1, 2009	Review*
d. Interim Financial Report (Attachment 1). Deliverables #3-4 below must be reviewed and approved before Interim payment is made.	February 1, 2010 **	Review & Approve Interim payment of grant award \$8,407.
e. Progress Report # 3	May 1, 2010	Review*
f. Progress Report # 4	August 1, 2010	Review*
g. Final Financial Report (Attachment 1)	November 1, 2010***	Review & Approve. Final Reimbursement of grant award \$1,681.

\*At the discretion of the SHP technical staff, progress reports may not receive a response.

\*\* Interim financial report due date is a guideline. Please submit Interim financial report when majority of advance has been expended and you are ready for the next payment.

\*\*\* Project period ends. All Deliverables due on or before this date

PROJECT DELIVERABLES

Submit the following Project Deliverables.

Project Deliverables	Society Response
1. Existing Conditions Photographs	Review/Comment and/or Approve
2. Subcontract copy Architect	Review/Comment and/or Approve
3. Schematic Design Documents	Review/Comment and/or Approve
4. Site Visit	Review/Comment and/or Approve
5. Draft Construction Documents	Review/Comment and/or Approve
6. Final Construction Documents	Review/Comment and/or Approve
7. Letter of Agreement/Memoranda of Understanding (LOA/MOU) between the Grant Recipient and the Property Owner	Review/Comment and/or Approve



STATE HISTORICAL FUND  
PAYMENT REQUEST

Attachment 2

Grant Recipient: \_\_\_\_\_ Date: \_\_\_\_\_

Project Title: \_\_\_\_\_ Project Number: \_\_\_\_\_

Total Amount Awarded: \$ \_\_\_\_\_ Contract Period: \_\_\_\_\_

As the authorized representative of the \_\_\_\_\_

Grant Recipient

I hereby state that the above project is presently under contract with the Colorado Historical Society, State Historical Fund, and request (complete only one section):

**ADVANCE PAYMENT REQUEST**

\_\_\_\_\_ An Advance Payment of no more than forty percent (40%) of the total grant award. I further state that work has begun or will begin within the next two weeks on the project, and that an advance payment is necessary to proceed with the Scope of Work.

**INTERIM PAYMENT REQUEST (Initial one or both lines, as applicable)**

\_\_\_\_\_ An Interim Payment of no more than fifty percent (50%) of the total grant award. I further state that any advance payment received to date has been fully expended, and that an interim payment is necessary to continue with the Scope of Work.

AND

\_\_\_\_\_ Enclosed is a SHF Interim Financial Report as required by contract, Exhibit C, and the required documentation or certification of expenditures (payment will NOT be considered without a financial report).

**EASEMENT FEE PAYMENT REQUEST (Initial one or both lines, as applicable)**

\_\_\_\_\_ Enclosed is an Invoice for the Easement Negotiation fee. I further state that we will negotiate in good faith and make every effort to fully execute an easement with the property owner.

AND/OR

\_\_\_\_\_ Enclosed is an Invoice for the Easement fee. I further state that the easement has been fully executed, recorded, and submitted to the State Historical Fund.

**FINAL PAYMENT REQUEST (Must initial both lines)**

\_\_\_\_\_ A Final Payment of the remaining balance of award, minus interest earned.

AND

\_\_\_\_\_ Enclosed is a SHF Final Financial Report and required documentation or certification of expenditures (payment will NOT be considered without a financial report).

I understand that the FINAL PAYMENT is a reimbursement, and further state that all invoices and bills reported on the Final Financial Report have been PAID IN FULL.

\_\_\_\_\_  
Signature of Grant Recipient / Project Director

\_\_\_\_\_  
Date





**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Resolution No. 16 re Intergovernmental Agreement with the State of Colorado re Historic Preservation Grant for Shoenberg Farm Concrete Silo Construction Documents

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

**Recommended City Council Action**

Adopt Resolution No. 16 authorizing the City Manager to execute an intergovernmental agreement with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for construction documents for the Shoenberg Farm concrete silo rehabilitation.

**Summary Statement**

- The City has applied for and has been awarded a grant in the amount of \$10,578 from the State Historical Fund for construction documents for the Shoenberg Farm concrete silo rehabilitation, located at 5202 West 73<sup>rd</sup> Avenue, west of Sheridan Boulevard.
- In order to complete this acquisition, the City is required to provide a 25% cash match of up to \$3,525. This cash match is the subject of a grant application recently filed with the Westminster Legacy Foundation.
- To regulate the use and accounting of the funds the State of Colorado requires intergovernmental agreements (IGAs) to be executed before funds are disbursed.

**Expenditure Required:** \$14,103

**Source of Funds:** \$10,578 – State Historical Fund  
\$ 3,525 – Separate grant request

**Policy Issue**

Should City Council authorize an IGA with the State of Colorado concerning the use of State Historical Fund grant money awarded for construction documents for the Shoenberg Farm concrete silo rehabilitation?

**Alternative**

Do not enter into the IGA with the State of Colorado and decline the grant money awarded by the State Historical Fund for the City historic preservation project. Staff does not recommend this alternative as no other funding is available to complete the construction documents for the Shoenberg Farm concrete silo rehabilitation.

**Background Information**

The attached intergovernmental agreement with the State Historical Fund (SHF) would provide a grant of \$10,578 for construction documents for the Shoenberg Farm concrete silo rehabilitation and requires a City cash match of \$3,525. If the Legacy Foundation does not award a grant to cover this cash match, it will be the City's responsibility to provide the cash match. A separate grant was awarded for construction drawings for the milk and ice house rehabilitation. The dairy barn rehabilitation is already underway this year. The State Historical Fund has thus far awarded five grants for Shoenberg Farm, totaling \$853,516.

The IGA consists of a State-prescribed format that is used with all State Historical Fund projects and it has been reviewed by the City Attorney's Office.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

- Resolution
- Contract

RESOLUTION

RESOLUTION NO. **16**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**A RESOLUTION  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE  
STATE OF COLORADO CONCERNING THE USE OF A  
GRANT FOR CONSTRUCTION DOCUMENTS FOR THE SHOENBERG FARM CONCRETE  
SILO REHABILITATION**

WHEREAS, the City of Westminster has been awarded the following grant from the State Historical Fund of the Colorado Historical Society in support of a historic preservation project within the City:

Shoenberg Farm Concrete Silo Rehabilitation Construction Drawings - \$10,578

WHEREAS, the State of Colorado requires Intergovernmental Agreements to be executed before funds are disbursed, which contracts regulate the use of funds and the grant award.

NOW, THEREFORE, the City Council of the City of Westminster resolves that the City Manager is authorized to execute and carry out the provisions of the attached Intergovernmental Agreement with the State of Colorado concerning the use of a grant for historic preservation purposes awarded to the City.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2009.

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Mayor

ATTEST:

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City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office



Colorado Historical Society	
GCA	
APPROVED WAIVER FORM	#37-D

CONTRACT #2009-M2-002

THIS CONTRACT, Made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the State of Colorado for the use and benefit of the Department of Higher Education, Colorado Historical Society, 1300 Broadway, Denver, Colorado 80203, hereinafter referred to as the State and/or the Society, and the City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031, hereinafter referred to as the "Contractor",

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number \_\_\_\_\_ in Fund Number 401, Appropriation Account 401 and Organization SDFG; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, Article 12-42.1 1201 of the Colorado Revised Statutes and Subsection (5) (a) (31) of Section 5 of Article XVIII of the state constitution, provide for the annual distribution of monies from the State Historical Fund; and

WHEREAS, the Contractor is eligible in accordance with law to receive a State Historical Fund preservation grant award for acquisition and development projects, survey and planning projects, and education projects; and

WHEREAS, this Contract (hereinafter "Contract" or "Agreement") sets forth the Scope of Work, Budget and LAW of Submittals, hereinafter referred to as the "Project",

NOW WHEREFORE, it is hereby agreed that

1. The Contractor shall use funds subject to this Contract in support of Project #2009-M2-002 "Construction Documents". In accordance with the *Scope of Work* attached hereto as Exhibit A, including all applicable plans and specifications developed prior to or during the contract period, which are hereby made a part of this Contract by reference.
2. APPLICABLE STANDARDS: The Contractor agrees that it will perform the activities and produce the deliverables listed in Exhibit C in accordance with the pertinent sections of the applicable Secretary of the Interior's *Standards for Archaeology and Historic Preservation*. Contractor shall perform any and all survey activities and submittals in accordance with the Survey Manual and *How to Complete Colorado's Cultural Resource Inventory Forms, Volumes I and II, June 1998 (Revised December 2001)* for any and all survey activities and projects (copies of which are available through the Society).
3. RIGHTS OF USE: All copyrightable materials and/or submittals developed or produced under this contract are subject to a royalty free, nonexclusive, and irrevocable license to the Society to reproduce, publish, display, perform, prepare derivative works or otherwise use, and authorize others to reproduce, publish, display, perform, prepare derivative works, or otherwise use, the work or works for Society and/or State Historical Fund purposes.
4. CONTRACT DURATION: The term of this Contract shall be from May 1, 2009 through May 1, 2011.  
The performance of the work must be commenced within sixty (60) days of the Contract beginning date unless a longer period is approved in writing by the State Historical Fund Administrator. The performance of the work must be completed no later than thirty (30) days prior to the Contract ending date.
5. COMPENSATION AND METHOD OF PAYMENT: In consideration of the project described in Exhibit A and subject to on time delivery of completion of the milestones contained in the *List of Submittals* set forth in Exhibit C, the State shall pay to the Contractor a grant not to exceed ten thousand, five hundred seventy-eight dollars (\$10,578.00).  
Unless otherwise specified in Exhibit C, the State shall advance forty percent (40%) of the total grant amount upon proper execution of this contract and upon submission of a SDF Payment Request, fifty percent (50%) will be paid to the Contractor upon submission and approval of the Interim SDF Financial Report. The remaining ten percent (10%) of the grant amount shall be paid following Contractor's submission and the State's approval of the Final SDF Financial Report and SDF Payment Request Form (*Attachments 1 and 2*). All payments are subject to the satisfactory completion of milestones described in Exhibit C and submission by Contractor of either documented proof or certification of expenditures with each financial report.

Expenditures incurred by the Contractor prior to execution of this Contract are not eligible expenditures for State reimbursement. If the Project involves matching funds the SHS may allow prior expenditures in furtherance of the Scope of Work to be counted as part of such matching funds.

6. **ACCOUNTING:** At all times from the effective date of this Contract until completion of this Project, the Contractor shall maintain properly segregated books of State funds, matching funds, and other funds associated with this Project. All receipts and expenditures associated with said Project shall be documented in a detailed and specific manner, and shall accord with the Budget set forth in Exhibit B. Contractor may adjust budgeted expenditure amounts up to ten percent (10%) within said Budget without approval of the State and document the adjustments in the next financial report. Adjustments of budget expenditure amounts in excess of ten percent (10%) must be authorized by the State. In no event shall the State's total financial obligation exceed the amount shown in Paragraph 5 above. Interest earned on funds advanced by the State shall be applied to eligible project expenditures, and will be deducted from the final payment.
7. **AUDIT:** The State or its authorized representative shall have the right to inspect, examine, and audit Contractor's records, books, and accounts, including the right to hire an independent Certified Public Accountant of the State's choosing and at the State's expense to do so. Such discretionary audit may be called for at any time and for any reason from the effective date of this Contract until five (5) years after the date final payment for this Project is received by the Contractor provided that the audit is performed at a time convenient to the Contractor and during regular business hours.
8. **PARTIES RELATIONSHIP: CONTRACTOR IS A GRANTEE AND NOT AN EMPLOYEE OR AGENT OF THE STATE. THE CONTRACTOR SHALL HAVE NO AUTHORITY, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS OR UNDERSTANDINGS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE STATE. CONTRACTOR REPRESENTS THAT IT HAS OR SHALL SECURE AT ITS OWN EXPENSE ALL PERSONNEL BY THE CONTRACTOR UNDER THIS CONTRACT. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING WORKMEN'S COMPENSATION COVERAGE AND UNEMPLOYMENT COMPENSATION COVERAGE FOR ALL OF ITS EMPLOYEES TO THE EXTENT REQUIRED BY LAW, AND FOR ENSURING THAT ALL SUBCONTRACTORS MAINTAIN SUCH INSURANCE. THE CONTRACTOR SHALL PAY WITHIN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING. ALL OF THE SERVICES REQUIRED HEREUNDER SHALL BE PERFORMED BY THE CONTRACTOR OR UNDER ITS SUPERVISION.**
9. **REPRESENTATIVES AND NOTICES:** All notices required to be given by the parties hereunder shall be given by certified or registered mail to the individuals at the addresses set forth below, who are also the designated representatives for the project. Any party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.  

To the State:	Steven W. Turner Director Colorado Historical Society State Historical Fund 225 East 16th Avenue, Suite 950 Denver, Colorado 80203-1620
To the Contractor:	Ms. Vicky Dunson Community Development Programs Coordinator City of Westminster 4800 West 22nd Avenue Westminster, Colorado 80031
10. **ADA COMPLIANCE:** The Contractor assures the State that at all times during the performance of this contract no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance the State relies. Further, all real property improvements shall conform to applicable ADA requirements.
11. **DISSEMINATION OF ARCHAEOLOGICAL SITE LOCATIONS:** Contractor agrees to provide the Society with copies of any archaeological surveys developed during the course of, or under a project financed either wholly or in part by the Society. The Contractor agrees to otherwise restrict access to such archaeological surveys, as well as access to any other information concerning the nature and location of archaeological resources, in strict accordance with the provisions of the Colorado Historical Society, Office of Archaeology and Historic Preservation, Dissemination of Cultural Resource Policy and Procedures, adopted October 1991 (Revised Nov. 2002), a copy of which is available from the Society.
12. **REPORTS:** Contractor shall deliver project progress reports to the State every six (6) months during the project which document the progress of the Project, and *SHS Financial Reports* (Attachment 1) as described and at the times in the *List of Submittals* (Exhibit C).
13. **MATCHING FUNDS:** Contractor agrees to make available the necessary funds to complete the Project and provide matching funds, if applicable, in accordance with the Project Budget as set forth in Exhibit B. In the event that said matching funds become unavailable, the State may, in its sole discretion, reduce its total funding commitment to the Project in proportion to the reduction in matching funds.

If the total funding set forth in the Project Budget is not expended on completion of the Project, the State may reduce its pro-rata share of the unexpended budget.

14. **CONSULTANTS/SITE VISITS:** The State may:

- a. Review any project planning documents and methods for conformity with the applicable standards, manuals, and guidelines;
- b. Make site visits as determined necessary by the State before, during and/or at the conclusion of the Project to provide on-site technical advice and to monitor progress.

Any exercise of the State's rights under this Paragraph 14 shall not relieve the Contractor of any of its Contract obligations.

15. **PUBLIC ACKNOWLEDGEMENT OF FUNDING SOURCE:** In all publications and similar materials funded under this Contract, a credit line shall be included that reads: "This project is/was paid for in part by a State Historical Fund grant from the Colorado Historical Society." In addition, the Society reserves the right to require that the following sentence be included in any publication or similar material funded through this program: "The contents and opinions contained herein do not necessarily reflect the views or policies of the Colorado Historical Society".

16. **REMEDIES:** In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant, insufficient, incorrect, or improper performance, activities, or inaction by the Contractor. These remedial actions are as follows:

- a. Suspend the Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- b. Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed in accordance with the *Standards*, the *SHP Grants Manual* and/or the terms and conditions of this Contract; and/or
- c. Request the removal from work on the contract of employees or agents of the Contractor whom the State justifies as being incompetent, careless, insubordinate, unavailable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
- d. Deny payment for those services or obligations which have not been performed and which due to circumstances caused by the Contractor cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
- e. Declare all or part of the work ineligible for reimbursement; and/or
- f. In the event of a violation of this Agreement, and in addition to any remedy now or hereafter provided by law, the Society may, following reasonable notice to the Contractor institute suit to enjoin said violation or to require the restoration of the Property to its condition at the time of this Agreement or condition at the time of the most recent satisfactory inspection by the Society. The Society shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.
- g. Terminate the contract for default.

17. **CUMULATIVE REMEDY:** The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

18. **TERMINATION OF CONTRACT FOR DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall, in addition to other remedies, thereupon have the right to terminate this Contract for default by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, products, submittals, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the State from the Contractor are determined.

19. **TERMINATION BY STATE:** The State may terminate this Contract at any time the State determines that the purposes of the distribution of State moneys under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials paid for with State funds shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the

services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the project covered by this Contract has been completed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the project covered by this Contract. If this Contract is terminated due to the fault of the Contractor, Paragraph 18 hereof relative to termination shall apply.

20. **CHANGES:** This Contract is intended as the complete integration of all understandings between the parties, at this time, and no prior or contemporaneous addition, deletion, or other amendment hereto, including an increase or decrease in the amount of monies to be paid to the Contractor, shall have any force or effect whatsoever, unless embodied in a written contract amendment incorporating such changes executed and approved pursuant to the State's Fiscal Rules. Notwithstanding this provision, modifications to Exhibit A (Scope of Work) and/or to Exhibit C (List of Submittals) may be approved by letter of agreement, agreed to in writing by all parties, providing that no such letter of agreement may alter either the total amount of funds payable under the contract, as set forth in Paragraph 5, or the contract period, as set forth in Paragraph 4, unless such changes are embodied in a written contract amendment executed and approved pursuant to the State's Fiscal Rules.
21. **CONFLICT OF INTEREST:** Contractor agrees not to engage in any conduct, activity, or transaction related to this contract which would constitute a conflict of interest under any applicable State or Federal law.
22. **COMPLIANCE WITH APPLICABLE LAWS:** At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.
23. **SEVERABILITY:** To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become imperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.
24. **BINDING ON SUCCESSORS:** Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.
25. **ASSIGNMENT:** No party, nor any subcontractors hereto, may assign its rights or duties under this Contract without the prior written consent of the other parties.
26. **SURVIVAL OF CERTAIN CONTRACT TERMS:** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Contractor or their subcontractors.

## SPECIAL PROVISIONS

[The Special Provisions apply to all contracts, except where noted in italics.]

1. **CONTROLLER'S APPROVAL, CRS 24-30-302 (7).**  
This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY, CRS 24-30-202(3.5).**  
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.**  
No term or condition of this contract shall be construed or interpreted to waive, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 et seq., as applicable law or hereafter amended.
4. **INDEPENDENT CONTRACTOR.**  
Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers' compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor as a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes assessed pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide profit shared when provided by the State, and (c) be solely responsible for its work and those of its employees and agents.
5. **COMPLIANCE WITH LAW.**  
Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.**  
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or enforceable in any action at law, whether by way of enforcement, defense, or otherwise. Any provision excluded herefrom and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of enforcement.
7. **BINDING ARBITRATION PROHIBITED.**  
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION, Governor's Executive Order D 607 III.**  
State or state public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTERESTS/CONFLICT OF INTERESTS, CRS 24-28-201 and 24-50-507.**  
The undersigned agrees that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict or be perceived to conflict with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OBLIGATION, CRS 24-30-202 (1) and 24-30-202.1. (Not Applicable to intergovernmental contracts)**  
Subject to CRS 24-30-202.4 (1.5), the State Controller may withhold payment under the State's vendor office interest system for debts owed to State agencies for: (a) unpaid child support orders or child support arrears, (b) unpaid balances of tax, interest, or other charges specified in CRS 39-21-101, et seq.; (c) unpaid taxes due to the Student Loan Division of the Department of Higher Education, (d) amounts required to be paid to the Unemployment Compensation Fund, and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES, CRS 8-17.5-101. (Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, license retentional agreements, or information technology services or products and services)**  
Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS 8-17.5-102(3)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractors and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontractor if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS 8-17.5-102(3), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with the requirement of this provision or CRS 8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS, CRS 24-36.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she: (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS 24-36.5-101 et seq., and (c) has produced one form of identification required by CRS 24-36.5-103 prior to the effective date of this contract.

Revised January 4, 2009

**CONTRACT SIGNATURE PAGE**  
**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

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

<p>CONTRACTOR: (Grant Recipient)</p> <p>_____ City of Westminster _____ Legal Name of Contracting Entity</p> <p>_____ Signature of Authorized Officer _____</p> <p>_____ Date _____</p> <p>_____ Print Name of Authorized Officer _____</p> <p>_____ Print Title of Authorized Officer _____</p>	<p>STATE OF COLORADO Bill Ritter, Jr., GOVERNOR</p> <p>BY: _____ Executive Director or Designee Edward C. Nichols, President</p> <p>Colorado Historical Society</p> <p>Date: _____</p> <p>Department of Higher Education STATE HISTORICAL FUND</p> <p>BY: _____ Steven W. Turner, Director</p> <p>Date: _____</p> <p><b>WAIVER CONTRACT REVIEWER</b></p> <p>BY: _____ Contracts Officer or Designee Janette Vogel, State Historical Fund</p> <p>Date: _____</p>
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**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

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

STATE CONTROLLER  
David J. McDermott, CPA

BY: \_\_\_\_\_  
Susan S. Riell  
CHS, Chief Financial Officer

Date: \_\_\_\_\_

Revised, June 10, 2008  
X:\Template\191113021.doc  
Approval/Contract ID

## SCOPE OF WORK

- I. **Project Purpose:** The purpose of this project is to complete construction documents for the structural rehabilitation for the Concrete Silo located at Schoenberg Farm.
- II. **Scope of Work** is as follows:
- A. Architect and subcontractors will complete the following tasks:
1. Obtain detailed field measurements of the structure.
  2. Establish a scope of work for the rehabilitation with owner and SHP approval.
  3. Coordinate with structural engineer for any necessary structural modifications to stabilize the building.
  4. Coordinate with general contractor to provide pricing based on the approved scope of work and construction documents.
- B. Professional services will include:
1. One meeting with owner and SHP to review the draft scope of work.
  2. One meeting to review the construction documents prior to completion and submittal to general contractor for pricing.
  3. One meeting to review general contractor pricing.
- C. Deliverables will include:
1. Memorandum delineating the approved scope of work.
  2. Construction documents for the approved scope of work (drawings and specifications).
  3. Pricing for the approved scope of work.

In accordance with Section 12-47.1 12-1 C.R.S. (1999) The Limited Gaming Act which authorizes the Colorado Historical Society to administer the State Historical Fund as a statewide grants program.

F:\Construction\2009\09M2002\Exhibit A.doc

PROJECT BUDGET

TASK	GRANT REQUEST	CASH MATCH	PROJECT TOTAL
Professional Services			
A. Architects Fees			
1. Schematic Design	\$675	\$225	\$900
2. Design/Development/Construction Drawings	\$4,050	\$1,350	\$5,400
3. Travel Reimbursement (1 trip @ 40 miles x .50/mile)	\$16	\$5	\$21
B. Structural Engineering Fees			
1. Schematic Design	\$855	\$285	\$1,140
2. Design/Development/Construction Drawings	\$4,845	\$1,615	\$6,460
3. Travel Reimbursement (1 trip @ 60 miles x .50/mile)	\$24	\$8	\$32
C. Related Direct Expenses	\$113	\$37	\$150
<i>Subtotal A (Professional Services)</i>	<i>\$10,578</i>	<i>\$3,525</i>	<i>\$14,103</i>
Grant Administration			
A. City Staff Salaries & Overhead			
1. Management	\$0	\$1,000	\$1,000
2. Clerical	\$0	\$300	\$300
<i>Subtotal B (Grant Administration)</i>	<i>\$0</i>	<i>\$1,300</i>	<i>\$1,300</i>
<b>PROJECT TOTALS</b>	<b>\$10,578</b>	<b>\$4,825</b>	<b>\$15,403</b>



LIST OF SUBMITTALS

Project Reports		
<u>Project Reports</u>	<u>Due Date</u>	<u>Society Response</u>
a. Payment Request Form (Attachment 2). Deliverables #1-2 below must be reviewed and approved before Advance payment is made.	N/A	Advance payment of grant award \$4,231.
b. Progress Report # 1	August 1, 2009	Review*
c. Progress Report # 2	November 1, 2009	Review*
d. Interim Financial Report (Attachment 1). Deliverables #3-4 below must be reviewed and approved before Interim payment is made.	February 1, 2010 **	Review & Approve. Interim payment of grant award \$5,289.
e. Progress Report # 3	May 1, 2010	Review*
f. Progress Report # 4	August 1, 2010	Review*
g. Final Financial Report (Attachment 1)	November 1, 2010***	Review & Approve. Final Reimbursement of grant award \$1,058.

\*At the discretion of the SIFB technical staff, progress reports may not receive a response.

\*\* Interim financial report due date is a guideline. Please submit Interim financial report when majority of advance has been expended and you are ready for the next payment.

\*\*\* Project period ends. All Deliverables due on or before this date.

PROJECT DELIVERABLES

Submit the following Project Deliverables.

<u>Project Deliverables</u>	<u>Society Response</u>
1. Existing Conditions Photographs	Review/Comment and or Approve
2. Subcontract copy - Architect	Review/Comment and or Approve
3. Schematic Design documents	Review/Comment and or Approve
4. Draft Construction Documents	Review/Comment and or Approve
5. Final Construction Documents	Review/Comment and or Approve

EE:\Contracts\2009\09M2002\Exhibit C.doc



STATE HISTORICAL FUND  
PAYMENT REQUEST

Attachment 2

Grant Recipient: \_\_\_\_\_ Date: \_\_\_\_\_

Project Title: \_\_\_\_\_ Project Number: \_\_\_\_\_

Total Amount Awarded: \$ \_\_\_\_\_ Contract Period: \_\_\_\_\_

As the authorized representative of the \_\_\_\_\_

I hereby state that the above project is presently under contract with the Colorado Historical Society, State Historical Fund, and request (complete only one section).

**ADVANCE PAYMENT REQUEST**

\_\_\_ An Advance Payment of no more than forty percent (40%) of the total grant award. I further state that work has begun or will begin within the next two weeks on the project, and that an advance payment is necessary to proceed with the Scope of Work.

**INTERIM PAYMENT REQUEST (Initial one or both lines, as applicable)**

\_\_\_ An Interim Payment of no more than fifty percent (50%) of the total grant award. I further state that any advance payment received to date has been fully expended, and that an interim payment is necessary to continue with the Scope of Work.

AND

\_\_\_ Enclosed is a SHF Interim Financial Report as required by contract, Exhibit C, and the required documentation or certification of expenditures (payment will **NOT** be considered without a financial report).

**EASEMENT FEE PAYMENT REQUEST (Initial one or both lines, as applicable)**

\_\_\_ Enclosed is an Invoice for the Easement Negotiation fee. I further state that we will negotiate in good faith and make every effort to fully execute an easement with the property owner.

AND/OR

\_\_\_ Enclosed is an Invoice for the Easement fee. I further state that the easement has been fully executed, recorded, and submitted to the State Historical Fund.

**FINAL PAYMENT REQUEST (Must initial both lines)**

\_\_\_ A Final Payment of the remaining balance of award, minus interest earned.

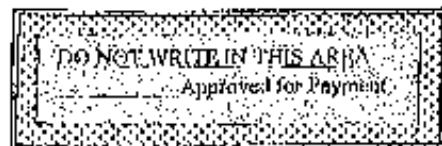
AND

\_\_\_ Enclosed is a SHF Final Financial Report and required documentation or certification of expenditures (payment will **NOT** be considered without a financial report).

I understand that the FINAL PAYMENT is a reimbursement, and further state that all invoices and bills reported on the Final Financial report have been PAID IN FULL.

Signature of Grant Recipient / Project Director \_\_\_\_\_

Date \_\_\_\_\_





**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Councillor’s Bill No. 8 re Bradburn Boulevard Bikeway Project  
Supplemental Appropriation

**Prepared By:** David W. Loseman, Senior Projects Engineer

**Recommended City Council Action**

Pass Councillor’s Bill No. 8 on first reading appropriating \$300,000 to the Bradburn Boulevard Bikeway Project, which will be funded by the American Recovery and Reinvestment Act.

**Summary Statement**

- On February 13, 2009, Staff submitted project applications for funding from the federal government to be awarded under the American Recovery and Reinvestment Act (ARRA), more commonly known as “Economic Stimulus Funds.” The intent of the ARRA is to provide jobs and boost the national economy.
- From the eight project applications submitted by Staff, the City was awarded funding for the construction of the “Bradburn Boulevard, 73<sup>rd</sup> Avenue to Turnpike Drive Bikeway Project.” This bikeway will provide the link between the future US 36 Trail and the existing Little Dry Creek Trail.
- This federal-aid bikeway project includes the construction of approximately 4,600 lineal feet of eight-foot wide, detached bike path, handicap ramps at all intersections and a small pedestrian bridge over the Allen Ditch.
- The project construction costs are funded entirely by the ARRA program, which will be administered by the Colorado Department of Transportation (CDOT) on behalf of the Denver Regional Council of Governments (DRCOG) and the federal government. Council’s approval of the attached Councillor’s Bill will appropriate the federal share of \$300,000. The City will be reimbursed by the federal government upon the completion of the project.
- The total project cost is \$330,000. The City’s share of \$30,000 is necessary to pay for the design of the project and minor miscellaneous expenses that are not reimbursable by the federal government. These funds are available in the CD Capital Reserve Project and have been moved into the new capital account for this project.

**Expenditure Required:** \$ 330,000

**Source of Funds:** \$ 300,000 - ARRA/CDOT Enhancement Pool Grant Funds  
\$ 30,000 - General Capital Improvement Fund  
- Community Development Capital Reserve Project

**Policy Issue**

Should the City proceed with the construction of the Bradburn Boulevard, 73<sup>rd</sup> Avenue to Turnpike Drive, Bikeway Project?

**Alternative**

The alternative to the recommended action is to abandon the construction of this project. Given the significant amount of Federal participation in this project that would be lost if the City does not proceed with the construction of the bike path, this alternative is not recommended.

**Background Information**

In January 2004, the City sponsored the preparation of a schematic plan for the Bradburn Boulevard corridor that included street, landscape and bikeway improvements. More recently, the Environmental Impact Study for future transportation improvements to US 36 identified the Bradburn Boulevard corridor as the most logical link of the proposed US 36 trail system to the existing Little Dry Creek trail system.

On February 6, 2009, an invitation for ARRA funding applications was issued by DRCOG for “shovel ready” projects, meaning projects that could be under construction within 90 to 120 days. Given the constraints outlined in the application form for these federal funds, the Bradburn Boulevard Bikeway Project was structured to include only the bikeway element since the design and construction of the landscape and street improvements could not possibly be performed within the short timeline required by the federal government. In March of this year, Staff was advised that the DRCOG Board of Directors selected this bikeway as one of the projects within the Denver-metropolitan region to receive ARRA funding.

The total project cost is estimated at \$330,000, of which the ARRA will provide \$300,000 to fund the construction. The remaining \$30,000 is needed to pay for the design and minor miscellaneous expenses that are not reimbursable by the federal government. These funds are available in the Community Development Capital Reserve Project and have been moved into the new capital account for this project. Approval of the attached Councillor’s Bill will appropriate \$300,000 to pay for the construction of the project. This appropriation will amend the General Capital Improvement Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Grants Fed T-21	7500.40610.0019	\$0	<u>\$300,000</u>	\$300,000
Total Change to Revenues			<u>\$300,000</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Bradburn Bike Trail	80975030848.80400.8888	\$30,000	<u>\$300,000</u>	\$330,000
Total Change to Expenses			<u>\$300,000</u>	

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **8**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

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**A BILL**

**FOR AN ORDINANCE AMENDING THE 2009 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3432 is hereby increased by \$300,000. This increase is due to the appropriation of a Denver Regional Council of Governments (DRCOG), Federal aid, American Recovery and Reinvestment Act (ARRA) Project, Enhancement Pool grant for construction and construction management costs necessary for the Bradburn Boulevard, 73rd Avenue to Turnpike Drive Bikeway Project.

Section 2. The \$300,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10G, dated April 13, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$300,000</u>
Total	<u>\$300,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13<sup>th</sup> day of April, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27<sup>th</sup> day of April, 2009

ATTEST:

\_\_\_\_\_  
Mayor

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



## Agenda Item 10 H

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
April 13, 2009



**SUBJECT:** Resolution No. 17 re Intergovernmental Agreement with the Colorado Department of Transportation re Bradburn Boulevard, 73<sup>rd</sup> Avenue to Turnpike Drive Bikeway Project

**Prepared By:** David W. Loseman, Senior Projects Engineer

### Recommended City Council Action

Adopt Resolution No. 17 authorizing the City Manager to execute an Intergovernmental Agreement (IGA) with the Colorado Department of Transportation (CDOT) for the design and construction of the Bradburn Boulevard, 73<sup>rd</sup> Avenue to Turnpike Drive Bikeway Project.

### Summary Statement

- On February 13, 2009, Staff submitted project applications for funds awarded under the American Recovery and Reinvestment Act (ARRA), more commonly known as “Economic Stimulus Funds.”
- Of the eight applications submitted by Staff, the City was awarded funds for the construction of the “Bradburn Boulevard, 73<sup>rd</sup> Avenue to Turnpike Drive Bikeway Project.”
- This federal-aid project consists of the construction of approximately 4,600 lineal feet of eight-foot wide, detached bike path, handicap ramps at all intersections and a small pedestrian bridge over the Allen Ditch.
- The project construction costs are funded entirely by the American Recovery and Reinvestment Act (ARRA), which is administered by the Colorado Department of Transportation (CDOT) on behalf of the Denver Regional Council of Governments (DRCOG) and the federal government. The federal government’s allocation for this project is \$300,000. The City is responsible for the \$30,000 design/engineering costs.
- At the time that this Agenda Memorandum was prepared, CDOT did not have the final version of the IGA. Staff has been advised that the IGA will be in the same format as that used for the Big Dry Creek at Old Wadsworth project that City Council authorized on January 9, 2006. In the interest of time, which is a necessity to meet the “shovel ready” requirements of the ARRA, City Council action on the attached Resolution is requested under the assumption that the final IGA will be in substantially the same form as that used on previous federal-aid projects. If significant revisions are made to the previously acceptable form, Staff will approach Council to approve the execution of the “new” IGA at a future Council meeting.

**Expenditure Required:** \$330,000 (\$300,000 to be reimbursed by the federal government)

**Source of Funds:** General Capital Improvement Fund

**Policy Issue**

Should the City continue with the effort to design and construct a detached, eight-foot wide bike path along the east side of Bradburn Boulevard from 73<sup>rd</sup> Avenue to Turnpike Drive and enter into an intergovernmental agreement with the Colorado Department of Transportation for this work?

**Alternative**

Do not authorize execution of the intergovernmental agreement. This alternative is not recommended because the City is receiving a substantial amount of federal funds to construct this project.

**Background Information**

In January 2004, the City sponsored the preparation of a schematic plan for the Bradburn Boulevard corridor which included street, landscape and bike path improvements. More recently, the Environmental Impact Study for future US 36 improvements identified the Bradburn Boulevard corridor as the most logical link of the US 36 trail system to the Little Dry Creek trail system.

On February 6, 2009, a call for applications was issued by DRCOG for “shovel ready” projects, meaning projects that could be under construction within 90 to 120 days. Given the constraints outlined in the application for these federal funds, the Bradburn Boulevard Bikeway project was structured to include only the bike path element since the design and construction of the landscape and street improvements could not possibly be completed within the short timeline demanded by the federal government.

The aggressive timeframe for ARRA funding requires the City to obtain all CDOT approvals, including right-of-way, environmental and utility clearances, quickly so that the project can be advertised for construction no later than May 15, 2009. If the City does not meet this deadline, the funding will be lost and allocated to another project outside of the City.

At the time that this Agenda Memorandum was written, the final IGA document was not yet prepared by CDOT. Given the extremely short timeframe for this project, it is necessary to request Council approval of the IGA with the understanding that this IGA will have similar requirements to that used for the Big Dry Creek at Old Wadsworth Trail project which was approved by Council on January 9, 2006. CDOT has told Staff that the language in this IGA is similar to what we can expect in the IGA that Council is being asked to approve at tonight’s meeting. The only significant change will be the funding provision, which will state that the project is entirely funded by the federal government up to \$300,000 and that any costs above this amount will be the responsibility of the City. If the final version of the IGA has any other substantive changes, Staff will approach Council at a later meeting requesting approval of those changes.

The key elements of the IGA are as follows:

- Design. The City is required to administer and pay for the design of the project.
- Right-of-way acquisition. The IGA obligates the City to provide the necessary right-of-way for the construction of this project. The right-of-way for this particular project currently exists.
- Project management/construction services. The IGA stipulates that the City will provide project management to oversee the construction of the project.
- Maintenance. The IGA obligates the City to maintain all elements of this project once construction is complete. This is a reasonable requirement since this sidewalk is owned by the City.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



RESOLUTION

RESOLUTION NO. **17**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**A RESOLUTION  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF  
WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)  
FOR THE DESIGN, CONSTRUCTION OVERSIGHT AND MAINTENANCE OF THE  
IMPROVEMENTS TO BE CONSTRUCTED FOR THE BRADBURN BOULEVARD, 73<sup>RD</sup>  
AVENUE TO TURNPIKE DRIVE BIKEWAY PROJECT**

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Section 29-1-201, et seq., and 29-20-205 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the Intergovernmental Agreement identifies funding obligations of the City of Westminster and of the Federal government for the design, construction oversight and maintenance of the improvements to be constructed for the Bradburn Boulevard, 73<sup>rd</sup> Avenue to Turnpike Drive Bikeway Project.

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

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to the design, construction, construction oversight and maintenance of the Bradburn Boulevard, 73<sup>rd</sup> Avenue to Turnpike Drive Bikeway Project, a copy of which shall be incorporated herein by this reference, is hereby approved.
2. The City Manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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

(F/MLAWRK)  
PROJECT ES6 M356-064, (17283)  
REGION 6/(JH)

Rev 10/03  
~~NO QIR/ROUTING/KEY~~  
SAP ID \_\_\_\_\_

### TRANSPORTATION ENHANCEMENT CONTRACT

**THIS CONTRACT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and the CITY OF WESTMINSTER, 4800 West 92<sup>nd</sup> Avenue, Westminster, Colorado, 80031, CITY Vendor #: 2000053, hereinafter referred to as the "Contractor" or the "Local Agency."

#### RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function 3301, GL Acct. 4231200011, WBS Element 17283.20.10, (Contract Encombrance Amount: \$300,000.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. This agreement is wholly or in part funded by the American Recovery and Reinvestment Act (ARRA) funding received from the Federal government. Section 29 in the General Provisions details the ARRA guidelines and required tasks for compliance. Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21<sup>st</sup> Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and will in the future be allocated for transportation projects requested by Local Agencies and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA"), hereinafter referred to as the "Program."
4. Pursuant to § 1007(a) of TEA-21, at 23 U.S.C. § 133(d)(2), certain Surface Transportation project funds are made available only for eligible "Transportation Enhancement Activities", as defined in § 23 U.S.C. § 101(a), and this contract provides for the performance by the Local Agency of a project for an eligible Transportation Enhancement Activity.
5. Pursuant to § 43-1-223, C.R.S. and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State.
6. The Local Agency has requested that a certain local transportation project be funded as part of the

Program, and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written "Notice to Proceed" prior to commencing any part of the work. The Local Agency further understands that, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.

7. Federal-aid funds have been made available for project ES6 M356-064 (17283), which shall consist of the replacement or addition to the existing four foot wide detached sidewalk to provide a new eight foot wide detached sidewalk along Bradburn Boulevard from 73<sup>rd</sup> Avenue to Turnpike Drive, referred to as the "Project" or the "Work." Such Work will be performed in Westminster, Colorado, specifically described in Exhibit A.

8. The matching ratio for this federal aid project is 100% federal-aid funds to 0% Local Agency funds, it being understood that such ratio applies only to such costs as are eligible for federal participation, it being further understood that all non-participating costs shall be borne by the Local Agency at 100%.

9. The Local Agency desires to comply with the Federal Provisions and other applicable requirements, including the State's general administration and supervision of the Project through this contract, in order to obtain federal funds.

10. The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit H.

11. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and Exhibit B.

12. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.

13. The Local Agency can more advantageously perform the Work.

**THE PARTIES NOW AGREE THAT:**

**Section 1. Scope of Work**

The Project or the Work under this contract shall consist of replacement or addition to the existing four foot wide detached sidewalk to provide a new eight foot wide detached sidewalk along Bradburn Boulevard from 73<sup>rd</sup> Avenue to Turnpike Drive, in Westminster, Colorado, as more specifically described in Exhibit A.

**Section 2. Order of Precedence**

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

1. Special Provisions contained in section 29 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibit C (Funding Provisions)
5. Exhibit D (Certification for Federal-Aid Contracts)
6. Exhibit E (DBE Requirements)
7. Exhibit F (Contract Modification Tools)
8. Other Exhibits in descending order of their attachment.

### **Section 3. Term**

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

### **Section 4. Project Funding Provisions**

The maximum amount payable to the Local Agency under this contract shall be \$300,000.00.

The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit U.

The funding provisions for the Project are attached hereto as Exhibit C. The Local Agency shall provide its share of the funds for the Project as outlined in Exhibit C.

### **Section 5. Transportation Enhancement Advance Payment Provisions**

The advance payment provisions described herein shall apply only to a percentage of the construction work portion of an enhancement project, as described below. Payment for all other work portions of the Project, including for the design work, shall be on a reimbursement basis, as described below.

- A. Pursuant to FHWA's approval under 23 U.S.C. § 133(e)(3)(B), the State will provide an advance payment up to a maximum percentage of the total amount for the construction portion of transportation enhancement project activities, in accord with the following procedures:
1. the State will provide advance payment in the Local Agency of 70% of the federal funds budgeted and available for the construction of this transportation enhancement project, in accord with 23 U.S.C. § 133(e)(3)(B) and as described herein.
  2. the Local Agency shall submit the following to the State representative identified in section VII, after execution of this Contract:
    - a) a financial statement for the construction of the project; and
    - b) an invoice for advance payment of 70% of the federal funds budgeted and

available for the construction of the project.

3. After receipt of such statement and invoice, the State will issue a warrant to the Local Agency in the amount of the approved advance payment of construction project funds, subject however to the prior performance of the following: A) the satisfactory completion of the design of the project; B) the State approving the Local Agency's construction contract; and C) the State issuing to the Local Agency a Notice To Proceed with the construction of the project.
  4. the advanced funds shall be used by the local agency only for the performance of the construction work of the project. Upon receipt of the notice to proceed from the State, the Local Agency shall proceed expeditiously to start the construction work and prosecute it diligently to completion. If for any reason the local agency does not start the construction work within 120 days of receipt of the notice to proceed, or if the Local Agency starts the construction work but discontinues or abandons performance before completion, the Local Agency shall remit to the State all federal funds reimbursed or advanced by the State for the project not later than 30 days after the 120th day, or after the date the Local Agency discontinues/abandons performance, as applicable.
  5. When the Project construction work is completed, the Local Agency shall submit to the State all required paperwork for that construction work, together with a final statement of costs for that construction work and a billing for the remaining 30% of the federal funds budgeted and available for the Project construction work. The State shall not reimburse the Local Agency the remaining 30% of the construction work costs until the State has reviewed the billings and has inspected the completed project construction work, subject to the terms and conditions of this contract.
- B. Except as provided in A. above, the State will reimburse the Local Agency for the federal-aid share of the project design, and other work following the State's review and approval of such charges, subject to the terms and conditions of this contract. The Local Agency will prepare and submit to the State monthly charges for costs incurred relative to the design, and work portions of the project. Provided, however, that charges incurred by the Local Agency prior to the date of FHWA authorization for the project and prior to the date this contract is executed by the State Controller or his designee will not be charged by the Local Agency to the project, and will not be reimbursed by the State, absent specific FHWA and/or State Controller approval thereof.
- C. The State will reimburse the Local Agency's reasonable, allowable, allowable costs of performance of the Work, not exceeding the maximum total amount described in Exhibit C. The applicable principles described in Title 49, Code of Federal Regulations, Part 18 (the "Common Rule"), Subpart C ("Financial Administration"), including 49 C.F.R. 18.22, shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
1. in accordance with the provisions of Exhibit C and with the terms and conditions of the contract.
  2. necessary for accomplishment of the Work.
  3. reasonable in amount for the goods and services provided.
  4. actual net cost to the Local Agency (i.e., the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the

5. cost actually incurred).
  5. incurred for Work performed subsequent to the effective date of this contract.
  6. satisfactorily documented.
- D. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.
1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
  2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.
- E. Upon execution of this contract the State is authorized, in its discretion, to perform any necessary administrative support services pursuant to this contract. These services may be performed prior to and in preparation for any conditions or requirements of this contract, including prior FHWA approval of project work. The Local Agency understands and agrees that the State may perform such services, and that payment for such services shall be at no cost to the State but shall be as provided in Exhibit C. At the request of the Local Agency, the State shall also provide other assistance pursuant to this contract as may be agreed in writing. In the event that federal-aid project funds remain available for payment, the Local Agency understands and agrees the costs of any such services and assistance shall be paid to the State from project funds at the applicable rate. However, in the event that such funding is not made available or is withdrawn for this contract, or if the Local Agency terminates this contract prior to project approval or completion for any reason, then all actual incurred costs of such services and assistance provided by the State shall be the sole expense of the Local Agency.
- F. If the Local Agency is to be billed for CDOT incurred direct costs, the billing procedure shall be as follows:
1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 45 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 45 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that at the request of the State, the State Treasurer may withhold an equal amount from future apportionments due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
  2. If the Local Agency fails to make timely payment to the State as required by this section (within 45 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall

accrue for the period from the required payment date to the date on which payment is made.

- G. The Local Agency will prepare and submit to the State monthly charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures, and standardized billing format to be supplied by the State.
- II. To be considered for payment, billings for payment pursuant to this contract must be received within 30 days after the period for which payment is being requested and final billings on the contract must be received by the State within 30 days after the end of the contract term.
  1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
  2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
  3. Incorrect payments to the Local Agency due to omission, error, fraud, or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
  4. Any costs incurred by the Local Agency that are not allowable under the Common Rule shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

#### Section 6. State and Local Agency Commitments

The Local Agency Contract Administration Checklist in Exhibit G describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in Exhibit G.

##### A. Design [if applicable]

I. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:

- a. perform or provide the Plans, to the extent required by the nature of the Work.
- b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
- c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.

- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.
- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

2. If the Local Agency is the responsible party:

- a. The local agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H attached hereto. If the Local Agency does enter into a contract with a consultant for the Work:

(1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.

(2) it shall ensure that all changes in the consultant contract have prior approval by the State and FHWA. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.

(3) it shall require that all consultant billings under that contract shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) it (or its consultant) shall use the CDOT procedures described in Exhibit H to administer that design consultant subcontract, to comply with 23 CFR 172.5(b) and (d).

(5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local



Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 CFR 172.5(b) and (d).

(6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) "The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose."

(b) "Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project."

(c) "The consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work."

d. The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State and FHWA requirements.

#### B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.
2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

3. If the Local Agency is the responsible party:
  - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
  - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
    - (1) in advertising and awarding the bid for the construction of a federal-aid project, the Local Agency shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency/contractor shall incorporate Form 1273 (Exhibit 1) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(c).
    - (2) the Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.
    - (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.
  - c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.
    - (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
    - (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the

Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.

- (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
- (4) All force account work shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

C. State's obligations

1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Local Agency Contract Administration Checklist, Exhibit G, within the Work of this contract.

**Section 7. ROW Acquisition and Relocation**

Prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable State and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with all federal and state statutes, regulations, UDOT policies and procedures, 49 CFR Part 24, the government wide Uniform Act regulation, the FHWA Project Development Guide and CDOT's Right of Way Operations Manual.

Allocation of Responsibilities can be as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Operation Manual. The manual is located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/).

### **Section 8. Utilities**

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

### **Section 9. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

### **Section 10. Environmental Obligations**

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

### **Section 11. Maintenance Obligations**

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

### **Section 12. Federal Requirements**

The Local Agency and/or their contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. The contractor shall also require compliance with these statutes and regulations in subgrant agreements permitted under this contract. A listing of certain federal and state laws that may be applicable are described in Exhibit J.

### **Section 13. Record Keeping**

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

### **Section 14. Termination Provisions**

This contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a

termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

**C. Termination Due to Loss of Funding.** The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

#### **Section 15. Legal Authority**

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

#### **Section 16. Representatives and Notice**

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

If to State:  
Tim Frazier  
CDOT Region 6  
2000 South Holly Street  
Denver, Colorado 80222  
(303) 398-6737

If to the Local Agency:  
David Loxeman  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031  
(303) 685-2125

#### **Section 17. Successors**

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

#### **Section 18. Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this

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

#### **Section 19. Governmental Immunity**

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

#### **Section 20. Severability**

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

#### **Section 21. Waiver**

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

#### **Section 22. Entire Understanding**

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

#### **Section 23. Survival of Contract Terms**

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

## Section 24. Modification and Amendment

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

## Section 25. Option Letters

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

**Option 1 - Option to extend or renew (this option applies to Highway and Signal maintenance contracts only).** In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to one (1) year. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the one (1) year period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate.

The State may exercise this option by providing a fully executed option to the contractor, within thirty (30) days prior to the end of the current contract term, in a form substantially equivalent to Exhibit F.

If the State exercises this option, the extended contract will be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

**Option 2 - Level of service change within current term due to unexpected overmatch in an overbid situation only.** In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding.

The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (Exhibit F), which will bring the maximum amount payable under this contract to the amount indicated in Exhibit C-1 attached to the executed Option Letter (future changes to Exhibit C shall be labeled as C-2, C-3, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local



Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

**Option 3 - Option to add overlapping phase without increasing contract dollars.** The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in Exhibit A and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to Exhibit F. If the State exercises this option, the contract will be considered to include this option provision.

**Option 4 - To update funding (Increases and/or decreases) with a new Exhibit C.** This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (Exhibit C) in the Original Contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc).

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

#### **Section 26. Disadvantaged Business Enterprise (DBE)**

The Local Agency will comply with all requirements of Exhibit E and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 CFR Part 26 under this contract, it must submit a copy of its program's requirements to the State for review and approval before the execution of this contract. If the Local Agency uses its program for this contract, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for its use as described above.

#### **Section 27. Disputes**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director

of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

#### **Section 28. Single Audit Act Amendment**

All state and local government and non-profit organization Sub-Grantees receiving more than \$500,000 from all funding sources, that are defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements that apply to Sub-Grantees receiving federal funds are as follows:

- a) If the Sub-Grantee expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.
- b) If the Sub-Grantee expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.
- c) If the Sub-Grantee expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
- d) Single Audit can only be conducted by an independent CPA, not by an auditor on staff.
- e) An audit is an allowable direct or indirect cost.

#### **Section 29. American Recovery and Reinvestment Act of 2009 (ARRA) Provisions**

##### **A. Reporting**

The Local Agency will report to CDOT on a monthly basis on the 1<sup>st</sup> of every month as identified on the FHWA ARRA website at:

<http://www.fhwa.dot.gov/economicrecovery/index.htm> and  
<http://www.fhwa.dot.gov/economicrecovery/guidancelist.htm>

The Local Agency shall use FHWA Form IS89 and report on the following categories:

- Contractors and Subcontractors including Utility Companies, on project by name
- Contractor and Subcontractor including Utility Companies ARRA information
- Number of Contractor's, Subcontractor's and Utility's Employees
- Consultants and Subconsultants on project by name
- Consultant and Subconsultant ARRA Information

- Number of Consultant's and Subconsultant's Employees
- Number of hours for all Local Agency, Contractor / Subcontractor, Consultant / Subconsultant, Utilities employees and total number of hours worked per month
- Hourly "unloaded" Payroll totals for each Local Agency, Contractor / Subcontractor, Consultant / Subconsultant and Utilities employees for the month

The Local Agency will review all ARRA project reporting information for reasonableness, and copy submitted reports monthly to the CDOT Regional Local Agency Coordinator, and to the CDOT Programs Unit, attn: Janie Valdez at: [Programs.ProjectAnalysis@dot.state.co.us](mailto:Programs.ProjectAnalysis@dot.state.co.us)

- B. CDOT has identified additional specifications and guidance on the CDOT ARRA website at <http://www.dot.state.co.us/arra>. The Local Agency shall receive directions on all applicable ARRA specifications by the CDOT Project Manager identified in Section 16 of this agreement.
- C. All billing must be completed by September 30, 2015 to be eligible for the Federal ARRA reimbursement. It is strongly suggested by CDOT that the Local Agency submits all bills for the Federal ARRA funds by April 30, 2015.
- D. The Local Agency is encouraged by CDOT to use the ARRA information signs. Contact the Project Manager identified in Section 16 for details.
- E. All general questions about the Federal ARRA not related to a specific project should be directed to Janie Valdez in the Contracts & Market Analysis Branch at [Programs.ProjectAnalysis@dot.state.co.us](mailto:Programs.ProjectAnalysis@dot.state.co.us). Project specific questions should be directed to the CDOT Project Manager identified in Section 16 of this agreement. (Representatives & Notice)
- F. Guidance for Congressman Oberstar's Committee on Transportation and Infrastructure reporting can be found in the "Transparency & Accountability Guidance" section at: <http://transportation.house.gov>

**SPECIAL PROVISIONS**

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

- 1. CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
  - 2. FUND AVAILABILITY.** CRS §24-30-202(5.6). Transfer obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
  - 3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(a) and 2671 et seq., as applicable now or hereafter amended.
  - 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local fees incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
  - 5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
  - 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part, shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
  - 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein, by reference shall be null and void.
  - 8. SOFTWARE INFRINGEMENT PROHIBITION.** Governor's Executive Order D 002 WA. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
  - 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-10-201 and 24-60-507. The signatories hereto to their knowledge, as an employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
  - 10. VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. *(Not Applicable to intergovernmental agreements)* Subject to CRS §24-30-202.4 (1.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §38-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of first agency determination or judicial action.
- .....
- 12. PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS §24-78.5-101. Contractor, if a natural person eighteen (18) years of age or older, *is not* liable for civil damages under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-78.5-101 et seq., and (c) has produced the form of identification required by CRS §24-78.5-103 prior to the effective date of this contract.

**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

CONTRACTOR:

STATE OF COLORADO:  
BILL RITTER, JR., GOVERNOR

City of Westminster  
Legal Name of Contracting Entity

By \_\_\_\_\_  
Executive Director  
Department of Transportation

2000053  
CDOT Vendor Number

\_\_\_\_\_  
Signature of Authorized Officer

LEGAL REVIEW:  
  
JOHN W. SUTHERS  
ATTORNEY GENERAL

\_\_\_\_\_  
Print Name & Title of Authorized Officer

By

CORPORATIONS:  
(A corporate attestation is required.)

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

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

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

STATE CONTROLLER:  
DAVID J. MODERMOTT, CPA

By \_\_\_\_\_

Date \_\_\_\_\_

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b> <b>DESIGN DATA</b>		Orig Date: 01/05/2009 Rev. Date: Revision #: 0 Region #: 06		Project Code # (SAM): 17283 S109-SDR7051 Project #: ES8 M356-024 PE Project Code:	
Page 1 of 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		Scheduled By: PM: STRASERO Approved by Program Engineer: Date:		Project Description: US 36 TRAIL: BRADBURN BLVD (3RD) TURNPIKE County: 001 Municipality: Westminster System Code: O-Other Federal/AD Highway On Sight By: A-Exempt Planned Length: 0.900	
Revised by: Date:		Geographic Location: US36 TRAIL: BRADBURN BLVD. FROM 73RD AVE-TURNPIKE DRIVE Type of Terrain: Upland Description of Proposed Construction/Improvement (Although may shorten site location): REPLACE 4' DETACHED SIDEWALK WITH DETACHED SIDEWALK			
<b>1 Project Characteristics (Proposed)</b>				Median Type: <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input checked="" type="checkbox"/> None	
<input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input checked="" type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input checked="" type="checkbox"/> Sidewalk Width: 8 <input type="checkbox"/> Bikeway Width: <input type="checkbox"/> Parking Lane Width <input type="checkbox"/> Delays				<input type="checkbox"/> Traffic Control Signals <input type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous Width <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous Width Signing: <input type="checkbox"/> Construction <input type="checkbox"/> Permanent <input type="checkbox"/> Other: (describe)	
<input checked="" type="checkbox"/> Landscaping requirements (description): Replace disturbed areas with in kind landscaping					
<b>2 Right of Way</b>		Yes/No    Ext # ROW &/or Perm. Easement Required    No    _____ Relocation Required    No    _____ Temporary Easements Required    No    _____ Changes in Access    No    _____ Changes to Connecting Road(s)    No    _____		<b>3 Utilities (list names of known utility companies)</b> N/A	
<b>4 Railroad Crossings</b> # of Crossings: 0 Recommendations: N/A					
<b>5 Environmental</b>		Type: P-CE Programmatic Approved On:		Project Code # Cleared Under:    Project # Cleared Under:	
Comments: 128 Initialed 3/19/09					
<b>6 Coordination</b>					
<input type="checkbox"/> Withdrawn Lands (Power Sites, Hest/Archie, Etc.) Cleared through BLM or Forest Service Office				Irrigation District Name: Allen Ditch	
<input type="checkbox"/> New Traffic Clearance Required <input type="checkbox"/> Modify Schedule of Existing Clearance				Municipality: Westminster	
Other:					
<b>7 Construction Method</b>		Advertised By: Local Road Reason:		City / Agency Contact Name: David Loseman Phone #: (303)658-2125	
<b>8 Safety Considerations</b>		Project Under: Other    Enhancement Criteria		Guardrail meets current standards: No	
<input type="checkbox"/> Variance to Minimum Design Standards Required <input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be Submitted <input type="checkbox"/> Bridge Section 121 <input type="checkbox"/> See Remarks				<input type="checkbox"/> Safety project not at standards addressed Comments: N/A	
<input type="checkbox"/> Stage Construction (explain in remarks) JFR projects Safety Evaluation Complete (date):					

Page 2 of 3	Project Code: 425AH 11283	Project # ES&U396-026	Reference														
Use Columns A, B, C, D and E to identify facility described below:																	
<table border="1"> <tr> <td>A =</td> <td>B =</td> <td>C =</td> <td>D =</td> <td>E =</td> </tr> </table>				A =	B =	C =	D =	E =									
A =	B =	C =	D =	E =													
<b>9 Facility</b>																	
Facility Name	ADT	N/A															
N/A	ADT	N/A															
Facility Type	ADT	N/A															
N/A	ADT	N/A															
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Retail <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other <input type="checkbox"/> Residential <input type="checkbox"/> Other <input type="checkbox"/> Residential <input type="checkbox"/> Other <input type="checkbox"/> Residential <input type="checkbox"/> Other <input type="checkbox"/> Residential <input type="checkbox"/> Other																
<b>10 Roadway Class</b>																	
Notes																	
Width	0.000																
Depth	0.000																
Functional Classification	R																
Facility Type	0																
Waste Code	3																
<b>11 Design Standards</b>																	
	Graded	Existing	Proposed	Utility	Graded	Existing	Proposed	Utility	Graded	Existing	Proposed	Utility	Graded	Existing	Proposed	Utility	
Design Standards Required by Standard Plans are indicated with an "X" in column 8, clarify by design reference with CODE Form #881																	
Width of Travel Lanes																	
Shoulder width (feet)																	
Shoulder width (feet)																	
Design Speed																	
Clearance																	
Max. Superelevation (%)																	
Min. Right-of-Way																	
Min. Height of Sign																	
Min. Vertical Curve																	
Max. Grade																	
Design Decision Log: Required (R) or optional (O) items are indicated with an "X" in column 4, comply with exception (EX)																	
Typical Section Type																	
# of Travel Lanes																	
Side Slope (ft:1ft)																	
Median Width																	
Posted Speed																	

Page 3 of 3	Project Code (SAM)	Project #:	Revised Date:
	17283	ES6 M356-024	

**12 Major Structures** S= to stay, R= to be removed, P= proposed new structure

Structure ID#	Length	Reference Point	Feature Intersected	Standard Width	Structure Number(s)	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
---------------	--------	-----------------	---------------------	----------------	---------------------	---------------------	----------------------	--------------------	------------

Proposed Treatment of Bridges to Remain in Place (add: 03 bridge rail, capacity, and allowable slabting thickness)

**13 Remarks**

The existing 4 foot wide, approx. 20 foot long pedestrian bridge over the Ave D/Sidewalk to be replaced with a new 8 foot wide x approx. 20 foot long precast concrete bridge.

The existing 4 foot detached sidewalk will be replaced in-situ with 8 foot detached sidewalk. New 4 foot sidewalk between 77th Ave and 78th Ave is attached to the curb and gutter, which shall be removed and replaced with new curb and gutter and new detached 8 foot sidewalk, which shall be abutted with the left of the new 8 foot detached sidewalk.



LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION

**EXHIBIT C FUNDING PROVISIONS**

**ES6 M356-064 (17283)**

A. The Local Agency has estimated the total cost the Work to be \$300,000.00 which is to be funded as follows:

<b>1 BUDGETED FUNDS</b>			
a. Federal Funds (FY 09 ARRA @ 100%)			\$300,000.00
b. Local Agency Matching Funds (FY 09 ARRA @ 0%)			\$0.00
Local Agency Matching for CDOT - Incurred Non-			
c. Participating Costs			\$0.00
(Including Non-Participating Indirects)			
<b>TOTAL BUDGETED FUNDS</b>			<b>\$300,000.00</b>
<b>2 ESTIMATED CDOT-INCURRED COSTS</b>			
a. Federal Share			\$300,000.00
(100% of Participating Costs)			
b. Local Share			
Local Agency Share of Participating Costs	\$0.00		
Non-Participating Costs (Including Non-			
Participating Indirects)	\$0.00		
Estimated to be Billed to Local Agency			\$0.00
<b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>			<b>\$0.00</b>
<b>3 ESTIMATED PAYMENT TO LOCAL AGENCY</b>			
a. Federal Funds Budgeted (1a)			\$300,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			\$0.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>			<b>\$300,000.00</b>
<b>FOR CDOT ENCUMBRANCE PURPOSES</b>			
Total Encumbrance Amount (\$300,000.00 divided by 100%)			\$300,000.00
Less ROW Acquisition 3111 and/or ROW			
Relocation 3109			\$0.00
Net to be encumbered as follows:			\$300,000.00
WBS Element <<<<<>>>>	Design	3020	\$0.00
WBS Element 17283.20.10	Const	3301	\$300,000.00

- B. The matching ratio for the federal participating funds for this project is 100% federal-aid funds (CFDA #20 2050) to 0% Local Agency funds, it being understood that such ratio applies only to the \$300,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$300,000.00, and additional federal funds are made available for the project, the Local Agency shall pay 0% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the local agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$300,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.
- C. The maximum amount payable to the Local Agency under this contract shall be \$300,000.00 (For CDOT accounting purposes, the federal funds of \$300,000.00 and local matching funds of \$0.00 will be encumbered for a total encumbrance of \$300,000.00), unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.
- D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from federal and/or state and/or Local Agency sources, as applicable. Should these sources, either federal or Local Agency, fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

**Certification for Federal-Aid Contracts**

The contractor certifies, by signing this contract, to the best of its 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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding 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 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.

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.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**SECTION 1. Policy.**

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 23. Consequently, the 49 CFR Part 1E DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

**SECTION 2. DBE Obligation.**

The recipient or its contractor agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

**SECTION 3 DBE Program.**

The contractor (subrecipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the contractor upon request:

Business Programs Office  
Colorado Department of Transportation  
4201 East Arkansas Avenue, Room 287  
Denver, Colorado 80222-3400

Phone: (303) 757-9234

**SAMPLE IGA OPTION LETTER**

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

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

Exhibit F

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

Vendor name: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

In accordance with the terms of the original contract (insert *FY, Agency code & CLIN routing #*) between the State of Colorado, Department of Transportation and (insert *contractor's name here*), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The contract is now (select one: *increased and/or decreased*) by (insert *dollars*)

**Exhibit F**

*here*) specified in Paragraph/-Section/-Provision/Exhibit \_\_\_\_\_ of the original contract. A new Exhibit C-1 is made part of the original contract and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

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

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

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

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

**APPROVALS:**

**For the Contractor:**

Legal Name of Contractor

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name of Authorized Individual

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: Official Title of Authorized Individual

\_\_\_\_\_

**State of Colorado:**

Bill Ritter, Jr., Governor

By: \_\_\_\_\_ Date: \_\_\_\_\_

Executive Director, Colorado Department of Transportation

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

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

State Controller  
David J. McDermott, CPA

By: \_\_\_\_\_

Date: \_\_\_\_\_

Issuance date: July 1, 2008  
Updated: June 12, 2008

LOCAL AGENCY  
CONTRACT ADMINISTRATION  
CHECKLIST

CDOT Form 1243



**THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES**

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDDT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(n) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDDT.

CDDT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporates requirements from both Federal and State regulations, i.e., 23 CFR 172 and Colorado Revised Statute (C.R.S.) 24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDDT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDDT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of ten percent (10%) for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants should be done in accordance with C.R.S. 24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDDT pre-qualified prime consultants and their teams. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the project,
- c. Ability to furnish professional services,
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,

## Exhibit II

- d. Location,
  - e. Current and projected work load,
  - f. Volume of previously awarded contracts, and
  - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursement for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profits) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six (6) to fifteen (15) percent of the total direct and indirect costs.
  7. A qualified local agency employee shall be responsible and in charge of the project to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of project, the local agency prepares a performance evaluation (a CDOC form is available) on the consultant.
  8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three (3) years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three (3) years after the case has been settled.

The C.R.S. 24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400, I, provide additional details for complying with the eight (8) steps just discussed.

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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**ATTACHMENTS**

- A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate supervision used to perform work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

**B. Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possess ion, or territory of the United States (except for employment preference for Appalachian contracts, where applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth in title laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.1 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, management training, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are

substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employment referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions.** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site

personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### 6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referee practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor

## Exhibit I

union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SBA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualified minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SBA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall qualify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use its best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SBA personnel.

c. The contractor will use its best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SBA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SBA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently employed in each work classification required by the contract work.

This information is to be reported on Form F-117A-1391. If on the job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, material and construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any washing rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)) the full amounts of wages and bona fide fringe benefits (or cash equivalent benefits) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates contained under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form F-117A-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 5(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or

## Exhibit I

mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

### 2. Classification:

a. The SITA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) The additional classification is utilized in the area by the construction industry;

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the helpers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer

within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

### 3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

### 4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

#### a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise recognized as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program; if the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination.

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ation for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, wages shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

### b. Trainees:

(1) Except as provided in 29 CFR 8.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed unless an acceptable program is approved.

### c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

### 6. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting FEO in connection with Federal-aid highway construction programs are not subject to the require-

ments of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

### 6. Withholding:

The SFA shall upon its own action or upon written request of an authorized representative of the UOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SFA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payments, advance, or guarantee of funds until such violations have ceased.

### 7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

### 8. Violation:

**Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible therefor shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

### 9. Withholding for Unpaid Wages and Liquidated Damages:

The SFA shall upon its own action or upon written request of any authorized representative of the UOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

### V. STATEMENTS AND PAYROLLS

## Exhibit I

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### 2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee, his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(a)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made, and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the amount paid to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHL resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number DRG-009-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including watch helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHL, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHL, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide safety for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (29 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of these specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHL resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

### VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater



## Exhibit I

percentage if specified elsewhere in the contract) of the total original contract price, excluding any specially items designated by the State. Specially items may be performed by subcontract and the amount of any such specially items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "His own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specially items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available to the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount plus which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHM contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHM contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHM has ascertained that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

## VIII. SAFETY-ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment, and take any other needed actions as it determines, or as the SHM contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the extent of compliance with the construc-

tion safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

## IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

*Whoever, being an officer, agent or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation, or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation, or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 356), as amended and supplemented,*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

## X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11736, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of

Violating Facilities pursuant to 40 CFR 15.29.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 3 through 4 of this Section X in every noncomp subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**f. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 20)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transactions," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or

agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may derive the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "List of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is debarred, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this

proposal

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**2. Instructions for Certification - Lower Tier Covered Transactions:**

[Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29]

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a

**Exhibit E**

person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING**

[Applicable to all Federal-aid construction contracts and to all selected subcontracts which exceed \$100,000 - 49 CFR 29]

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 Federal agency, a Member of Congress, an officer or 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.

b. 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 Federal 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 112, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall comply and disclose accordingly.

## FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation:

1. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
2. the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
3. the Local Agency/Contractor shall comply with section 18.37 concerning any subgrants;
4. to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 subgrant procedures, as applicable;
5. the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

C. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

D. The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11734, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

G. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. Office of Management and Budget Circulars A 87, A 24 or A 122, and A 102 or A 110, whichever is applicable.

I. The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal

funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. 42 USC 6101 et seq., 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq.. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds;

K. The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of this contract.)

M. The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(u) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

1. Compliance with Regulations. The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract,

including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

4. Information and Reports. The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

5. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
- b. Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto; The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.



## Agenda Item 10 I

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Resolution No. 18 re the First Amendment to the North Huron Urban Renewal Plan

**Prepared By:** Robert Smith, Treasury Manager

**Recommended City Council Action:**

Adopt Resolution No. 18 approving the First Amendment to the North Huron Urban Renewal Plan.

**Summary**

By approving the attached resolution, Council approves the First Amendment to the North Huron Urban Renewal Plan, which modifies the sales tax increment pledge within the urban renewal area boundaries and thereby releases excess sales tax increment from the urban renewal area per the terms of the Loan Agreement with Compass Bank.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Does the City desire to amend the existing North Huron Urban Renewal Plan?

**Alternative**

Decline or delay approval of the amendment resolution. This is not recommended. This is not recommended as it would result in the City not receiving excess sales tax increment, which is critical to maintaining General Fund services.

**Background Information**

On January 26, 2004, Council approved the North Huron Urban Renewal Plan (Plan). Subsequent to the approval of the Plan, the Westminster Economic Development Authority (WEDA) issued, in May 2005, \$68,300,000 of variable rate tax increment revenue bonds. The bonds were issued to fund various public infrastructure and road improvements, half of the 144<sup>th</sup> Avenue Interchange over Interstate 25, and purchase land.

As a means to market the variable rate bonds, the bonds were issued with a direct pay letter of credit (LOC) from DEPFA Bank (DEPFA), with the underlying credit of the bank ensuring payment on the bonds. Due to a downgrade in the credit rating of DEPFA, the bonds converted into “bank bonds.” A Staff Report, dated January 12, 2009, was presented to the Council and Board, apprising them of the “bank bond” issue with DEPFA on certain WEDA debt issues. In summary, WEDA’s Series 2005 tax exempt variable rate debt issue is backed by a LOC agreement with DEPFA. After remarketing efforts failed to find investors for the bonds due to the credit downgrades of DEPFA by the rating agencies, the bonds converted to bank bonds, which meant DEPFA was obligated, under the terms of the LOC, to buy the bonds. As a result of this event, Staff has been working with the City’s underwriter, Stifel Nicolaus, & Company, to find a long-term solution that maintains competitive interest costs and preserves fund balance as compared to the terms of debt service under DEPFA’s LOC agreement.

Since the January Staff Report, the underwriter and Staff negotiated a loan agreement with Compass Bank and a commitment letter was signed to engage in the refinancing of the 2005 WEDA bonds with Compass Bank. Under separate Council and WEDA Board agenda memos, Staff has outlined the terms of the loan agreement and with guidance from the City’s bond counsel, Sherman & Howard, recommended the approval of the agreement and associated actions required, such as the adoption of an updated Replenishment Resolution and Cooperation Agreement between the City and WEDA.

A significant benefit of the loan with Compass Bank is the ability of the City to retain excess sales and use tax revenues, which under the terms of the existing bond indenture is not permitted. The First Amendment to the Plan incorporates the terms of the loan for the release of excess sales tax increment revenues, which currently must be kept and spent only within the urban renewal area. This key feature of the loan agreement will provide the general fund with significant revenues beginning in 2009. Staff forecasts over \$1.0 million in excess sales tax increment in 2009 with a jump to nearly \$4.6 million in 2010 and over \$5.1 million in 2011. The ability for the City to receive these excess revenues is particularly important during the current economic climate, which has the City adjusting revenue projections from the 2009-2010 Budget forecasts downward as sales and use tax receipts trend downward until the economy recovers.

The economic recovery is anticipated to gradually occur over the next couple of years and Staff will be assessing opportunities to refinance the debt incurred in the North Huron Urban Renewal Area (URA) by the expiration date of the loan with Compass Bank in 2016. As Staff and the Underwriter assess these opportunities, Council and the WEDA Board will be apprised of the situation.



**SUBJECT:** Resolution re First Amendment to North Huron Urban Renewal Plan

Page 3

Staff and the Underwriter will be available at the City Council meeting on April 13th to answer City Councillor questions.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment: Resolution  
First Amendment to the North Huron Urban Renewal Plan

RESOLUTION

RESOLUTION NO. **18**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**A RESOLUTION  
CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND  
AUTHORIZING THE FIRST AMENDMENT TO NORTH HURON URBAN RENEWAL PLAN  
AND OTHER ACTIONS IN CONNECTION THEREWITH**

WHEREAS, the City Council (the "City Council") of the City of Westminster, Colorado (the "City"), by Resolution No. 40, adopted September 14, 1987, created the Westminster Economic Development Authority of the City ("Authority"); and

WHEREAS, pursuant to Resolution No. 5, adopted on January 26, 2004, the City approved the North Huron Urban Renewal Plan (the "Original Plan") pursuant to the Colorado Urban Renewal Law; and

WHEREAS, Section 31-25-107(7), C.R.S. allows the City Council to modify the Plan at any time without being subject to the notice and blight finding requirements of Section 31-25-107, C.R.S. provided that such modification will not substantially change the Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, the City wishes to amend the Original Plan concerning the allocation of sales tax revenues in the form of the First Amendment to North Huron Urban Renewal Plan (the "Plan Amendment") which will be an insubstantial modification of the Original Plan; and

WHEREAS, the Plan Amendment is attached hereto as Exhibit A and incorporated herein by this reference.

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

Section 1. Findings Relating to the Plan Amendment. The City Council hereby finds and determines that the modifications to the Original Plan to be made by the Plan Amendment will not substantially change the Original Plan in land area, land use, design, building requirements, timing or procedure, as previously approved, for purposes of Section 31-25-107, Colorado Revised Statutes.

Section 2. Approval and Authorization of the Plan Amendment. The form of the Plan Amendment is hereby approved. Except as amended by Plan Amendment, the Plan shall remain unchanged in all other respects and shall remain in full force and effect.

Section 3. General Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. Effectiveness. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED on April 13, 2009.

CITY OF WESTMINSTER, COLORADO

---

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM

---

City Clerk

---

City Attorney

STATE OF COLORADO                    )  
  ) SS.  
CITY OF WESTMINSTER                )

I, the City Clerk of the City of Westminster, Colorado, do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the City Council (the “Council”) at a regular meeting held on April 13, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of April 13, 2009, by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

3. The members of the Council were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor of the City, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

6. Notice of the meeting of April 13, 2009, in the form attached hereto as Exhibit B, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed on April 13, 2009.

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

(SEAL)

Exhibit A

(Form of First Amendment to Plan)

Exhibit B

(Form of Notice of Meeting)

CITY OF WESTMINSTER  
NORTH HURON URBAN RENEWAL PLAN  
ORIGINALLY APPROVED JANUARY 2004  
FIRST AMENDMENT DATED APRIL 13, 2009

This First Amendment dated April 13, 2009, amends the North Huron Urban Renewal Plan originally approved January 2004 amends and restates Article 5 to read as follows:

5.1 Tax Increment Financing. The primary method of financing the projects undertaken in furtherance of this Plan shall be the use of sales tax and property tax increment financing pursuant to Section 31-25-107(9), C.R.S. which is by this reference incorporated herein as if set forth in its entirety. If there is any conflict between the Urban Renewal Law and this Plan, the provisions of the Urban Renewal Law shall control. All property and sales taxes collected within the North Huron Urban Renewal Area (the "Area") shall be divided as follows:

(a) That portion of property and sales taxes equal to the amount collected within the boundaries of the Area in the twelve month period ending on the last day of the month prior to the effective date of the approval of this Plan shall be paid into the funds of each such public body as are all other taxes collected by or for such public body.

(b) Except as WEDA may legally provide otherwise under the Urban Renewal Law, the portion of such property taxes in excess of the amounts described in paragraph (a) above shall be allocated to and when collected paid into a special fund (the "Special Fund") to fund WEDA's obligations with respect to any project including payment of the principal of the interest on and any premiums due in connection with the bonds, loans or advances to, or indebtedness incurred by (whether funded, refunded, assumed or otherwise) WEDA for financing or refinancing in whole or in part the reinvestment projects or applicable redevelopment agreements.

(c) Except as WEDA may legally provide otherwise under the Urban Renewal Law, the portion of such sales taxes in excess of the amounts described in paragraph (a) above shall be allocated to and when collected paid as described in this paragraph (c). There shall be paid into the Special Fund the lesser of (i) that portion of the City sales tax at a rate of 2%; or (ii) the sales tax rate specified in any loan agreement, bond indenture, bond resolution, or other agreement pursuant to which WEDA borrows money for the project. The balance of the City sales tax above the rate specified in the preceding sentence shall be paid into the funds of the City.

(d) When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith have been paid but in no event later than 25 years following the adoption of this Plan for the construction of the projects improvements any excess property and sales tax collections not allocated pursuant to this paragraph or any Cooperation Agreement between WEDA and City or other taxing jurisdiction shall be paid into the funds of said jurisdiction or public body. Unless and until the total property and sales tax collections in the Area exceed the base year property and sales tax collections in the Area as provided in paragraph a above all such property and sales tax collections shall be paid into the funds of the appropriate public body. WEDA reserves the right to enter into Cooperation Agreements with select taxing jurisdictions relative to allocation of incremental tax revenues.

(e) The adoption of this Plan shall be deemed an adoption of a provision that taxes if any levied after the effective date of the approval of this Plan upon taxable property in the Area shall be divided among WEDA and various taxing entities for a period of 25 years thereafter or such lesser period as provided in Section 31-25-107(9), C.R.S. or in any Cooperation Agreement between WEDA and a county, school district, the City or a special district.

(f) WEDA and the City may by Cooperation Agreement or other agreement provide for the method by which sales tax increments shall be allocated and paid to WEDA pursuant to the provisions of this Plan and the Urban Renewal Law. Such agreements and similar agreements between WEDA and other public bodies may provide for additional assistance by the City and cooperation between WEDA and the City in support of the projects as may be more fully set forth in the provisions of such Cooperation Agreement or any other agreement.

Exhibit B

(Form of Notice of Meeting)



WESTMINSTER  
COLORADO

Agenda Item 10 J

Agenda Memorandum

City Council Meeting  
April 13, 2009



**SUBJECT:** Resolution No. 19 re Refinancing of up to \$69 Million of the 2005 Series WEDA Bonds Issued for the North Huron Urban Renewal Area WEDA Bond Issue

**Prepared By:** Robert Smith, Treasury Manager

**Recommended City Council Action:**

Adopt Resolution No. 19 that approves a Cooperation Agreement with WEDA and that provides that the Council will consider requests to fund deficiencies in the WEDA reserve fund.

**Summary**

- By approving the attached resolution, Council approves the Cooperation Agreement between the Authority and the City.
- Adoption by the City Council of the Replenishment Resolution is required to complete the part of the loan structure known as the "moral obligation." Council previously adopted the prior Replenishment Resolution for the 2005 WEDA bonds and the updated Reimbursement Resolution needs approval for the refinancing.
  - The basis of the resolution is such that if, at any time, the balance in the WEDA Reserve Fund falls below the required amount of \$5,122,000 the City Manager will request that Council budget, appropriate, and transfer to Compass Bank the funds necessary to replenish these reserves. Because the Replenishment Resolution is subject to annual appropriation, it does not constitute a multi-year fiscal obligation, and therefore does not subject the City to TABOR requirements.
  - This resolution is necessary to minimize interest costs. Because of the expected revenues WEDA will realize from tax increment, Staff does not anticipate the need for the City to ever transfer funds at any time.
  - Staff also had discussions with the credit rating agencies in the fall of 2004 about the impact on the City's credit of issuing a moral obligation pledge for the WEDA debt. The agencies have told City officials that the City's credit rating will not be affected. The City's credit rating has not been affected under the existing moral obligation pledge.
- The Cooperation Agreement between the City and the Authority provides for the repayment to the City of funds advanced to and on behalf of the Authority from tax increment, if such revenue is available after other debts are paid. This would permit recovery by the City of any amounts paid by the City to replenish the Reserve Fund held by Compass Bank in connection with the Authority's bonds. Council previously adopted the prior Cooperation Agreement for the 2005 WEDA bonds.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

### **Policy Issues**

1. Does the City desire to provide its non-binding moral obligation pledge to replenish the reserve fund on the WEDA loan in the event it is drawn down to meet debt service requirements?
2. Does the City desire to participate in the WEDA Cooperation Agreement?

### **Alternatives**

1. Decline or delay approval of the replenishment resolution. This is not recommended. Although non-binding, this would not be favorably viewed by the bank and would result in the failure of the refinancing.
2. Decline or delay approval of the Cooperation Agreement. This is not recommended, as it will result in the failure of the refinancing.

### **Background Information**

On January 12, 2009, a Staff Report was presented to the Council and Board, apprising them of the “bank bond” issue with DEPFA Bank (DEPFA) on certain WEDA debt issues. In summary, WEDA’s Series 2005 tax exempt variable rate debt issue is backed by a Letter of Credit (LOC) agreement with DEPFA. After remarketing efforts failed to find investors for the bonds due to credit downgrades of DEPFA by the rating agencies as a result of the financial crisis, the bonds converted to bank bonds, which means DEPFA was obligated, under the terms of the LOC, to buy the bonds. As a result of this event, Staff has been working with the City’s underwriter, Stifel Nicolaus, & Company, to find a long-term solution that reduces interest costs and preserves fund balances compared to the terms of debt service under DEPFA’s LOC agreement.

Since the January Staff Report, a term sheet with Compass Bank was signed to negotiate a term loan for the 2005 North Huron URA debt issue. Under the initial terms of this loan agreement, Compass Bank would purchase the approximate \$66,592,500 bank bonds from DEPFA and convert them into 7-year term bonds with a fixed interest rate cost based on an interest rate swap agreement.

Per statutory requirements, the Council and Board must be informed of the costs, risks, and benefits of entering into a swap agreement. At the January 12<sup>th</sup> meeting, Staff gave a general review of swaps. At a February 23<sup>rd</sup> meeting, Staff went into greater detail of the interest rate swap agreement.

On March 24<sup>th</sup>, the commitment letter was signed to engage in the refinancing of the 2005 WEDA bonds with Compass Bank. Under the terms of the loan agreement, an updated Reimbursement Resolution and Cooperation Agreement need to be approved by both the City and WEDA.

The advent of market acceptance of the value of a promise to pay by a local unit of government is a recent phenomenon. Because the City's credit rating is AA/AA-, the word of the City has merit and can and should be used to reduce the costs and improve the marketability of the Authority's (WEDA) bonds. The moral obligation is a promise to pay, but is also subject to annual appropriation, and is non-binding and thus does not constitute a multiple fiscal-year obligation.

Staff does not anticipate the need to trigger the City’s moral obligation, as defined in the Reimbursement Resolution, to replenish the reserve fund at any time. The forecasts for the tax increment revenues for the various commercial developments within the North Huron Urban Renewal Area (URA) significantly exceed the anticipated debt service requirements.



A significant benefit of the loan with Compass Bank is the ability of the City to retain excess sales and use tax revenues, which under the terms of the existing bond indenture is not permitted. The ability for the City to retain these excess revenues is particularly important during the current economic climate, which has the City adjusting revenue projections from the 2009-2010 Budget forecasts downward as sales and use tax receipts trend downward until the economy recovers.

The economic recovery is anticipated to gradually occur over the next few years and Staff will be assessing opportunities to refinance the debt incurred in the North Huron Urban Renewal Area (URA) by the expiration date of the loan with Compass Bank in 2016. As Staff and the Underwriter assess these opportunities, Council and the WEDA Board will be apprised of the situation.

Staff and the Underwriter will be available at the City Council meeting of April 13th, to answer City Councillor questions.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

RESOLUTION

RESOLUTION NO. 19

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION**

**CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ITS LOAN AGREEMENT WITH COMPASS MORTGAGE CORPORATION; AUTHORIZING AND DIRECTING ACTIONS BY THE CITY MANAGER WITH RESPECT TO THE PREPARATION OF REQUESTS TO THE CITY COUNCIL FOR APPROPRIATION OF FUNDS FOR THE REPLENISHMENT OF CERTAIN FUNDS PERTAINING THERETO; AUTHORIZING THE 2009 COOPERATION AGREEMENT; AND OTHER ACTIONS TAKEN BY THE CITY IN CONNECTION THEREWITH**

WHEREAS, the City Council (the "City Council") of the City of Westminster, Colorado (the "City"), by Resolution No. 40, adopted September 14, 1987, created the Westminster Economic Development Authority of the City ("Authority"); and

WHEREAS, pursuant to Resolution No. 5, adopted on January 26, 2004, the City approved the North Huron Urban Renewal Plan (the "Plan") pursuant to the Colorado Urban Renewal Law; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005 in the original aggregate principal amount of \$68,300,000, and presently outstanding in the aggregate principal amount of \$66,592,000, (the "Prior Bonds"), for the purpose of financing the acquisition, construction and equipping of the project described in the Plan (the "Urban Renewal Project"); and

WHEREAS, the Authority is entering into a Loan Agreement (the "Loan Agreement") with Compass Mortgage Corporation ("Compass") to obtain a loan in the principal amount of not to exceed \$69,000,000 (the "Loan") in order to finance the costs of refunding the Prior Bonds (the "Refunding Project"); and

WHEREAS, pursuant to a Cooperation Agreement (the "2009 Cooperation Agreement") between the City and the Authority, the City will agree, subject to conditions specified in the 2009 Cooperation Agreement, to loan funds to the Authority for the Refunding Project and deposit to certain funds in accordance with the Loan Agreement; and

WHEREAS, there will be created under the Loan Agreement a reserve fund (the "Reserve Fund") which will be funded initially in the amount of the Reserve Requirement (as defined in the Loan Agreement), and is required to be maintained at such amount to be used as a reserve against deficiencies in the payment of principal of or interest on the Loan and in certain other payments; and

WHEREAS, the Loan Agreement contemplates that if, at any time, the Reserve Fund is not funded at the Reserve Requirement, the Lender (as defined in the Loan Agreement) shall notify the City Manager of any deficiency and the City Manager shall request that the City Council advance sufficient funds pursuant to the 2009 Cooperation Agreement to restore the Reserve Fund to the Reserve Requirement immediately thereafter; and

WHEREAS, the City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Reserve Fund, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for such appropriations to be presented to the City Council for consideration; and

WHEREAS, the form of the 2009 Cooperation Agreement is on file with the City Clerk.

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

Section 1. Appropriations to Replenish Reserve Fund. The City Manager shall, upon notice from the Lender that the Reserve Fund is not funded at the Reserve Requirement, prepare and submit to the City Council a request for an appropriation of a sufficient amount to replenish the Reserve Fund to the Reserve Requirement. It is the present intention and expectation of the City Council to appropriate such funds as requested, within the limits of available funds and revenues, but this declaration

of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Council may determine in its sole discretion, but shall never be required, to make the appropriations so requested. All sums appropriated by the City Council for such purpose shall be deposited by or on behalf of the Authority in the Reserve Fund. Nothing provided in this Section 1 shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

Section 2. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds as contemplated by Section 1 hereof, any amounts actually advanced shall be treated as an obligation under the 2009 Cooperation Agreement and shall be repaid by the Authority, with interest thereon, but shall be payable from and secured solely by the Pledged Revenue of the Authority, as provided in the 2009 Cooperation Agreement, on a basis expressly subordinate and junior to that of the Loan and any obligations secured under the Loan Agreement, including, without limitation, all obligations owed to the Swap Provider under the Interest Rate Exchange Agreement (each as defined in the Loan Agreement).

Section 3. Limitation to Loan and Other Obligations Originally Secured by Loan Agreement. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the Reserve Fund originally established in connection with the Loan and shall not apply to any other additional obligations.

Section 4. Approval and Authorization of the 2009 Cooperation Agreement. The form of the 2009 Cooperation Agreement is hereby approved. The City shall enter into and perform its obligations under the 2009 Cooperation Agreement, in the form of such document as is on file with the City Clerk, with only such changes therein as are not inconsistent herewith. The City Manager is hereby authorized and directed to execute the 2009 Cooperation Agreement on behalf of the City, and the City Clerk is hereby authorized to attest to the 2009 Cooperation Agreement.

Section 5. General Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6. Effectiveness. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED April 13, 2009.

CITY OF WESTMINSTER, COLORADO

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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

STATE OF COLORADO )  
 ) SS.  
CITY OF WESTMINSTER )

I, the City Clerk of the City of Westminster, Colorado, do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the City Council (the "Council") at a regular meeting held on April 13, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of April 13, 2009, by an affirmative vote of a majority of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

3. The members of the Council were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor of the City, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

6. Notice of the meeting of April 13, 2009, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed April 13, 2009.

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

(SEAL)

Exhibit A

(Form of Notice of Meeting)



## Agenda Item 10 K&L

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
April 13, 2009



**SUBJECT:** Councillor's Bill No. 9 re 2008 Westin Westminster Conference Center Possessory Interest Tax Payment

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

#### Recommended City Council Action

1. Pass Councillor's Bill No. 9 on first reading, appropriating FY2008 carryover funds into the FY2009 budget of the General Fund.
2. Authorize the City Manager to proceed with payment to the Jefferson County Treasurer in the amount of \$300,523.32 for payment of the 2008 Possessory Interest Tax for the Westin Conference Center.

#### Summary Statement

- The City was the owner of the Westin Conference Center through October of last year, and therefore is responsible for making the tax payment for the Conference Center. The County does not prorate possessory interest tax, so the City was billed for the full amount for the 2008 year. Staff disputed this matter with the County; however, the assessor's office indicated that this is their standard operating procedure as authorized by the State.
- The City sold the Westin Conference Center to Westminster Boulevard LLC, effective November 1, 2008; therefore, this will be the last year that the City will owe this tax.
- The City is in the midst of an appeal with Jefferson County over the Possessory Interest on the Conference Center for 2006 and 2007. If these efforts are successful Staff will pursue an adjustment for the 2008 tax year as well.

**Expenditure Required:** \$300,523.32

**Source of Funds:** 2008 Carryover Funds

**Policy Issue**

Should the City make the 2008 possessory interest tax payment for the Westin Conference Center?

**Alternative**

The City could delay this payment until the outcome of the appeal with Jefferson County is known. Staff does not recommend this alternative because penalties and interest will be applied to the payment amount, which the City will be responsible for paying. These amounts may be refunded at a later date if the City is successful in its appeal; however, Staff believes it is more prudent to make the payment at this time to avoid the complications involved in working through the refund with Jefferson County.

**Background Information**

Through October of 2008 the City was the owner of the Westin Conference Center and leased the facility to Westminster Boulevard LLC who managed and operated the Center. By the terms of the original agreement signed in 1998, the City is obligated to pay any assessed property tax for the Conference Center.

The possessory interest tax is determined by the Jefferson County Assessor’s Office through a methodology set forth by the State of Colorado. The possessory interest tax has increased dramatically over the past five years, going from just over \$15,000 to the 2008 assessment that is over \$300,000. This increase is a result of the County using the escalating lease payments made by the Westin for the Conference Center. The City is not in agreement with the County’s methodology and has appealed the tax bills for 2006 and 2007. The City’s appeal was denied last year and a further appeal was filed to the County Board of Adjustment, the outcome of which is still pending. If the City is successful there could be a significant refund to the City for 2006 and 2007. The City would then file an appeal of the 2008 assessment that could lead to an additional refund.

Staff is requesting the use of 2008 carryover funds to fund this request because at the time the budget was proposed and adopted, Staff was unclear how much if any of the 2008 tax would need to be paid. Adequate 2008 carryover funds are available to fund this expenditure.

This appropriation will amend General Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1000.40020.0000	\$1,000,000	<u>\$300,524</u>	\$1,300,524
Total Change to Expenses			<u>\$300,524</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Expenditures – Miscellaneous	10010900.79400.0000	\$0	<u>\$300,524</u>	\$300,524
Total Change to Expenses			<u>\$300,524</u>	

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **8**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE INCREASING THE 2009 BUDGET OF THE GENERAL FUND AND  
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED  
REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$300,524. This appropriation is due to the appropriation of 2008 carryover for the General Fund.

Section 2. The \$300,524 increase in the General Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 K&L, dated April 13, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	<u>\$300,524</u>
Total	<u>\$300,524</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13<sup>th</sup> day of April, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27<sup>th</sup> day of April, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
April 13, 2009



**SUBJECT:** Councillor's Bill No. 10 re Lease/Purchase of Park Services Maintenance Equipment

**Prepared By:** Richard Dahl, Park Services Manger

**Recommended City Council Action**

1. Pass Councillor's Bill No. 10 on the first reading appropriating \$550,000 in the General Fund for the lease/purchase of Park Services maintenance equipment package.
2. Authorize the City Manager to sign an agreement to add \$550,000 to the existing master lease with KeyBank.
3. Award contracts for the purchase of Park Services maintenance equipment to LL Johnson, Pauls Lawnmower, Honnen Equipment, Postestio Brothers Equipment, Colorado Equipment and related vendors based on price agreements reached through the Multiple Assembly of Procurement Officials (MAPO) and the General Services Administration (GSA), and the City of Westminster procurement process.

**Summary Statement**

- Approval of the lease/purchase will:
  - Fund the lease/purchase and financing costs of a new park maintenance fleet;
  - Replace an aging fleet of equipment that requires increased labor and parts to keep operations running efficiently;
  - Provide essential equipment necessary to maintain the City's park system.
- The lease/purchase and financing cost is estimated to be \$714,812, and the associated annual lease payments of \$102,116 are included in the adopted 2009 and 2010 Park Services Division budgets. The lease term is seven years and the interest rate is anticipated to be between 3.7 and 4.1 percent. The interest rate will be determined on the date of commitment by the City as defined in the master lease agreement approved by City Council in 2001.

**Expenditure Required:** Not to exceed \$550,000

**Source of Funds:** Proceeds from Master Lease in the General Fund



**Policy Issue**

Should the City move forward with the lease/purchase of Park Services maintenance equipment?

**Alternatives**

1. Take no action. This option is not recommended as this approach would jeopardize Staff’s ability to adequately maintain park property in a consistent and efficient manner.
2. Finance the equipment package with cash. This option is not recommended as cash funding of this purchase would require use of funds that Park Services does not currently have budgeted. The master lease/purchase program stretches out the cost of funding the equipment package over multiple years at a favorable lease rate. By using the master lease concept, the cash flow needed can be scheduled and budgeted over the life of the lease.

**Background Information**

The Park Services Division maintains 56 parks totaling 715 acres, 10 public facilities and 145 open space sites totaling an additional 2,700 acres. To maintain these areas, Staff uses 20 trailers and 47 pieces of power equipment for the mowing, irrigation, construction, athletic field maintenance, trail construction/repair and weed control operations. A substantial portion of the Park Division maintenance equipment currently exceeds the manufacturer’s estimated life expectancy, which in turn, affects the ability of the Division to achieve its maintenance schedule due to dependability and down time issues. The 23 pieces of equipment being recommended for replacement range in age from 8 to 31 years old with the majority of the equipment falling within the 10 year range.

The type of equipment being recommended for replacement include the following: (for additional detail see attachment)

- 4 large riding gang mowers
- 3 medium riding single deck mowers
- 1 rough terrain mower for open space
- 1 trencher
- 1 excavator
- 1 skid steer loader with attachments
- 5 trailers
- 4 utility carts
- 1 all terrain vehicle (ATV)
- 1 athletic field line painter
- 1 finish grader for baseball fields

This appropriation will amend General Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Note Proceeds	1000.46000.0225	\$0	\$550,000	\$550,000
Total Change to Expenses			<u>\$550,000</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Equipment – PR&L Park Services	10050550.76000.0000	\$12,000	\$550,000	\$562,000
Total Change to Expenses			<u>\$550,000</u>	

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

## PARK SERVICES DIVISION EQUIPMENT PACKAGE 2009

<u>LL Johnson Dist.</u>	<u>Quantity</u>
Toro 5900-D 16' mower	1
Toro GM 4100-D 10' mower	3
Toro 3280-D mower	1
Toro Workman 3300 carry all	1
Toro Sand Pro 5040, QAS Finish Grader	1
Toro 4500-D mower	1
<u>Paul's Lawnmower</u>	
Hustler ATZ 928168 mower	2
<u>Jayhawk Trailers</u>	
Jayhawk Equipment Trailers	5
<u>Honnon Equipment</u>	
John Deere 27 D Excavator	1
<u>Ditch Witch of the Rockies</u>	
Ditch Witch SK5TR trencher with attachments	1
<u>Potestio Brothers Equipment</u>	
John Deere-XUV 850D carry all	1
John Deere TX carry all	2
<u>Sun Honda</u>	
Honda 500 ATV	1
<u>Colorado Paint</u>	
Graco Line Lazer Painter	1
<u>Colorado Equipment</u>	
John Deere 328 Skid Steer with attachments	1
Total pieces of equipment	23

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **10**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE INCREASING THE 2009 BUDGET OF THE GENERAL FUND AND  
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED  
REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$550,000. This appropriation is due to an increase in the master lease for the General Fund.

Section 2. The \$550,000 increase in the General Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 M, N & O dated April 13, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	<u>\$550,000</u>
Total	<u>\$550,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13<sup>th</sup> day of April, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27<sup>th</sup> day of April, 2009.

ATTEST:

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Mayor

---

City Clerk

**REVISED**

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
WESTMINSTER CITY HALL, 4800 W. 92<sup>ND</sup> AVENUE  
MONDAY, April 13, 2009  
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (March 23, 2009)
- 3. New Business**
  - A. Resolution No. 106 re WEDA Loan Approval for up to \$69 Million to Refinance the 2005 Series WEDA Bonds Issued for the North Huron URA
  - B. Public Hearing re 2009 WEDA Budget Amendment
  - C. Resolution No. 107 re 2009 WEDA Budget Amendment and Loan Supplemental Appropriation
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, March 23, 2009 AT 7:57 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Dittman, and Board Members Briggs, Kaiser, Lindsey, and Major. Councillor Winter was absent and excused. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney for the Authority, and Carla Koeltzow, Acting Secretary.

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Dittman, to approve the minutes of the meeting of February 23, 2009 with no additions or corrections. The motion carried unanimously.

COMPASS BANK LOAN RE REFUND REMAINING SERIES 2005 BONDS NORTH HURON URA

Due to a conflict of interest through employment, Chairperson McNally recused herself from participation in this item. She passed the gavel to Vice Chairperson Dittman and left the Council Chambers.

Upon a motion by Major, seconded by Kaiser, the Board voted unanimously to authorize the Executive Director to execute and implement the Commitment Letter with Compass Bank regarding a term loan for the Westminster Economic Development Authority North Huron Urban Renewal Area.

ADJOURNMENT

There being no other business to come before the Authority, the meeting was adjourned at 7:59 p.m. by the Vice Chairperson.

ATTEST:

\_\_\_\_\_  
Acting Secretary

\_\_\_\_\_  
Chairperson

# WEDA Agenda Item 3 A

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
April 13, 2009



**SUBJECT:** Resolution No.106 re WEDA Loan Approval for up to \$69 Million to Refinance the 2005 Series WEDA Bonds Issued for the North Huron Urban Renewal Area

**Prepared By:** Tammy Hitchens, Finance Director

### Recommended Board Action

Adopt Resolution No. 106 authorizing the Executive Director or his designee to enter into a variable rate loan agreement of up to \$69 million with Compass Mortgage Corporation and an interest rate swap with Compass Bank to refinance the Series 2005 WEDA bonds that were issued to finance the construction of public infrastructure improvements in the North Huron Urban Renewal Area, to be repaid from available tax increment revenues, with the moral obligation pledge of the City of Westminster, as well as approving loan and swap documents including but not limited to the Loan Agreement, Promissory Note, 2009 Cooperation Agreement with the City, and International Swaps and Derivatives Association (ISDA) Master Agreement and Schedule.

### Summary Statement

- By approving the attached resolution, WEDA approves the loan and swap agreements and the Cooperation Agreement between the Authority and the City. These agreements are necessary to replace WEDA's current debt financing for the North Huron Urban Renewal Area, which is no longer feasible to continue.
- Staff updates revenue and expenditure projections for the Urban Renewal Areas semi-annually based on changes within the development relative to actual versus projected tenant composition, store opening dates, and revenue collections. Based on the following projections, Staff believes the new financing with Compass Bank is a fiscally prudent move:
  - Property and Sales Tax increments that accrue to pay the loan will approximate \$7.75 million in 2009 and grow to over \$13.10 million in 2018 as the development reaches build-out.
  - Annual debt service payments on the loan are estimated to be \$4.93 million through the year 2015 with a balloon payment of \$51,562,850 in 2016. It is anticipated that the loan will be refinanced in 2016.
  - Incremental net revenues after debt service that will be available to the City are estimated to exceed \$1.0 million in 2009 and exceed \$5.0 million beginning in 2011. These can be used for other legal City purposes.

**Expenditure Required:** Up to \$69 million

**Source of Funds:** WEDA Loan Proceeds

## **Policy Issue**

Does the WEDA Board of Directors support the refinancing of the Series 2005 North Huron Urban Renewal Area bonded indebtedness?

## **Alternatives**

1. Do not authorize the refinancing of the bonds. This is not recommended. The current outstanding debt has an accelerated amortization schedule and while debt payments can be made it will have a negative impact on the City's ability to provide services.
2. Delay the refinancing. This is not recommended. WEDA has signed a commitment letter to complete this transaction by April 30, 2009. If not completed, the commitment by Compass will expire and new approvals would be required. There is no guarantee that Compass would be able to recommit to the transaction.

## **Background Information**

On January 12, 2009, a Staff Report was presented to the Council and Board, apprising them of the "bank bond" issue with DEPFA Bank (DEPFA) on certain WEDA debt issues. In summary, WEDA's Series 2005 tax exempt variable rate debt issue is backed by a Letter of Credit (LOC) agreement with DEPFA. After remarketing efforts failed to find investors for the bonds due to the credit downgrades of DEPFA by the rating agencies caused by the current financial crisis, the bonds converted to bank bonds, which meant the Bank was obligated under the terms of the LOC to buy the bonds. As a result of this event, Staff has been working with the City's underwriter, Stifel Nicolaus, & Company, to find a long-term solution that reduces interest costs and preserves fund balances compared to the terms of debt service under DEPFA's LOC agreements.

Since the January Staff Report, a term sheet with Compass Bank was signed to negotiate a term loan for the 2005 North Huron URA debt issue. Under the initial terms of this loan agreement, Compass Bank would purchase approximately \$66,592,500 in bank bonds from DEPFA and convert them into 7-year term bonds with a fixed interest rate cost based on an interest rate swap agreement.

Per statutory requirements, the Council and Board must be informed of the costs, risks, and benefits of entering into a swap agreement. At the January 12<sup>th</sup> meeting, Staff gave a general review of swaps. At a February 23<sup>rd</sup> meeting, Staff went into greater detail of the interest rate swap agreement.

On March 24<sup>th</sup>, the commitment letter was signed to engage in the refinancing of the 2005 WEDA bonds with Compass Bank. Under the terms of the loan agreement, an updated Replenishment Resolution and Cooperation Agreement need to be approved by both the City and WEDA.

The advent of market acceptance of the value of a promise to pay by a local unit of government is a recent phenomenon. Because the City's credit rating is AA/AA-, the word of the City has merit and can and should be used to reduce the costs and improve the marketability of the Authority's (WEDA) bonds. The moral obligation is a promise to pay, but is also subject to annual appropriation, and is non-binding and thus does not constitute a multiple fiscal-year obligation.

Staff does not anticipate the need to trigger the City's moral obligation, as defined in the Replenishment Resolution, to replenish the reserve fund at any time. The forecasts for the tax increment revenues for the various commercial developments within the North Huron Urban Renewal Area (URA) significantly exceed the anticipated debt service requirements.



A significant benefit of the loan with Compass Bank is the ability of the City to retain excess sales and use tax increment revenues, which under the terms of the existing bond indenture is not permitted. The ability for the City to receive these excess revenues is particularly important during the current economic climate, which has the City adjusting revenue projections from the 2009-2010 Budget forecasts downward as sales and use tax receipts trend downward until the economy recovers.

The economic recovery is anticipated to gradually occur over the next few years and Staff will be assessing opportunities to refinance the debt incurred in the North Huron Urban Renewal Area (URA) by the expiration date of the loan with Compass Bank in 2016. As Staff and the Underwriter assess these opportunities, Council and the WEDA Board will be apprised of the situation.

Staff and the Underwriter will be available at the WEDA meeting of April 13th to answer Board questions.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **106**

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

**A RESOLUTION  
AUTHORIZING, APPROVING AND DIRECTING THE EXECUTION AND DELIVERY OF  
A LOAN AGREEMENT FOR A LOAN IN THE ORIGINAL PRINCIPAL AMOUNT OF  
NOT TO EXCEED \$69,000,000, AN INTEREST RATE EXCHANGE AGREEMENT AND  
CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH, FOR THE PURPOSE OF  
REFINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF  
AN URBAN RENEWAL PROJECT**

WHEREAS, the Westminster Economic Development Authority (the "Authority") is a public body corporate and politic, and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the "City") to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended (the "Act"); and

WHEREAS, pursuant to Section 31-25-105 of the Act, the Authority has the power to borrow money and to apply for and accept advances, loans, grants and contributions from any source for any of the purposes of the Act and to give such security as may be required; and

WHEREAS, pursuant to Section 31-25-109 of the Act, the Authority has the power to issue refunding or other bonds (defined by the Act to mean any bonds, notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures or other obligations) from time to time in its discretion for the payment, retirement, renewal or extension of any bonds previously issued by it under the Act; and

WHEREAS, the Authority is authorized to issue bonds without an election; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005 in the original aggregate principal amount of \$68,300,000, and presently outstanding in the aggregate principal amount of \$66,592,000 (the "Prior Bonds"); and

WHEREAS, an urban renewal plan, known as the "North Huron Urban Renewal Plan" (the "Urban Renewal Plan"), was duly and regularly approved by the City Council of the City for an urban renewal project under the Act; and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the City of the Urban Renewal Plan have been duly complied with; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority and the citizens and taxpayers of the City that the Prior Bonds be refunded (the "Refunding Project"); and

WHEREAS, the Authority intends to enter into a Loan Agreement with Compass Mortgage Corporation ("Compass") to obtain a loan in the principal amount of not to exceed \$69,000,000 (the "Loan") in order to finance the costs of the Refunding Project; and

WHEREAS, the proceeds derived from the Loan, after payment of the costs of issuance properly allocable thereto, along with such other legally available moneys of the Authority as may be necessary, shall be used to pay and cancel the Prior Bonds on the date of funding of the Loan, as more particularly hereinafter set forth; and

WHEREAS, the Authority specifically elects to apply the provisions of Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act") to the Loan; and

WHEREAS, the Loan shall be a limited obligation of the Authority payable solely from the Pledged Revenue (as defined in the Loan Agreement); and

WHEREAS, pursuant to Sections 11-59.3-101 through 11-59.3-105, inclusive, C.R.S. (the "Interest Rate Exchange Act"), the Authority may enter into an agreement for an exchange of interest rates, cash flows or payments with respect to public securities (defined by the Interest Rate Exchange Act to mean bonds, notes, debentures, interim certificates, bond anticipation notes, commercial paper or other evidences of indebtedness, or lease, installment purchase or other agreements, or certificates of

participation therein, issued by or on behalf of a public entity) that the Authority has issued if it finds that such an agreement would be in the best interests of the Authority and if the long-term debt obligations of the party with whom the Authority enters into the agreement are rated in one of its two highest rating categories by one or more nationally recognized securities rating agencies which regularly rate such obligations; and

WHEREAS, in order to fix the interest rate on the Loan, there is proposed an ISDA Master Agreement relating to the Loan, including a Schedule thereto and a Confirmation thereunder (together, the "Exchange Agreement"), all between the Authority and Compass Bank (the "Exchange Agreement Provider"), whereby the Authority will pay the Exchange Agreement Provider a fixed rate of interest to be specified in the confirmation of the Exchange Agreement on a notional amount to be specified in the Confirmation, and the Exchange Agreement Provider will pay the Authority a variable rate of interest equal to 65% of the Index plus the Base Margin (both as defined in the Loan Agreement); and

WHEREAS, the Board of Commissioners of the Authority (the "Board") has received information as to the costs, risks and benefits of entering into the Exchange Agreement from the staff of the Authority; and

WHEREAS, the Board desires to delegate to the Executive Director of the Authority the power to determine the terms of the Loan and the Exchange Agreement consistent with the provisions of this Resolution and the Interest Rate Exchange Act; and

WHEREAS, there are on file with the Secretary of the Board: (a) the proposed form of the Loan Agreement; (b) the proposed form of the Exchange Agreement; (c) the proposed form of the promissory note, in the form attached to the Loan Agreement (the "Note"), to be executed by the Authority and delivered to Compass evidencing the Authority's obligations to pay the Loan; and (d) the proposed form of the 2009 Cooperation Agreement between the Authority and the City (the "Cooperation Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, COLORADO, THAT:

Section 1. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the Board and the officers of the Authority directed toward the Refunding Project and the entering into of the Loan Agreement, the Exchange Agreement, the Note and the Cooperation Agreement hereby are ratified, approved and confirmed.

Section 2. The forms, terms and provisions of the Loan Agreement, the Exchange Agreement, the Note and the Cooperation Agreement (collectively, the "Documents") hereby are authorized and approved, and the Authority shall enter into the Documents in the respective forms as are on file with the Secretary of the Board, but with such changes therein as shall be consistent with this Resolution and as the Chair or Vice Chairperson of the Board or the Executive Director of the Authority shall approve, the execution thereof being deemed conclusive approval of any such changes. The Chair and/or the Vice Chairperson of the Board is hereby authorized and directed to execute and deliver the Documents, for and on behalf of the Authority. The Secretary of the Board is hereby authorized and directed to affix the seal of the Authority to, and to attest those Documents requiring the attestation of the Secretary.

Section 3. The officers of the Authority shall take all action which they deem necessary or reasonably required in conformity with the Act to enter into the Documents and refund the Prior Bonds, including the paying of incidental expenses, which are hereby authorized to be paid, and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution and the Documents, including, without limitation, the execution and delivery of any necessary or appropriate closing documents to be delivered in connection with the execution and delivery of the Documents and the refunding of the Prior Bonds.

Section 4. Pursuant to Section 11-57-205, C.R.S., the Board hereby delegates to the Executive Director of the Authority the authority to make the following determinations with respect to the Loan and the Exchange Agreement, including the execution of any certificates necessary or desirable to evidence such determinations, which determinations shall be subject to the restrictions and parameters set forth below and the Interest Rate Exchange Act: (a) the rate or rates of interest on the Loan; (b) the conditions on which and the prices at which the Loan may be redeemed before maturity; (c) the existence and amount of any reserve funds; (d) the principal amount of the Loan; (e) the amount of principal maturing in any particular year; (f) the dates on which principal and interest shall be paid; (g) the notional

amount of the Exchange Agreement; (h) the term of the Exchange Agreement; (i) the Index and the Base Margin used to calculate amounts to be paid to the Authority by the Exchange Agreement Provider pursuant to the Exchange Agreement; and (j) the fixed rate of interest to be paid to the Exchange Agreement Provider by the Authority pursuant to the Exchange Agreement. The foregoing authority shall be subject to the following restrictions and parameters: (1) the Loan shall mature not later than June 1, 2016; (2) the principal amount of the Loan shall not exceed \$69,000,000; (3) the term of the Exchange Agreement shall not extend beyond June 1, 2016; (4) the notional amount of the Exchange Agreement shall not exceed \$69,000,000; (5) the Base Margin shall not exceed 2.30%; and (6) the fixed rate of interest payable by the Authority under the Exchange Agreement shall not exceed 6.0%.

Section 5. The Loan, the Note and the Exchange Agreement are special obligations of the Authority payable solely as provided in the Loan Agreement and the Exchange Agreement, respectively. The principal of, premium, if any, and interest on the Loan and the Note, and any payments due under the Exchange Agreement, shall not constitute an indebtedness of the City or the State of Colorado or any political subdivision thereof, and neither the City, the State of Colorado nor any political subdivision thereof shall be liable thereon, nor in any event shall the principal of, premium, if any, and interest on the Loan and the Note, or any payments due under the Exchange Agreement, be payable out of funds or properties other than the Pledged Revenue, as such term is defined in the Loan Agreement. Neither the Commissioners of the Authority nor any persons executing the Loan Agreement, the Note or the Exchange Agreement shall be liable personally on the Loan Agreement, the Note or the Exchange Agreement.

Section 6. After the Loan Agreement, the Note and the Exchange Agreement are entered into, this Resolution shall be and remain irrevocable, and may not be amended except in accordance with the Loan Agreement, until the Loan, the Note and the Exchange Agreement shall have been fully paid, canceled and discharged in accordance therewith.

Section 7. The Prior Bonds shall be paid and cancelled on the date of funding of the Loan, at a price equal to the par amount thereof plus accrued interest.

Section 8. If, for any reason, the funds on hand from the Loan shall be insufficient to make the payment of the principal of and accrued interest on the Prior Bonds, as the same shall be due and payable as provided in Section 7 above, the Authority shall forthwith deposit additional legally available funds as may be required fully to meet the amount due and payable on the Prior Bonds.

Section 9. The officers of the Authority are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution, including but not limited to the execution of such certificates and affidavits as may be reasonably required by Compass or the Exchange Agreement Provider.

Section 10. The Chair, the Vice Chairperson and the Executive Director are each hereby appointed as an Authorized Person, as defined in the Loan Agreement. Different or additional Authorized Persons may be appointed by resolution adopted by the Board and a certificate filed with Compass.

Section 11. All costs and expenses incurred in connection with the Loan and the transactions contemplated by this Resolution shall be paid either from the proceeds of the Loan or from legally available moneys of the Authority, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 12. The Board has received information from the professional advisors of the Authority as to the costs, risks and benefits of the Exchange Agreement. The Board, in evaluating the merits of the Exchange Agreement, has given consideration to the savings and debt management benefits to the citizens residing within the boundaries of the Authority. The Board hereby finds that the Exchange Agreement, as set forth in the ISDA Master Agreement relating to the Loan Agreement, including the Schedule thereto and the Confirmation thereunder, is in the best interests of the Authority. The Board hereby determines that the long term debt obligations of the Exchange Agreement Provider are rated in one of the two highest rating categories by one or more nationally recognized securities rating agencies which regularly rate such obligations.

Section 13. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 14. All bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or resolution or part thereof.

Section 15. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2009.

ATTEST:

\_\_\_\_\_  
Chair/Vice Chairperson of the Board of Commissioners

\_\_\_\_\_  
Secretary

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Attorney for the Authority

STATE OF COLORADO )  
 ) SS.  
 WESTMINSTER ECONOMIC )  
 DEVELOPMENT AUTHORITY )

I, the Secretary of the Westminster Economic Development Authority (the "Authority"), do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of Commissioners of the Authority (the "Board") at a regular meeting held on April 13, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of April 13, 2009, by an affirmative vote of a majority of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

3. The members of the Board were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Chair or Vice Chairperson of the Board, sealed with the Authority seal, attested by the Secretary of the Board and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Notice of the meeting of April 13, 2009, in the form attached hereto as Exhibit A, was posted in at the Westminster City Hall, 4800 W. 92nd Street, in the City of Westminster, not less than twenty-four hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said Authority affixed April 13, 2009.

(SEAL)

\_\_\_\_\_  
 Secretary

EXHIBIT A

(Form of Notice of Meeting)

# WEDA Agenda Item 3 B&C

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
April 13, 2009



**SUBJECT:** Public Hearing and Resolution No. 107 re 2009 Westminster Economic Development Authority Loan Supplemental Appropriation

**Prepared By:** Karen Creager, Special Districts Accountant

### Recommended Board Action

1. Hold a Public Hearing on the Westminster Economic Development Authority (WEDA) Budget Amendment for 2009.
2. Adopt Resolution No. 107 adopting an amendment to the 2009 WEDA budget as presented and appropriate the funds.

### Summary Statement

- Prior to the opening of this public hearing, the Board considered authorizing the Executive Director to enter into a variable rate loan agreement of up to \$69 million with Compass Mortgage Corporation and a related fixed to variable rate swap with Compass Bank to refinance the Series 2005 WEDA bonds.
- In anticipation of the Board approving the loan, the attached resolution was prepared for the Board's consideration to amend the 2009 budget for WEDA to appropriate the loan proceeds.
- A public hearing is required pursuant to Section 29-1-108 of the Colorado Revised Statutes.

**Expenditure Required:** \$69,000,000 for 2009

**Source of Funds:** Loan Proceeds



**Policy Issue**

Should the attached 2009 budget amendment be adopted by the Board?

**Alternative**

The alternative would be to not adopt an amendment to the 2009 budget. However, providing that the loan is approved by the Board, Budget Law, C.R.S. 29-1-109 requires that the budget be amended in order to authorize the expenditure of the loan proceeds.

**Background Information**

This supplemental appropriation was prepared in anticipation of the Board approving the time sensitive refinancing of the Series 2005 WEDA bond (the "Bonds"). In the previous agenda memo presented to the Board at this meeting, Staff detailed the steps necessary to refinance the Bonds that were issued to finance the construction of the public infrastructure improvements in the North Huron Urban Renewal Area. One step is to pay-off the balance of the Bonds with the loan proceeds. In order to properly reflect that transaction on the books of WEDA, the loan proceeds must be appropriated.

The attached resolution appropriates the maximum approved loan to accomplish the refinancing as previously authorized by the Board. When the refinance is completed, the actual amount of the loan will be recorded on WEDA's books. Appropriating the maximum amount allows for the appropriation to be recorded at the time of the approval of the refinance instead of Staff having return to the Board at a later date for the appropriation. This also allows Staff to move quickly to finalize the agreements with Compass Bank in this critical transaction.

The adjustments will amend Revenue and Expenditure accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Loan Proceeds	6800.46000.0183	\$0	<u>\$69,000,000</u>	\$69,000,000
Total Change to Revenues			<u>\$69,000,000</u>	

**EXPENDITURES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Use	68010900.78800.0183	\$0	<u>\$69,000,000</u>	\$69,000,000
Total Change to Expenses			<u>\$69,000,000</u>	

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **107**

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

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**2009 WEDA BUDGET AMENDMENT**

WHEREAS, the Board of Directors of the Westminster Economic Development Authority (WEDA) must adopt an operating budget prior to each fiscal year; and

WHEREAS, a budget for 2009/2010 was adopted by the Board of Directors on October 13, 2008; and

WHEREAS, there is the need for WEDA to refinance the Series 2005 WEDA Bonds to reduce interest costs and preserve fund balances for future debt service; and

WHEREAS, the Board previously authorized a loan agreement with Compass Bank to accomplish the refinance; and

WHEREAS, proper notice for the loan budget amendment was published on April 9, 2009 pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for the loan budget amendment was held on April 13, 2009 pursuant to the requirements of Section 29-1-109, Colorado Revised Statutes; and

WHEREAS, no objections have been filed by any elector of WEDA to the proposed amendment;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority:

1. The 2009 budget increase shall be allocated to WEDA Revenue and Expenditure accounts as described in the WEDA Agenda Item 3 B&C, April 13, 2009 (a copy of which may be obtained from the City Clerk) .
2. That the City of Westminster Finance Director, Tammy Hitchens, is hereby directed to cause a certified copy of the budget amendment to be filed in the office of the Division of Local Government, Department of Local Affairs, 1313 Sherman Street, Room 520, Denver, Colorado, 80203.

PASSED AND ADOPTED this 13th day of April, 2009.

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Vice Chairperson

ATTEST:

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Secretary