



CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Proclamation re Graduating Seniors on the 2012-2013 Youth Advisory Panel
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda
 - A. Financial Report for April 2013
 - B. Special Legal Services for Formal Tax Hearings
 - C. Third Amendment to the Minor Home Repair Program Agreement with Brothers Redevelopment Inc.
 - D. IGA with Clear Creek County Sheriff's Department re Detention of Prisoners at Clear Creek County Jail
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Councillor's Bill No. 20 re 2013 1st Quarter Budget Supplemental Appropriation
 - B. Councillor's Bill No. 21 re Concessionaire Agreement with Top One, Inc. for Christopher Fields
 - C. Councillor's Bill No. 22 re Early Supplemental Appropriation for Promenade Light Towers Electrical Conversion
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
 - A. City Council
 - B. Executive Session - Consultation with City Attorney to discuss and provide direction on the proposed acquisition of property for the City's 87th and Wadsworth Lift Station Replacement Project, pursuant to W.M.C. section 1-11-3(C) (2), (7) and (8) and C.R.S. 24-6-402 (4)(a), (b) and (e).
13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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



WESTMINSTER
Strategic Plan
2012-2017
Goals and Objectives

STRONG, BALANCED LOCAL ECONOMY

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



FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

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



SAFE AND SECURE COMMUNITY

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



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

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



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

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



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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MAY 13, 2013, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Atchison, to approve the minutes of the regular meeting of April 22, 2013, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that Community Pride Day had been a huge success with over 1,500 volunteers cleaning up public parks, opens spaces and rights-of-way. The Rotary Club had grilled hot dogs and hamburgers for volunteers after the clean-up activities were done. This event, jointly sponsored by the City and Hyland Hills Park and Recreation District, was one of the most successful held each year.

Memorial Day would fall on Monday, May 27, and the Council meeting that would normally occur on the fourth Monday of the month had been rescheduled to May 20. City offices would be closed on May 27 to observe the holiday.

COUNCIL REPORTS

Councillor Briggs reported that new memorial bricks would be dedicated at the Armed Forces Memorial Garden on Saturday, May 18. Veterans would be honored at the Westminster Grange after the brick dedication ceremonies. He invited the public to attend.

Councillor Atchison reported that in conjunction with the ceremonies at the Armed Forces Tribute Garden, a pancake breakfast would be held from 8-10:30 a.m. at Valley Bank. All donations collected would be dedicated to maintenance of the garden.

Councillor Lindsey reported that the Council's second telephone town hall meeting had been a success. Over 1,600 people were connected to the phone call. Some listened and some participated in conversation. The meeting provided an opportunity to ask some polling questions, i.e., should RTD (Regional Transportation District) build the Northwest Rail, to which 87% of the participants answered yes.

Mayor McNally reminded everyone that the Westminster Historical Society was celebrating its 25th Anniversary. Special activities were planned each weekend in May and the Bowles House was open from 10 a.m. to 3 p.m. on Saturdays. She encouraged the public to attend the scheduled activities and learn of Westminster's heritage.

PROCLAMATIONS

Councillor Kaiser read the Public Works Week proclamation and presented it to Public Works staff members Jackie Bowers, Barb Cinkosky, Brock Hufford, Tom Settle, and Bob Krugmire. Public Works Week was the week of May 19 to 25. This year's theme focused on the quality of life brought to communities around the world "Because of Public Works."

Mayor McNally read a proclamation in recognition of the efforts of Standley Lake High School students and teachers who had organized a Day Without Hate on April 26. She presented the proclamation to Emily Williamson, the student organizer, and teachers Ben Reed and Christy Hayashi, sponsors. In 2007, students had formed a Day Without Hate Club to draw attention to school violence following the Virginia Tech shootings. The goal of Club members was to promote awareness of nonviolence, respect and unity within the educational system.

Councillor Briggs read a proclamation declaring May to be Mental Health Month. He presented the proclamation to Lindy Schultz of Adams County Community Reach and thanked her for the compassionate services her organization provided to Westminster residents from all walks of life.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: based on the recommendation of the City Manager, find that the public interest would be best served by a negotiated contract with North Star Emergency Vehicles for the purchase of one replacement Ford Braun Ambulance in the amount of \$122,223; find that the public interest would be best served by waiving the bidding requirement and authorizing Staff to proceed with the purchase of 11 in-vehicle gateways (mobile Wi-Fi) for fire apparatus, along with the related server hardware and licensing with In Motion Technology Inc. for an amount not to exceed \$55,890; authorize the City Manager to execute a \$1,359,763 contract for 2013 Chipseal application with options for two additional one-year renewals (2014 and 2015) to the low bidder, A-1 Chipseal Co., and authorize a contingency of \$10,000 for a total 2013 project budget of \$1,369,763; authorize the City Manager to execute a \$208,427 contract with Burns and McDonnell Engineering Company, Inc. for preliminary design services related to the Northridge Tank No. 3 project and authorize a 10% contingency in the amount of \$20,843 for a total project budget of \$229,270; authorize the City Manager to execute a contract with the low bidder, Brannan Construction, Inc., in the amount of \$49,379 for construction services for the West 122nd Avenue Reclaimed Water Connections and authorize a 10% contingency in the amount of \$4,938 for a total project expenditure of \$54,317; authorize the City Manager to execute a \$17,823 change order to the existing contract with American Mechanical Services (AMS) of Colorado Springs Inc. for the addition of three supply side duct-fan blowers and ancillary testing and equipment to complete the Heritage Clubhouse HVAC retrofit project to design parameters; approve the Memorandum of Understanding (MOU) among the Colorado High Performance Transportation Enterprise, the Colorado Department of Transportation, and the U.S. 36 Coalition regarding the U.S. 36 Managed Lanes/Bus Rapid Transit Project and authorize the Mayor to sign the MOU as the City of Westminster's representative on the U.S. 36 Mayors and Commissioners Coalition; final passage on second reading of Councillor's Bill No. 15, providing for a supplemental appropriation of funds to the 2013 budget of the General Capital Improvement relative to the receipt of funds awarded to the City from the State Historic Fund to be used towards the restoration of the Shoenberg Farm Milk House; and final passage on second reading of Councillor's Bill No. 16 authorizing the City Manager to execute and implement an Economic Development Agreement with Air Comm Corporation.

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

RESOLUTION NO. 17 AUTHORIZING THE ADAMS COUNTY DISASTER MUTUAL AID ASSISTANCE IGA

Councillor Kaiser moved, seconded by Councillor Lindsey, to adopt Resolution No. 17 authorizing the City Manager to execute an Intergovernmental Agreement with Adams County pertaining to Disaster Mutual Aid Assistance. The motion carried unanimously at roll call.

COUNCILLOR'S BILL NO. 18 AMENDING A DEFINITION IN TITLE V, CHAPTER 14, W.M.C.

Councillor Lindsey moved to pass on first reading Councillor's Bill No. 18 amending Westminster Municipal Code Section 5-14-11 by adding athletic fields to the definition of an Outdoor Sports and Recreation Facility under the optional premise liquor license. Councillor Kaiser seconded the motion and it carried unanimously at roll call.

COUNCILLOR’S BILL NO. 19 TO APPROPRIATE GRANT FUNDS TO J RIDGEWAY MEMORIAL PARK

It was moved by Councillor Briggs and seconded by Councillor Major to pass as an emergency ordinance Councillor’s Bill No. 19 authorizing a supplemental appropriation in the amount of \$190,530 reflecting the City’s receipt of \$50,000 from the Colorado Garden and Home Show and \$140,530 from the Westminster Legacy Foundation for Jessica Ridgeway Memorial Park (JRMP). The motion passed unanimously on roll call vote.

JRMP CONTRACT AWARD, PLAYGROUND PIECE PURCHASE, AND MISCELLANEOUS PURCHASES

Upon a motion by Councillor Briggs, seconded by Councillor Major, the Council voted unanimously to authorize the City Manager to enter into a contract with T2 Construction, Inc. in the amount of \$208,198 for the construction renovation of the Jessica Ridgeway Memorial Park (JRMP) with a \$20,819 contingency for construction of the park; authorize Staff to purchase a track ride with ribbon embellishments for JRMP from Landscape Structures for \$25,000; and authorize Staff to purchase other miscellaneous items for JRMP, including a sculpture and a donor recognition ribbon for \$23,345.

ADJOURNMENT

With no further business to come before the City Council, it was moved by Councillor Kaiser, seconded by Councillor Major, to adjourn. The motion passed and the Mayor adjourned the meeting at 7:25 p.m.

ATTEST:

Mayor

City Clerk



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
May 20, 2013

SUBJECT: Proclamation re Graduating Seniors on the 2012-2013 Youth Advisory Panel

Prepared By: Cindy McDonald, Staff Liaison
Melissa Collison, Staff Liaison

Recommended City Council Action

Mayor Pro Tem Winter will present a proclamation and certificates acknowledging the service of the graduating seniors from the 2012-2013 Youth Advisory Panel.

Summary Statement

City Council is requested to recognize the five outgoing senior Youth Advisory Panel (YAP) members. All five members did an outstanding job representing their respective schools and the entire community. They also all demonstrated true service and leadership during their tenure on the Panel. City Council is requested to honor each outgoing member with a certificate. Mayor Pro Tem Faith Winter will present the proclamation and certificates.

- Danny Yeager (Westminster High School) began his junior year, serving as Chairperson his senior year.
- Bobbi Strange (Academy of Charter Schools) began the Panel in her freshman year and is the current Vice-Chairperson.
- Vince Alcon (Westminster High School) began the Panel in his junior year and served as the Treasurer his senior year.
- Ali Starr (Westminster High School) is the Panel's outgoing Public Information Officer and also served since her junior year.
- Meagan White (Academy of Charter Schools) has served as a dedicated YAP member all four years of high school.

Expenditure Required: \$50

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

On September 13, 1999, City Council adopted Resolution No. 68 creating the Westminster Youth Advisory Panel. YAP is made up of two or more representatives from local area high schools as well as "at large" members who are home schooled within the City. Their purpose is to advise City Council and City Staff members of the interests and concerns of youth and teens in the City today. These matters include development of citywide community and/or neighborhood programs that address both the short- and long-term needs of Westminster's youth and teen population. In addition to advising city leaders, they give back to the community by taking part in monthly community service projects which consist of food and clothing drives and assisting with city events and engaging in other projects.

On October 25, 1999, the City Council appointed the first Youth Advisory Panel. Since 1999, the panel has worked with Staff on a variety of issues. The term of each panelist is one year, with reappointment possible up to four terms.

Since 1999, the Youth Advisory Panel has been very active in the community helping at the Holy C.O.W. Stampede, (a Parks, Recreation and Libraries race) to raise proceeds for youth programs, providing support for the Westminster Christmas Lighting Ceremony, assisting at the annual Father Daughter Ball, participating at Westminster Pride Day and most recently participating in the Westminster Strategic Planning in the Community Forum. As active participants in the community, YAP members have fulfilled their goal of reaching out to the Westminster community in order to make a difference in the places where members attend school and live. They have also worked with Broomfield Lutheran Church to make and serve sandwiches to the homeless on the streets of downtown Denver. Additional project endeavors include gathering, sorting, sizing, and hanging clothing donations for Precious Child and volunteering at Have-a-Heart helping to distribute food and clothing to School District #50 families.

The Panel will continue these very diverse and ambitious community service goals for the 2013/2014 school year.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Proclamation

WHEREAS, the City Council of the City of Westminster believes that our youth should share with their community leaders the responsibility in addressing their needs, desires, challenges and issues, in molding their own futures; and

WHEREAS, the City values its youth and desires to advance and promote their special needs and interests and therefore created the Westminster Youth Advisory Panel on September 13, 1999; and

WHEREAS, currently the Panel has had eleven members appointed for the 2012-2013 school year; and

WHEREAS, these Westminster Youth Advisory Panel members will be graduating from High School and departing from the 2012-2013 Youth Advisory Panel; and

WHEREAS, it is important to acknowledge the contributions made by exiting panel members.

NOW THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby recognize and show appreciation to the following graduating seniors who have served on the Youth Advisory Panel, representing their schools and Westminster Youth:

Danny Yeager	Westminster High School	Outgoing Chairperson	2 Years Service
Bobbi Strange	Academy of Charter Schools	Outgoing Vice-Chairperson	4 Years Service
Vince Alcon	Westminster High School	Outgoing Treasurer	2 Years Service
Ali Starr	Westminster High School	Outgoing Panelist	2 Years Service
Megan White	Academy of Charter Schools	Outgoing PIO	4 Years Service

Signed this 20th day of May, 2013.

Nancy McNally, Mayor



Agenda Memorandum

City Council Meeting
May 20, 2013



SUBJECT: Financial Report for April 2013

Prepared By: Tammy Hitchens, Finance Director

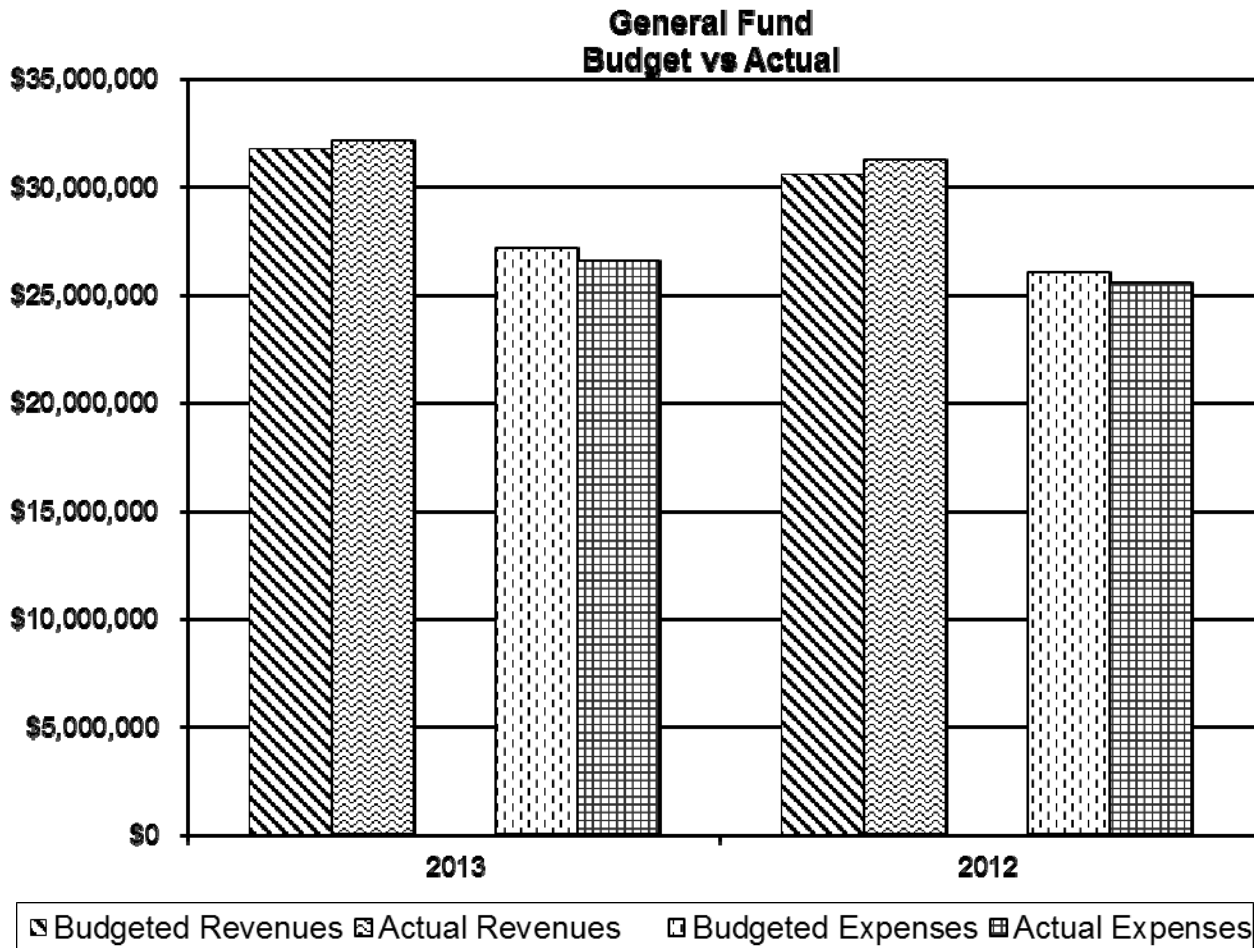
Recommended City Council Action

Accept the Financial Report for April as presented.

Summary Statement

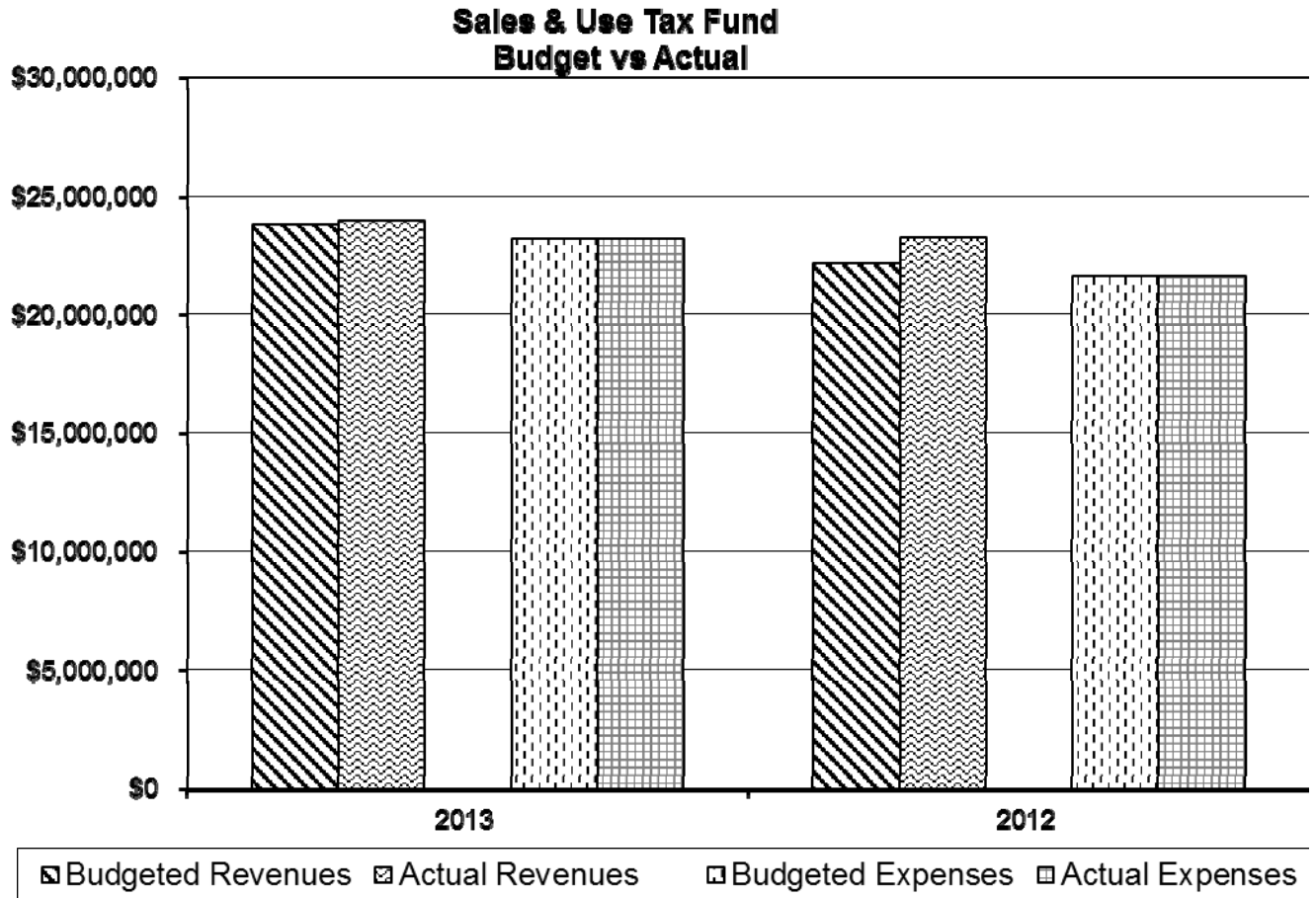
City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, "budget" refers to the pro-rated budget. The budget numbers that are presented reflect the City's amended adopted budget. Both revenues and expense are pro-rated based on 10-year historical averages.

The General Fund revenues exceed expenditures by \$5,573,509. The following graph represents Budget vs. Actual for 2012-2013.

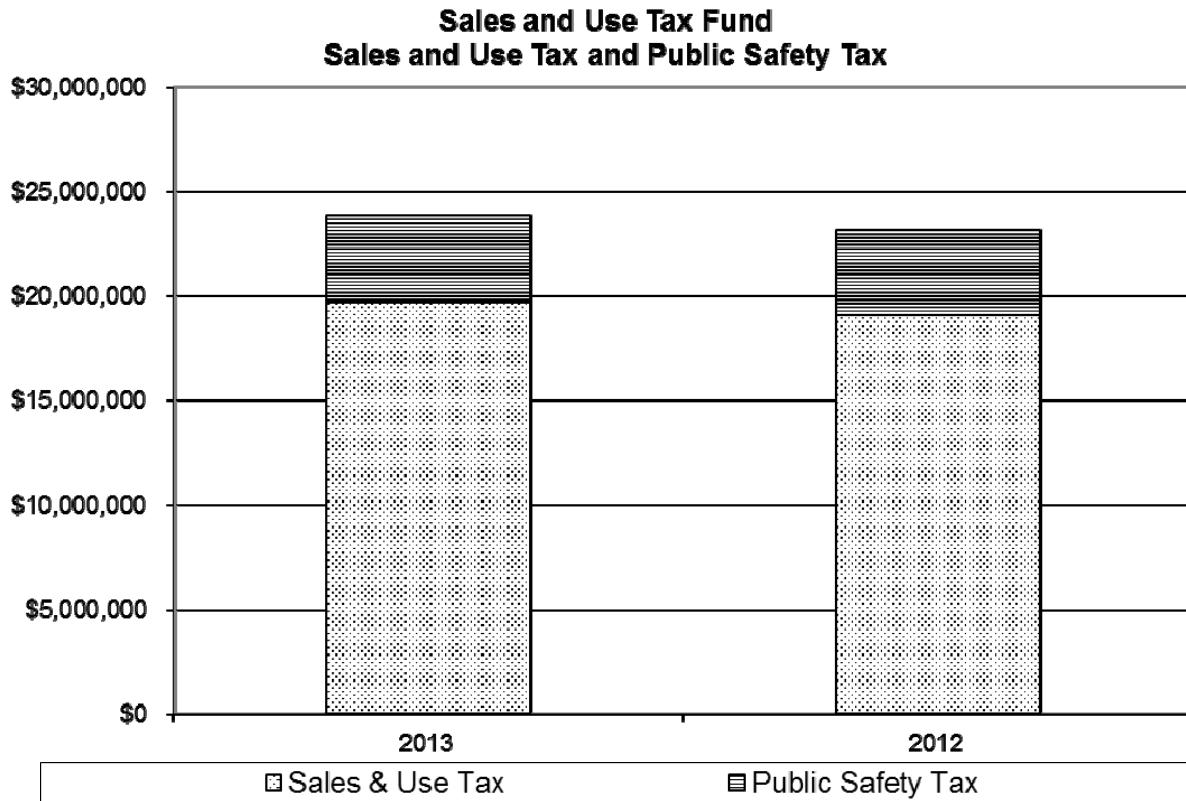


The Sales and Use Tax Fund revenues exceed expenditures by \$731,527. On a year-to-date cash basis, total sales and use tax is up 3.1% from 2012. Key components are listed below:

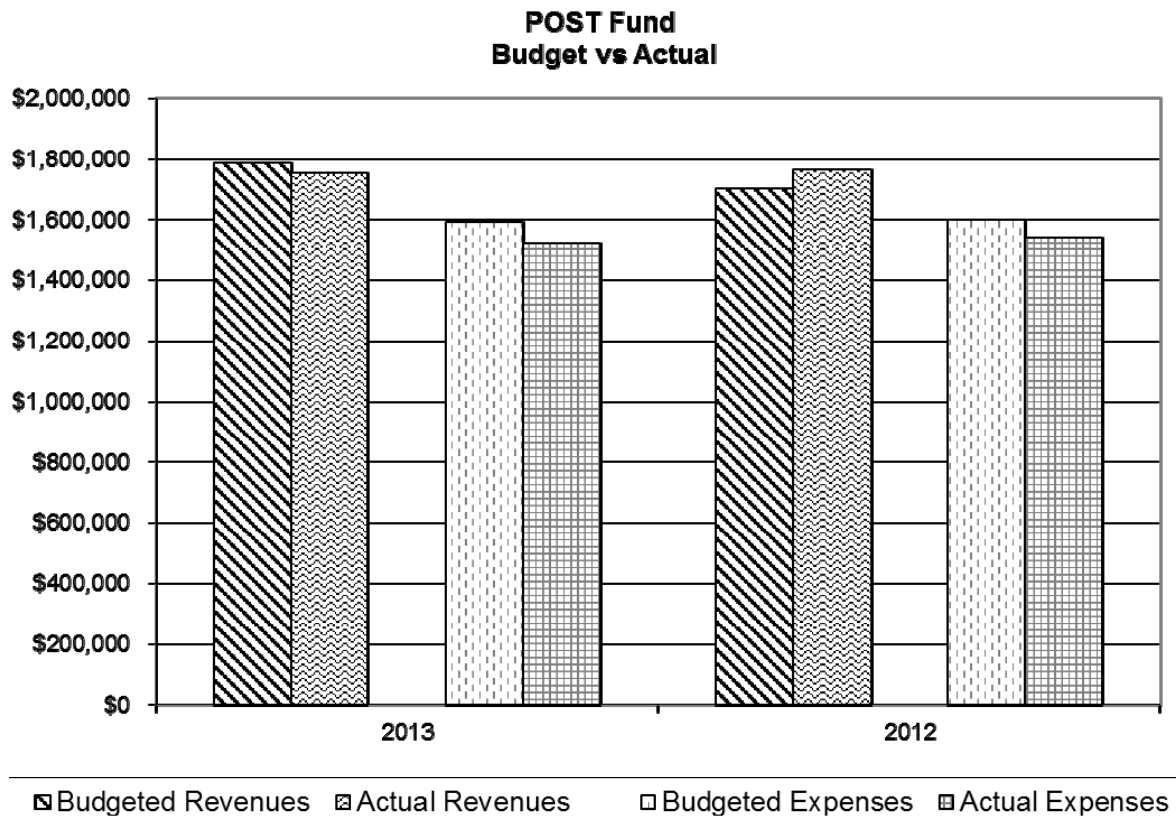
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 2.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 57.3% of all collections, are up 1.1% for the month.
- Urban renewal areas make up 40.7% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 85.0% of this money is being retained for General Fund use.



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

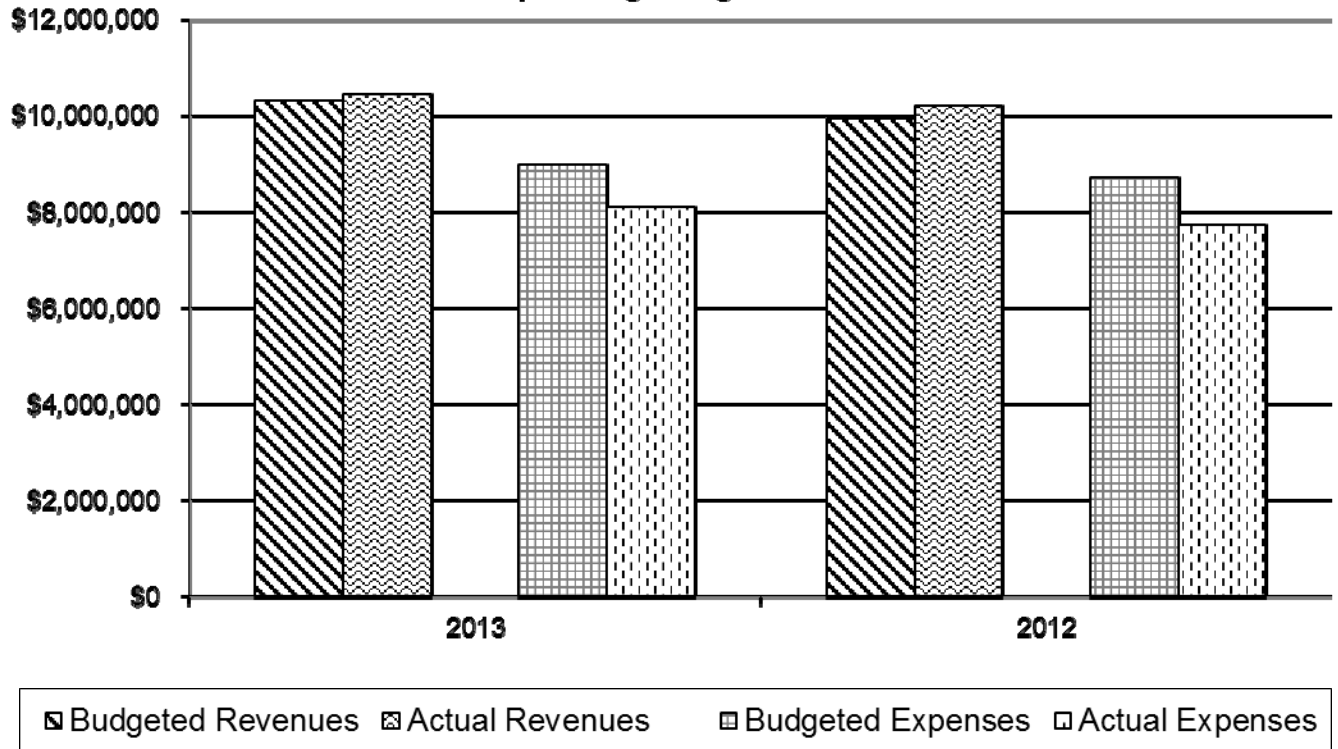


The Parks Open Space and Trails Fund revenues exceed expenditures by \$231,988.



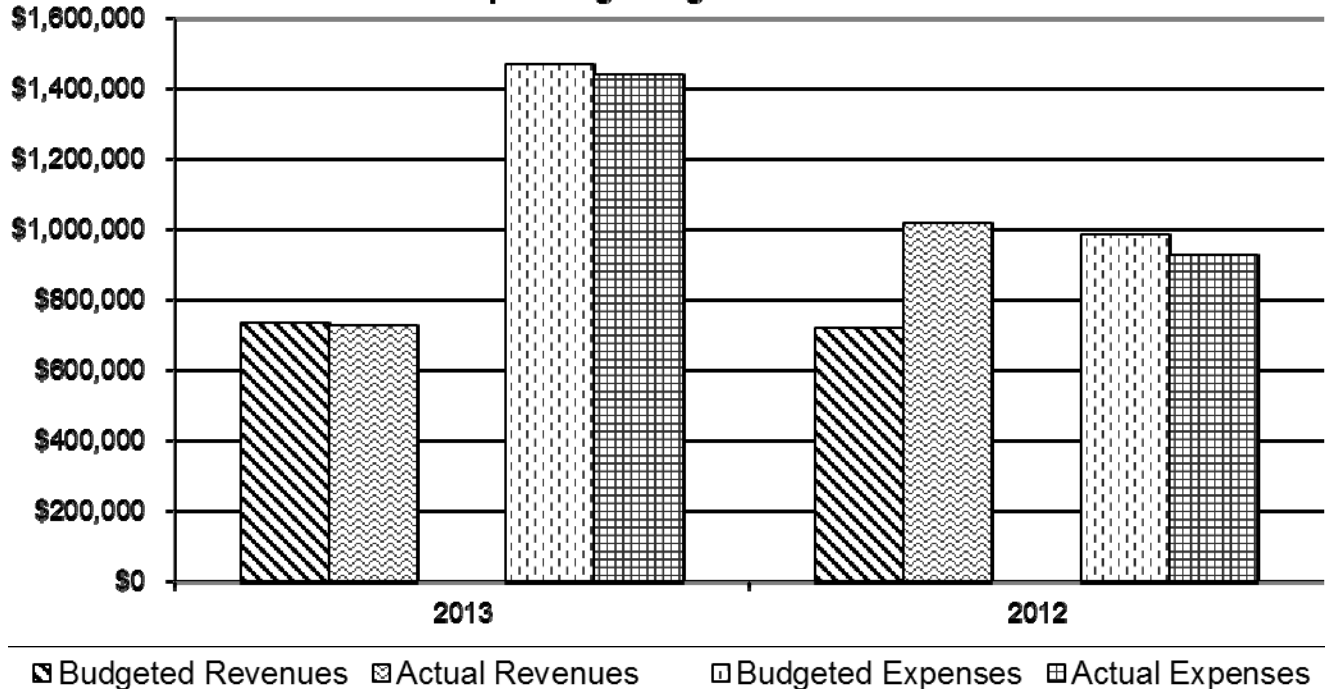
The combined Water & Wastewater Fund revenues exceed expenditures by \$3,599,081. Operating revenues exceed operating expenditures by \$2,346,451. \$14,984,540 is budgeted for capital projects and reserves.

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



The combined Golf Course Fund expenditures exceed revenues by \$227,907

**Golf Course Enterprise
Operating Budget vs Actual**



At this time in 2012, green fees, cart rental, driving range fees, property tax receipts, and transfers were higher. The snowy Spring decreased the number of rounds played.

Policy Issue

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

Alternative

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

Background Information

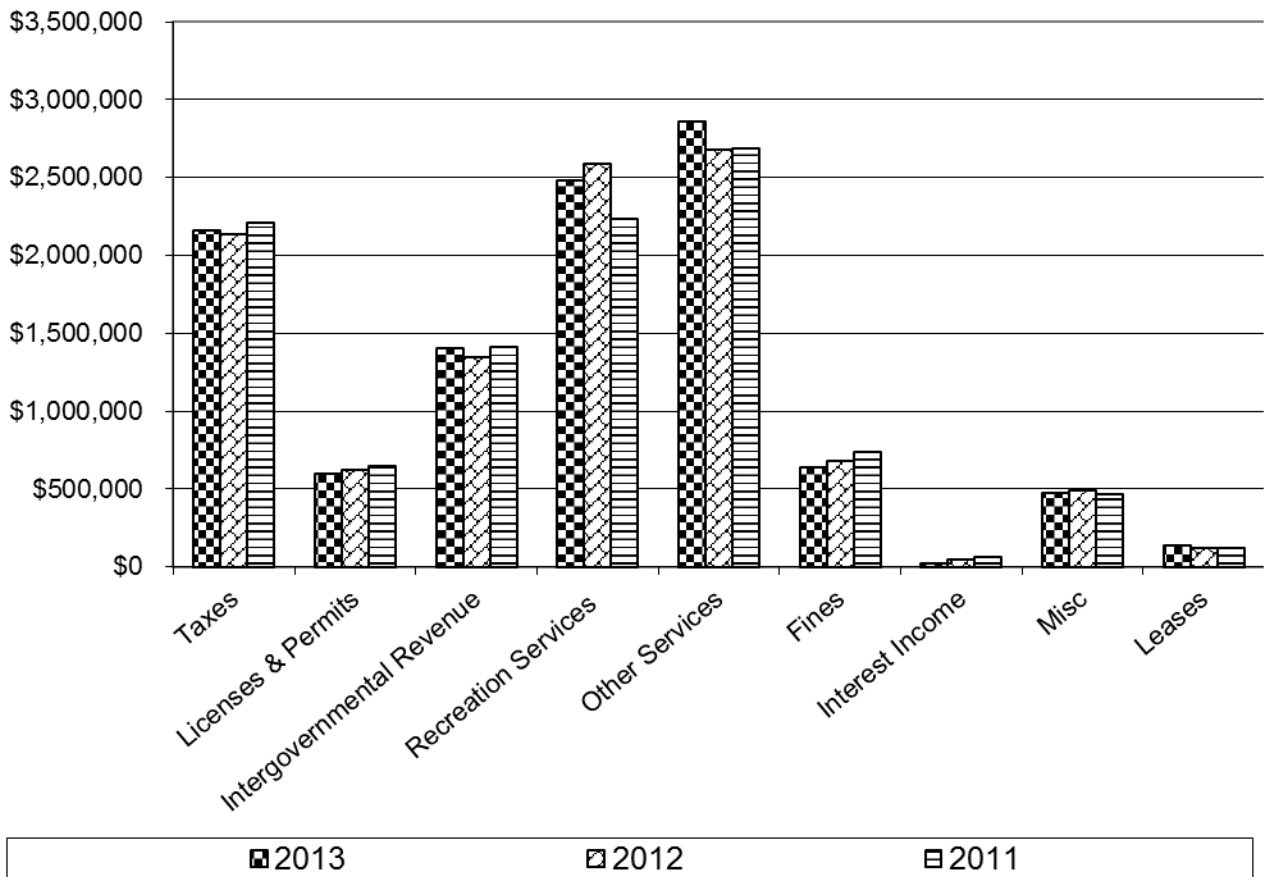
This section includes a discussion of highlights of each fund presented.

General Fund

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

The following chart represents the trend in actual revenues from 2011-2013 year-to-date.

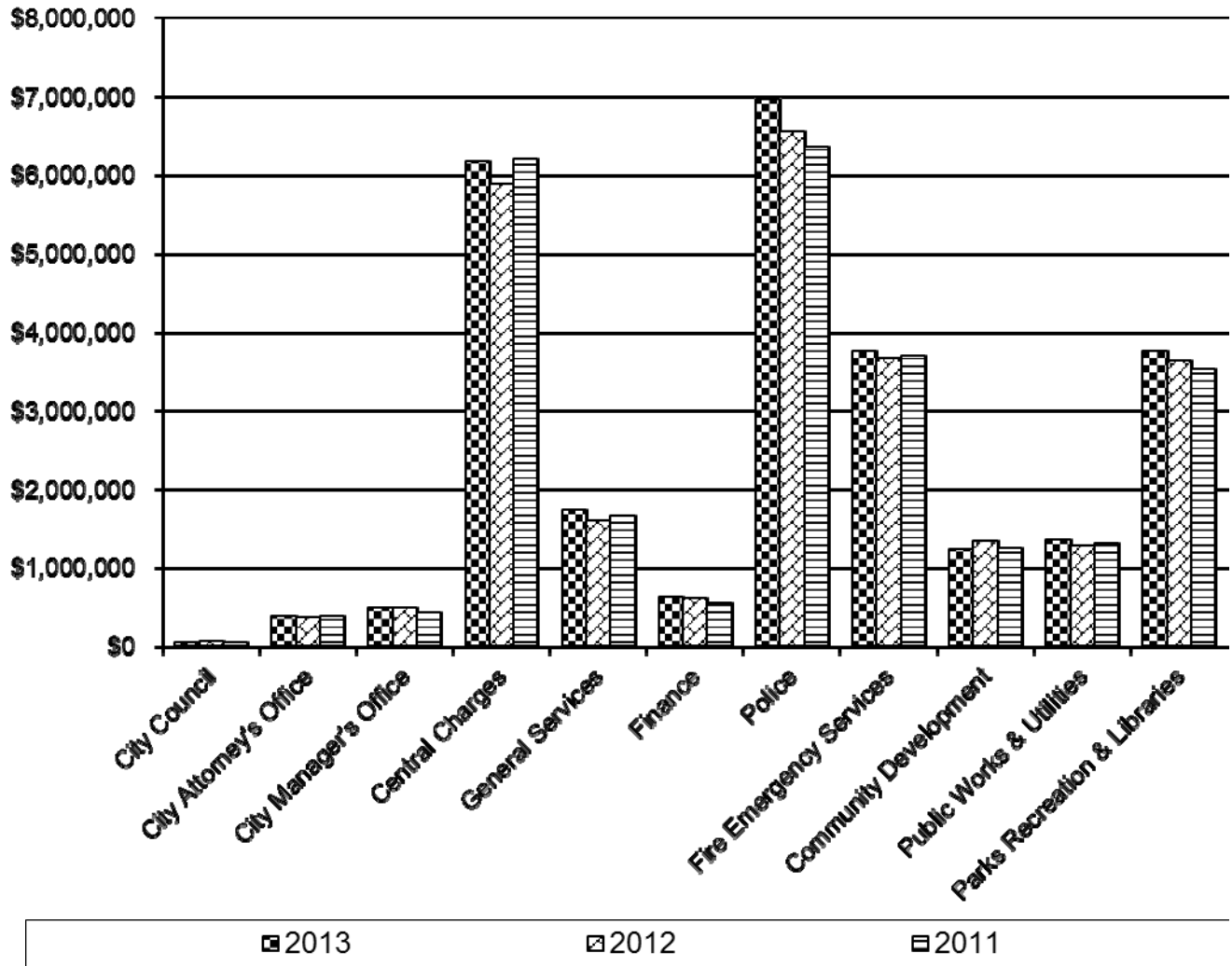
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2011-2013**



The Other Services revenue variance between years is primarily attributable to Franchise and Emergency Medical Service Fees.

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2011-2013.

**General Fund Expenditures by Function, less Other Financing Uses
2011-2013**

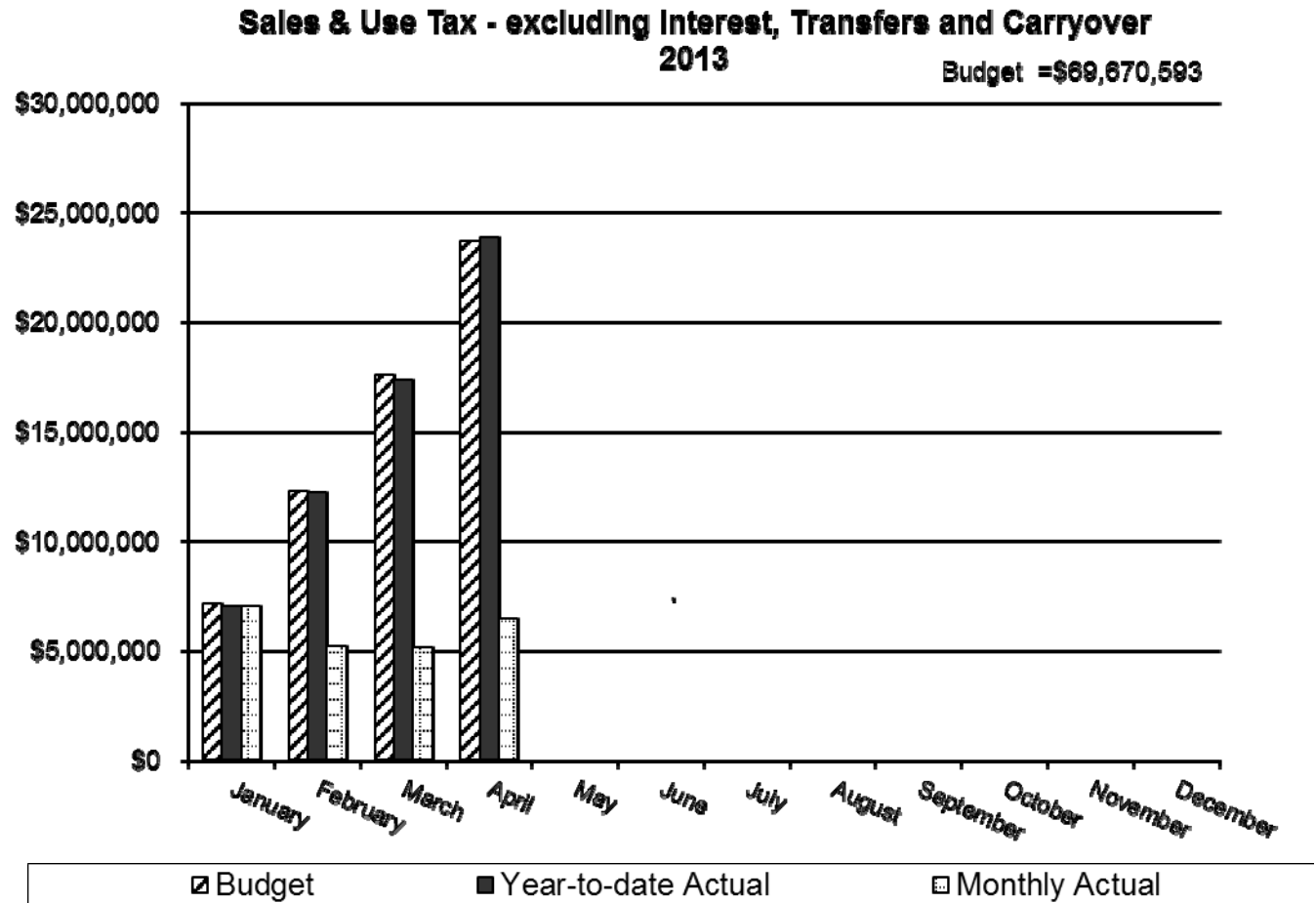


Central Charges expenditures is higher than 2012 mainly due to increased memberships fees. The Police expenditure variance between years are primarily due to an increase in contract services and equipment replacement fees.

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

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

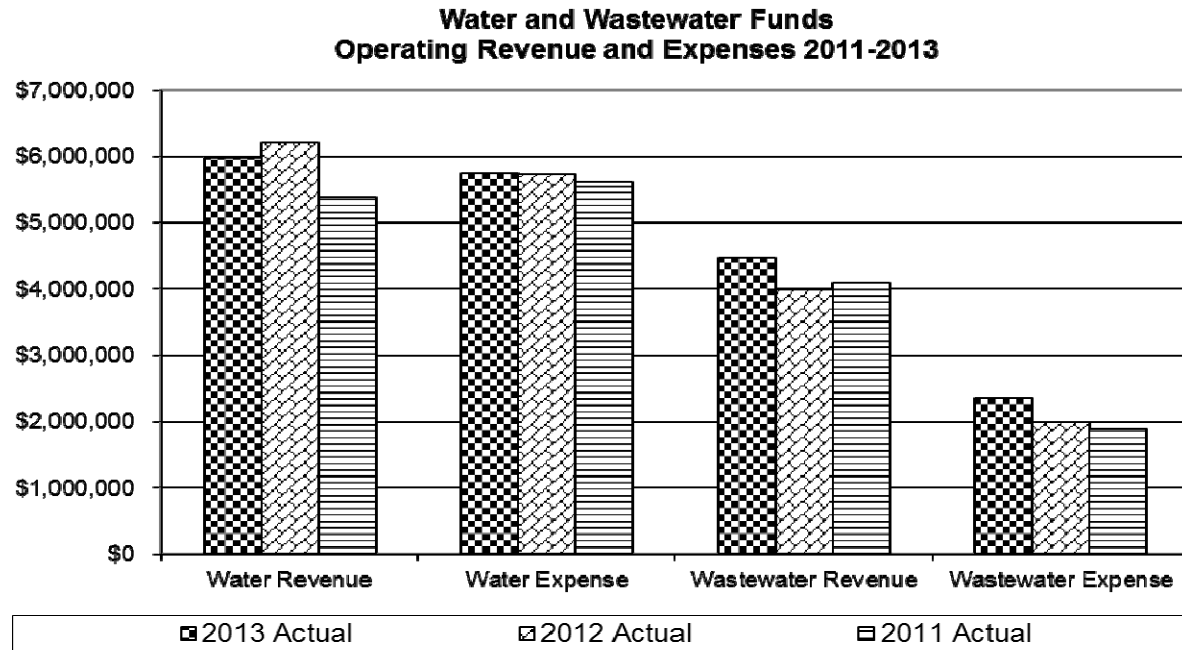
This chart indicates how the City’s Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.



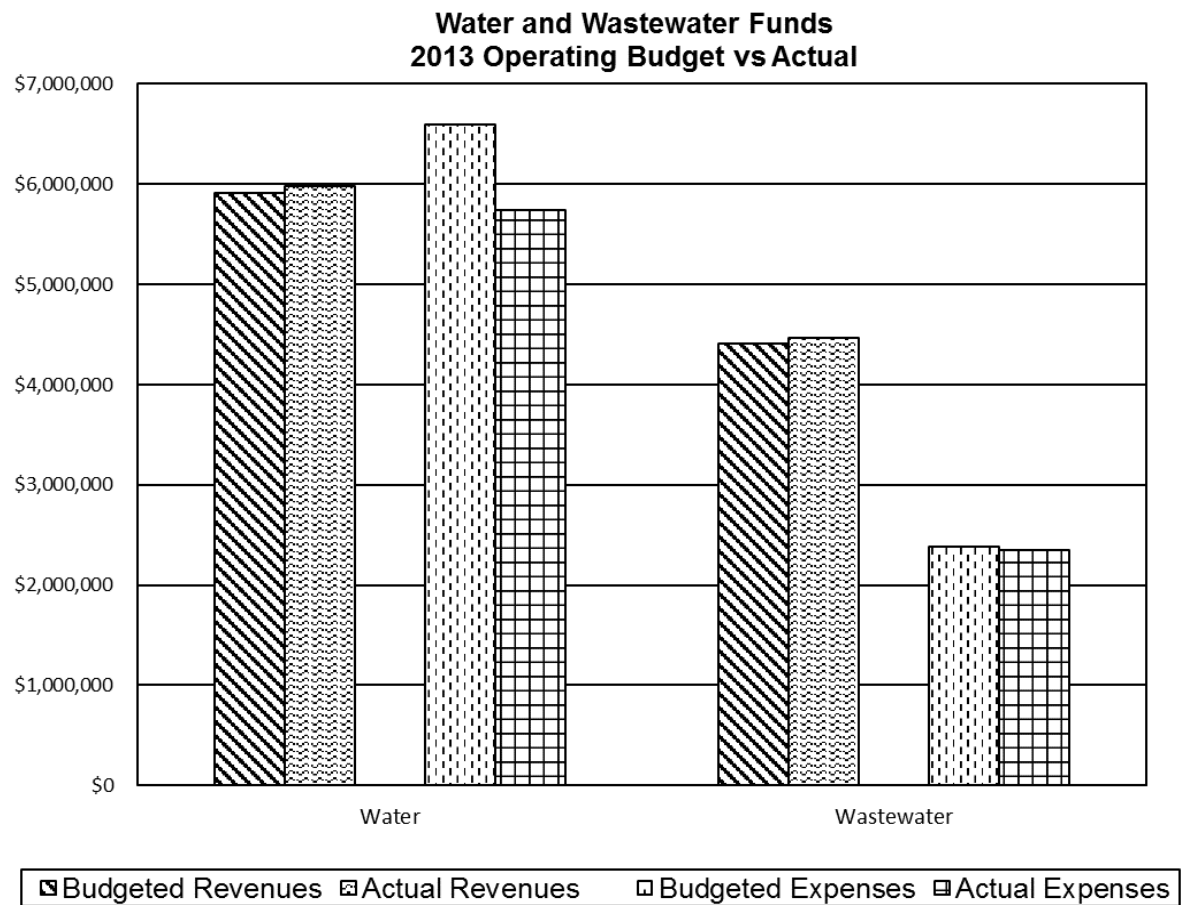
Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

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



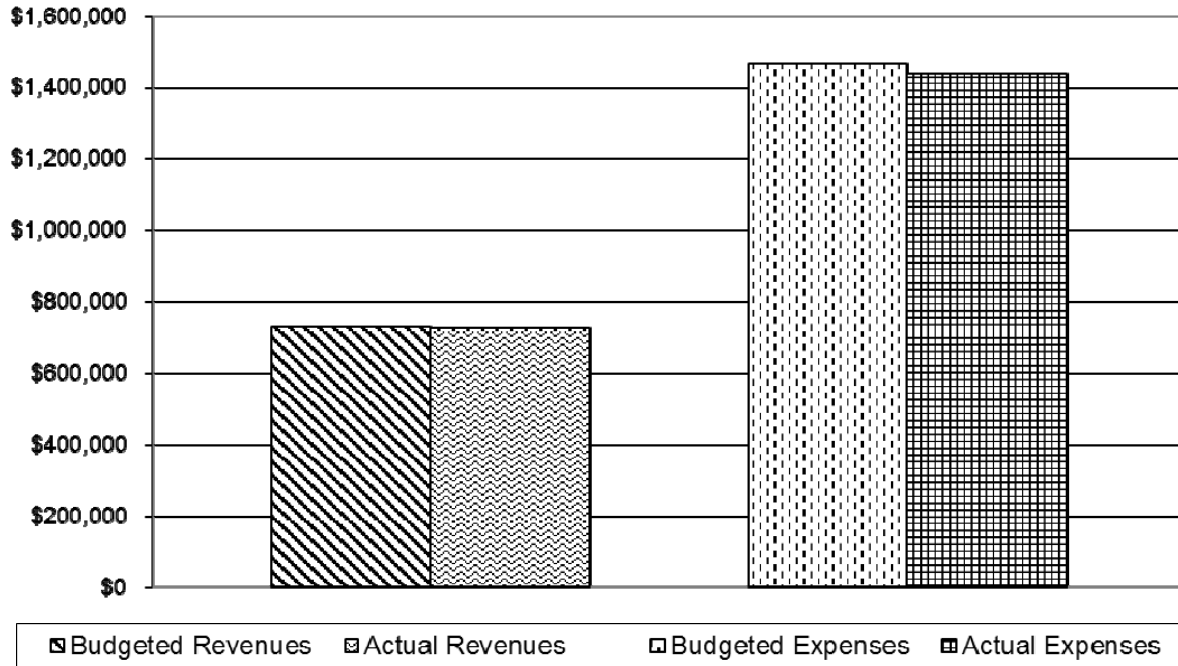
The Water Fund revenue variance is due to the effect of climatic variations on water consumption as well as changes in billing rates. 2013 Wastewater revenues are also up due to changes in billing rates. 2013 Wastewater expenses exceed prior years due to capital purchases for field operations.



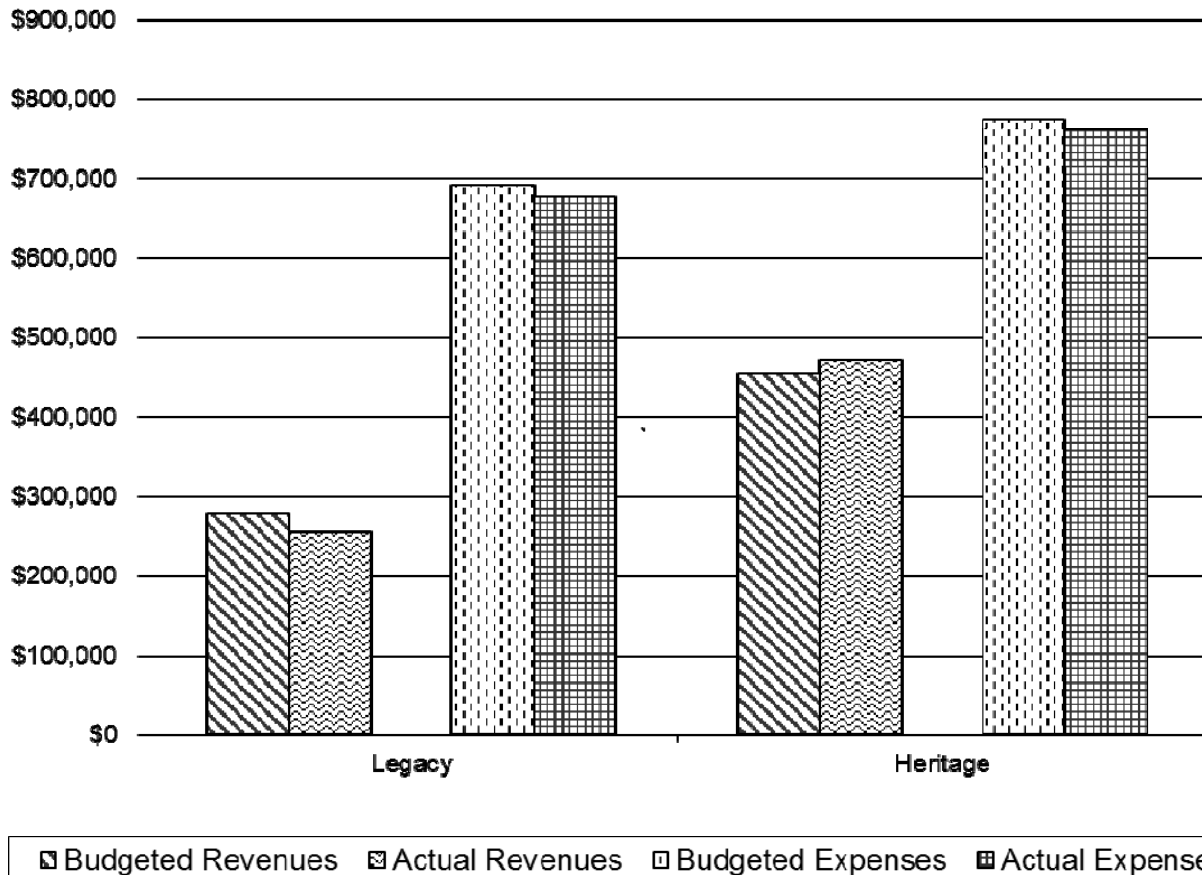
Golf Course Enterprise (Legacy and Heritage Golf Courses)

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

**Combined Golf Courses
2013 Operating Budget vs Actual**

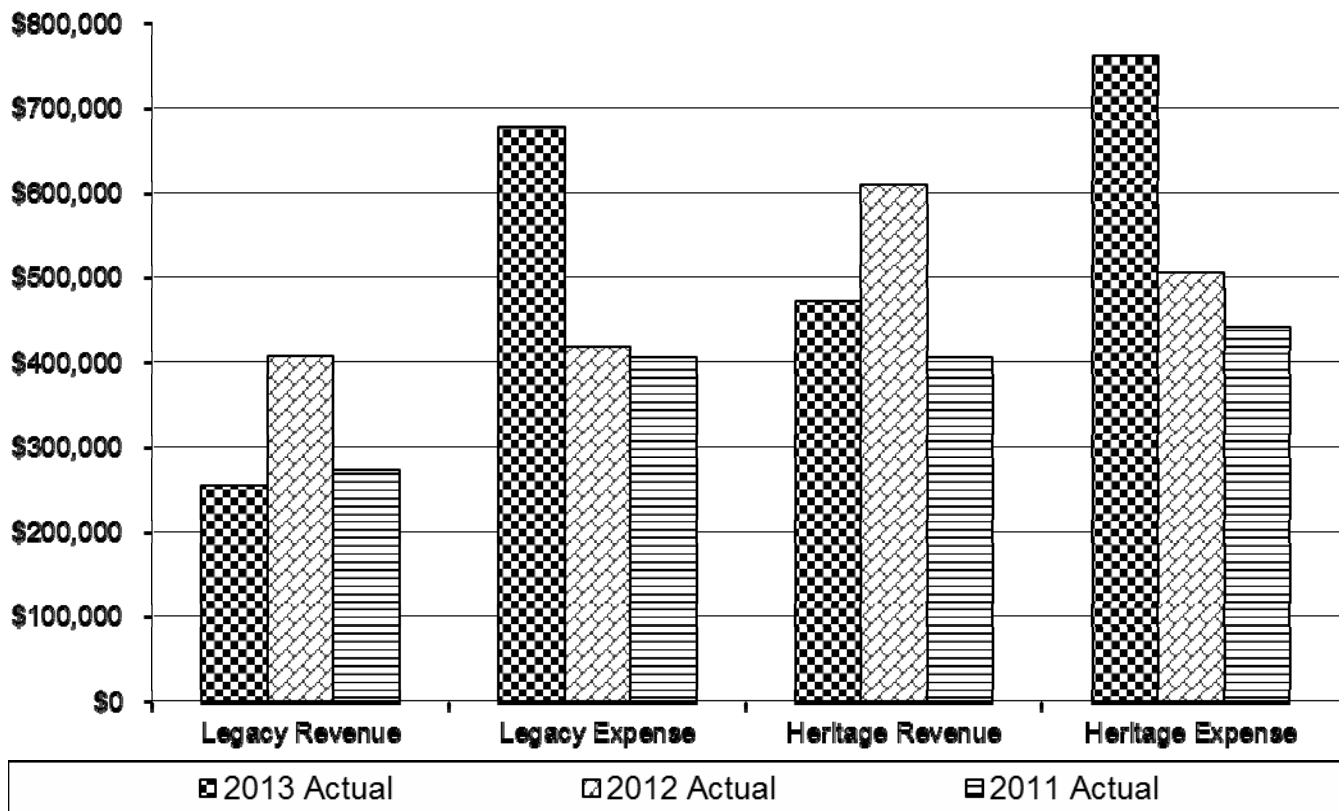


**Legacy and Heritage Golf Courses
2013 Operating Budget vs Actual**



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

**Legacy and Heritage Golf Courses
Operating Revenue and Expenses 2011-2013**



The 2012 revenue variance at both courses is due primarily to charges for services, including driving range and green fees. Transfer revenue decreased in 2011 as a result of savings from refunding of the Heritage at Westmoor revenue bonds.

The 2012 expenditure variance for both courses is due primarily to the purchase of golf carts.

This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Financial Statements
- Shopping Center Report

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,729,500	2,241,791		2,157,185	(84,606)	96.2%
Licenses & Permits	1,619,750	510,065		599,184	89,119	117.5%
Intergovernmental Revenue	5,030,446	1,271,957		1,406,679	134,722	110.6%
Charges for Services						
Recreation Services	6,710,438	2,285,840		2,478,955	193,115	108.4%
Other Services	9,878,856	2,799,084		2,862,222	63,138	102.3%
Fines	2,260,000	747,116		638,780	(108,336)	85.5%
Interest Income	125,000	30,307		22,783	(7,524)	75.2%
Miscellaneous	1,655,506	359,395	(1)	472,913	113,518	131.6%
Leases	401,779	133,090		133,090	0	100.0%
Interfund Transfers	64,049,819	21,349,940		21,349,940	0	100.0%
Total Revenues	<u>97,461,094</u>	<u>31,728,585</u>		<u>32,121,731</u>	<u>393,146</u>	<u>101.2%</u>
Expenditures						
City Council	254,094	76,166		54,105	(22,061)	71.0%
City Attorney's Office	1,256,450	382,543		388,022	5,479	101.4%
City Manager's Office	1,567,013	479,868		489,755	9,887	102.1%
Central Charges	25,508,631	6,116,521		6,178,848	62,327	101.0%
General Services	5,994,825	1,839,800		1,742,434	(97,366)	94.7%
Finance	2,110,661	638,100		627,026	(11,074)	98.3%
Police	21,330,429	6,715,627		6,963,176	247,549	103.7%
Fire Emergency Services	12,525,053	3,895,741		3,761,147	(134,594)	96.5%
Community Development	4,202,436	1,312,928		1,229,926	(83,002)	93.7%
Public Works & Utilities	8,039,149	1,613,584		1,351,730	(261,854)	83.8%
Parks, Recreation & Libraries	14,672,353	4,067,183		3,762,053	(305,130)	92.5%
Total Expenditures	<u>97,461,094</u>	<u>27,138,061</u>		<u>26,548,222</u>	<u>(589,839)</u>	<u>97.8%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>4,590,524</u>		<u>5,573,509</u>	<u>982,985</u>	

(1) Miscellaneous revenue includes a substantial purchasing card rebate and the annual Pepsi sponsorship fee

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	47,601,952	16,661,958		16,827,164	165,206	101.0%
Sales Tx Audit Revenues	724,000	241,092		239,357	(1,735)	99.3%
S-T Rev. STX	<u>48,325,952</u>	<u>16,903,050</u>		<u>17,066,521</u>	<u>163,471</u>	101.0%
Use Tax						
Use Tax Returns	8,017,000	2,352,705		2,196,521	(156,184)	93.4%
Use Tax Audit Revenues	785,000	261,405		414,905	153,500	158.7%
S-T Rev. UTX	<u>8,802,000</u>	<u>2,614,110</u>		<u>2,611,426</u>	<u>(2,684)</u>	99.9%
Total STX and UTX	<u>57,127,952</u>	<u>19,517,160</u>		<u>19,677,947</u>	<u>160,787</u>	100.8%
Public Safety Tax						
PST Tax Returns	11,883,683	4,073,018		4,035,217	(37,801)	99.1%
PST Audit Revenues	308,500	102,731		130,802	28,071	127.3%
Total Rev. PST	<u>12,192,183</u>	<u>4,175,749</u>		<u>4,166,019</u>	<u>(9,730)</u>	99.8%
Interest Income	85,000	28,333		22,606	(5,727)	79.8%
Interfund Transfers	265,458	88,486		88,486	0	100.0%
Total Revenues	<u>69,670,593</u>	<u>23,809,728</u>		<u>23,955,058</u>	<u>145,330</u>	100.6%
Expenditures						
Central Charges	<u>69,670,593</u>	<u>23,223,531</u>		<u>23,223,531</u>	0	100.0%
Revenues Over(Under) Expenditures	<u>0</u>	<u>586,197</u>		<u>731,527</u>	<u>145,330</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues						
Sales & Use Tax	5,085,325	1,749,046		1,735,396	(13,650)	99.2%
Interest Income	10,000	3,333		5,476	2,143	164.3%
Miscellaneous	85,030	28,343		6,660	(21,683)	23.5%
Interfund Transfers	19,542	6,514		6,514	0	100.0%
Total Revenues	<u>5,199,897</u>	<u>1,787,236</u>		<u>1,754,046</u>	<u>(33,190)</u>	98.1%
Expenditures						
Central Charges	4,869,081	1,514,373		1,463,275	(51,098)	96.6%
Park Services	330,816	79,626		58,783	(20,843)	73.8%
	<u>5,199,897</u>	<u>1,593,999</u>		<u>1,522,058</u>	<u>(71,941)</u>	95.5%
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>193,237</u>		<u>231,988</u>	<u>38,751</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	25,000		32,160	7,160	128.6%
Intergovernmental Revenue	0	0		36,435	36,435	
Rates and Charges	45,315,766	10,145,322		10,224,415	79,093	100.8%
Miscellaneous	435,000	145,000		144,526	(474)	99.7%
Total Operating Revenues	<u>45,825,766</u>	<u>10,315,322</u>		<u>10,437,536</u>	<u>122,214</u>	101.2%
Operating Expenses						
Central Charges	6,032,672	2,010,890		1,950,292	(60,598)	97.0%
Finance	646,064	209,971		175,135	(34,836)	83.4%
Public Works & Utilities	21,378,120	5,826,595		5,133,873	(692,722)	88.1%
Parks, Recreation & Libraries	152,415	18,137		16,005	(2,132)	88.2%
Information Technology	2,868,928	918,057		815,780	(102,277)	88.9%
Total Operating Expenses	<u>31,078,199</u>	<u>8,983,650</u>		<u>8,091,085</u>	<u>(892,565)</u>	90.1%
Operating Income (Loss)	<u>14,747,567</u>	<u>1,331,672</u>		<u>2,346,451</u>	<u>1,014,779</u>	
Other Revenue and Expenses						
Tap Fees	4,560,000	1,613,145		279,876	(1,333,269)	17.3%
Interest Income	365,000	121,666		111,961	(9,705)	92.0%
Interfund Transfers	2,533,172	844,391		844,391	0	100.0%
Sale of Assets	0	0		16,402	16,402	
Debt Service	(7,221,199)	0		0	0	
Total Other Revenue (Expenses)	<u>236,973</u>	<u>2,579,202</u>		<u>1,252,630</u>	<u>(1,326,572)</u>	
Increase (Decrease) in Net Assets	<u>14,984,540</u>	<u>3,910,874</u>		<u>3,599,081</u>	<u>(311,793)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	25,000		32,160	7,160	128.6%
Rates and Charges	32,100,766	5,740,322		5,764,566	24,244	100.4%
Miscellaneous	425,000	141,667		142,076	409	100.3%
Total Operating Revenues	<u>32,600,766</u>	<u>5,906,989</u>		<u>5,975,237</u>	<u>68,248</u>	101.2%
Operating Expenses						
Central Charges	4,253,473	1,417,824		1,359,176	(58,648)	95.9%
Finance	646,064	209,971		175,135	(34,836)	83.4%
Public Works & Utilities	14,419,655	4,037,196		3,372,465	(664,731)	83.5%
PR&L Standley Lake	152,415	18,137		16,005	(2,132)	88.2%
Information Technology	2,868,928	918,057		815,780	(102,277)	88.9%
Total Operating Expenses	<u>22,340,535</u>	<u>6,601,185</u>		<u>5,738,561</u>	<u>(862,624)</u>	86.9%
Operating Income (Loss)	<u>10,260,231</u>	<u>(694,196)</u>		<u>236,676</u>	<u>930,872</u>	
Other Revenue and Expenses						
Tap Fees	3,500,000	1,212,000		252,904	(959,096)	20.9%
Interest Income	250,000	83,333		78,836	(4,497)	94.6%
Interfund Transfers	2,097,065	699,022		699,022	0	100.0%
Sale of Assets	0	0		16,402	16,402	
Debt Service	(5,714,756)	0		0	0	
Total Other Revenues (Expenses)	<u>132,309</u>	<u>1,994,355</u>		<u>1,047,164</u>	<u>(947,191)</u>	
Increase (Decrease) in Net Assets	<u>10,392,540</u>	<u>1,300,159</u>		<u>1,283,840</u>	<u>(16,319)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	13,215,000	4,405,000		4,459,849	54,849	101.2%
Miscellaneous	10,000	3,333		2,450	(883)	73.5%
Total Operating Revenues	<u>13,225,000</u>	<u>4,408,333</u>		<u>4,462,299</u>	<u>53,966</u>	101.2%
Operating Expenses						
Central Charges	1,779,199	593,066		591,116	(1,950)	99.7%
Public Works & Utilities	6,958,465	1,789,399		1,761,408	(27,991)	98.4%
Total Operating Expenses	<u>8,737,664</u>	<u>2,382,465</u>		<u>2,352,524</u>	<u>(29,941)</u>	98.7%
Operating Income (Loss)	<u>4,487,336</u>	<u>2,025,868</u>		<u>2,109,775</u>	<u>83,907</u>	
Other Revenue and Expenses						
Tap Fees	1,060,000	401,145		26,972	(374,173)	6.7%
Interest Income	115,000	38,333		33,125	(5,208)	86.4%
Interfund Transfers	436,107	145,369		145,369	0	100.0%
Debt Service	(1,506,443)	0		0	0	
Total Other Revenues (Expenses)	<u>104,664</u>	<u>584,847</u>		<u>205,466</u>	<u>(379,381)</u>	
Increase (Decrease) in Net Assets	<u>4,592,000</u>	<u>2,610,715</u>		<u>2,315,241</u>	<u>(295,474)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,082,000	694,000		670,946	(23,054)	96.7%
Interest Income	50,000	16,667		13,054	(3,613)	78.3%
Miscellaneous	0	0		15	15	
Total Revenues	<u>2,132,000</u>	<u>710,667</u>		<u>684,015</u>	<u>(26,652)</u>	96.2%
Expenses						
General Services	86,200	14,223		6,622	(7,601)	46.6%
Community Development	174,090	55,709		52,140	(3,569)	93.6%
PR&L Park Services	200,000	24,000		10,573	(13,427)	44.1%
Public Works & Utilities	322,710	35,175		34,965	(210)	99.4%
Total Expenses	<u>783,000</u>	<u>129,107</u>		<u>104,300</u>	<u>(24,807)</u>	80.8%
Increase (Decrease) in Net Assets	<u>1,349,000</u>	<u>581,560</u>		<u>579,715</u>	<u>(1,845)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Course Funds - Combined						
Operating Revenues						
Charges for Services	2,967,608	538,530		531,551	(6,979)	98.7%
Interest Income	0	0		1,102	1,102	
Interfund Transfers	582,143	194,047		194,047	0	100.0%
Total Revenues	<u>3,549,751</u>	<u>732,577</u>		<u>726,700</u>	<u>(5,877)</u>	99.2%
Operating Expenses						
Central Charges	217,435	72,974		58,767	(14,207)	80.5%
Recreation Facilities	3,816,599	1,393,987		1,380,123	(13,864)	99.0%
Total Expenses	<u>4,034,034</u>	<u>1,466,961</u>		<u>1,438,890</u>	<u>(28,071)</u>	98.1%
Operating Income (Loss)	(484,283)	(734,384)		(712,190)	22,194	97.0%
Other Revenues and Expenses						
Other Financing Sources	<u>484,283</u>	<u>484,283</u>		<u>484,283</u>	<u>0</u>	100.0%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(250,101)</u>		<u>(227,907)</u>	<u>22,194</u>	91.1%

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Operating Revenues						
Charges for Services	1,582,258	275,313		249,259	(26,054)	90.5%
Interest Income	0	0		1,722	1,722	
Interfund Transfers	10,372	3,457		3,457	0	100.0%
Total Revenues	<u>1,592,630</u>	<u>278,770</u>		<u>254,438</u>	<u>(24,332)</u>	91.3%
Operating Expenses						
Central Charges	113,659	38,417		28,344	(10,073)	73.8%
Recreation Facilities	1,721,113	653,296		648,727	(4,569)	99.3%
Total Expenses	<u>1,834,772</u>	<u>691,713</u>		<u>677,071</u>	<u>(14,642)</u>	97.9%
Operating Income (Loss)	(242,142)	(412,943)		(422,633)	(9,690)	102.3%
Other Revenue/Expense						
Other Financing Sources	<u>242,142</u>	<u>242,142</u>		<u>240,539</u>	<u>(1,603)</u>	99.3%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(170,801)</u>		<u>(182,094)</u>	<u>(9,690)</u>	99.3%

**City of Westminster
Financial Report
For Four Months Ending April 30, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Operating Revenues						
Charges for Services	1,385,350	263,217		282,292	19,075	107.2%
Interest Income	0	0		(620)	(620)	
Interfund Transfers	571,771	190,590		190,590	0	100.0%
Total Revenues	<u>1,957,121</u>	<u>453,807</u>		<u>472,262</u>	<u>18,455</u>	104.1%
Operating Expenses						
Central Charges	103,776	34,557		30,423	(4,134)	88.0%
Recreation Facilities	2,095,486	740,691		731,396	(9,295)	98.7%
Total Expenses	<u>2,199,262</u>	<u>775,248</u>		<u>761,819</u>	<u>(13,429)</u>	98.3%
Operating Income	(242,141)	(321,441)		(289,557)	31,884	90.1%
Other Revenues and Expenses						
Other Financing Sources	<u>242,141</u>	<u>242,141</u>		<u>243,744</u>	<u>1,603</u>	100.7%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(79,300)</u>		<u>(45,813)</u>	<u>33,487</u>	

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF APRIL 2013

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	465,484	11,977	477,461	441,804	13,060	454,863	5	-8	5
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	347,416	975	348,391	344,112	1,346	345,458	1	-28	1
SHOPS AT WALNUT CREEK 104TH & REED TARGET	272,881	8,819	281,700	264,566	2,699	267,266	3	227	5
WAVE CAR CENTER CORNER W SIDE 91ST & WADSWORTH WAVE CARE WASH	9,952	207,617	217,568	4,787	336	5,123	108	61641	4147
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	215,592	383	215,975	201,940	718	202,658	7	-47	7
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	193,911	1,428	195,339	163,346	1,227	164,572	19	16	19
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	185,349	634	185,983	180,080	819	180,898	3	-23	3
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	169,822	6,725	176,546	157,876	635	158,511	8	958	11
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	174,178	453	174,631	193,305	418	193,723	-10	9	-10
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	132,059	16,993	149,052	131,751	19,960	151,711	0	-15	-2
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	119,507	4,352	123,859	108,195	806	109,001	10	440	14
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	105,694	239	105,933	127,185	840	128,024	-17	-72	-17
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	79,451	641	80,093	72,692	130	72,822	9	394	10
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	76,160	1,152	77,311	135,567	3,352	138,919	-44	-66	-44
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	7,635	66,330	73,965	8,233	731	8,965	-7	8970	725

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF APRIL 2013

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	73,045	295	73,341	79,399	1,124	80,524	-8	-74	-9
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	65,917	163	66,080	67,433	145	67,577	-2	13	-2
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	65,423	208	65,632	76,598	909	77,507	-15	-77	-15
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	13,482	44,565	58,046	21,750	39,113	60,863	-38	14	-5
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	54,741	494	55,235	46,855	286	47,141	17	73	17
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	46,808	1,593	48,401	45,360	992	46,352	3	61	4
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	45,717	188	45,905	43,143	123	43,266	6	53	6
WILLOW RUN 128TH & ZUNI SAFEWAY	37,089	709	37,798	32,347	295	32,643	15	140	16
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	30,203	253	30,456	23,828	249	24,077	27	2	26
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	27,549	2,342	29,891	37,448	663	38,111	-26	253	-22
	<u>3,015,066</u>	<u>379,528</u>	<u>3,394,594</u>	<u>3,009,602</u>	<u>90,976</u>	<u>3,100,578</u>	<u>0</u>	<u>317</u>	<u>9</u>

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
APRIL 2013 YEAR-TO-DATE

Center Location Major Tenant	YTD 2013			YTD 2012			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	1,852,536	58,108	1,910,644	1,682,532	65,418	1,747,950	10	-11	9
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	1,434,597	4,575	1,439,172	1,472,535	10,998	1,483,533	-3	-58	-3
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,076,561	19,290	1,095,852	983,315	8,375	991,690	9	130	11
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	903,721	2,754	906,475	849,060	2,172	851,232	6	27	6
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	803,253	6,872	810,125	701,448	8,600	710,048	15	-20	14
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	733,239	4,212	737,452	795,368	2,064	797,432	-8	104	-8
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	727,828	3,835	731,663	682,997	9,586	692,583	7	-60	6
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	679,216	8,553	687,770	657,864	2,342	660,205	3	265	4
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	582,710	7,676	590,386	524,113	3,807	527,920	11	102	12
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	565,994	64,675	630,670	531,054	66,682	597,736	7	-3	6
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	479,613	11,432	491,045	512,056	3,891	515,948	-6	194	-5
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	384,549	1,550	386,099	351,868	1,227	353,094	9	26	9
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	297,985	997	298,982	310,488	4,929	315,417	-4	-80	-5
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	252,638	825	253,463	251,505	645	252,151	0	28	1
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	217,712	2,429	220,141	208,962	5,342	214,304	4	-55	3

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
APRIL 2013 YEAR-TO-DATE

Center Location Major Tenant	YTD 2013			YTD 2012			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	211,045	3,393	214,438	390,913	11,396	402,309	-46	-70	-47
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	209,207	1,074	210,282	219,633	4,018	223,651	-5	-73	-6
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	187,528	7,829	195,357	169,379	2,469	171,848	11	217	14
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	179,715	773	180,487	176,990	568	177,558	2	36	2
WILLOW RUN 128TH & ZUNI SAFEWAY	126,212	1,283	127,495	131,286	1,796	133,082	-4	-29	-4
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	107,998	4,362	112,360	104,953	611	105,564	3	614	6
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	102,645	1,818	104,462	99,447	6,748	106,195	3	-73	-2
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	100,798	4,340	105,138	111,143	2,751	113,893	-9	58	-8
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	99,387	1,780	101,167	95,275	2,610	97,885	4	-32	3
MEADOW POINTE NE CRN 92ND & OLD WADS CARRABAS	96,910	295	97,205	97,026	188	97,214	0	56	0
	<u>12,413,598</u>	<u>224,730</u>	<u>12,638,327</u>	<u>12,111,208</u>	<u>229,235</u>	<u>12,340,443</u>	3	-2	2



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
May 20, 2013



SUBJECT: Special Legal Services for Formal Tax Hearings

Prepared By: Leslie C. Annand, Assistant City Attorney

Recommended City Council Action

Authorize the City Manager to sign contracts for legal services on an as-needed basis in a form acceptable to the City Attorney's Office with counsel selected by the City Attorney's Office to advise the Finance Director in formal tax hearings held pursuant to W.M.C. § 4-1-26.

Summary Statement

- The City's Finance Director desires legal advice on evidentiary and procedural matters during formal tax hearings.
- One formal tax hearing is currently pending, and it is believed that sufficient funds exist to cover it. However, additional hearings are expected to occur throughout the year, and possibly into 2014.
- The City Attorney's Office has determined that, under the Attorneys Code of Professional Responsibility, it is not able to both represent the City and advise the Finance Director in contested hearings such as these.
- The proposed expenditure, in the amount of \$5,000, is intended to cover these services for hearings that may arise in 2013 and 2014.

Expenditure Required: Not to exceed \$5,000

Source of Funds: Audit Revenue Contra Account

Policy Issue

Should the City retain special legal counsel to advise the Finance Director during sales tax hearings?

Alternative

Not hire special legal counsel. This alternative is not recommended, as the Finance Director desires legal advice on evidentiary and procedural matters during the hearings.

Background Information

The City Attorney's Office believes outside counsel is needed to advise the Finance Director on evidentiary and procedural matters in conducting formal tax hearings pursuant to W.M.C. § 4-1-26. The City Attorney's Office will be representing the City at these hearings and it would be a conflict of interest to both represent the City and advise the Finance Director. The proposed approval of \$5,000 for these services is intended to cover any other tax hearings that may arise during 2013 and 2014. Funds are available for these services in the Audit Revenue Contra Account, which is the account designated for direct expenses incurred in conducting tax audits.

City Council action on this item addresses two Strategic Plan Goals: Strong, Balanced Local Economy and Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
May 20, 2013



SUBJECT: Third Amendment to the Minor Home Repair Program Agreement with Brothers Redevelopment Inc.

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Authorize the City Manager to enter into a third amendment to the Agreement, in substantially the same form as attached, with Brothers Redevelopment Inc. providing an additional \$50,000 in funds to continue operating the Minor Home Repair Program.

Summary Statement

- The City entered into a contract with Brothers Redevelopment, Inc. (BRI) to operate and administer the Minor Home Repair Program on April 11, 2011. The Agreement provided for an initial allocation of \$50,000 from the 2010 Community Development Block Grant (CDBG) funds provided by the U.S. Department of Housing and Urban Development (HUD).
- Participation in the Minor Home Repair Program is limited to households earning low to moderate incomes, which equates to 80% or less of the Denver Metro Area Median Income (AMI) as defined by the U.S. Department of Housing and Urban Development (HUD).
- On June 25, 2012 the City Council amended the Agreement providing an additional \$50,000 of 2011 CDBG funds, bringing the total Minor Home Repair Program contract with BRI to \$100,000.
- Since initiation of the program, BRI has provided assistance to 32 eligible households, providing an average of \$3,125 in assistance on each housing unit.
- On May 14, 2012, the City Council assigned another \$50,000 in 2012 Community Development Block Grant (CDBG) funds to continue funding of the Minor Home Repair Program. These funds are yet to be obligated or spent.
- With the previously authorized \$100,000 having been fully spent, Staff is recommending that the Agreement be amended to provide BRI with an additional \$50,000 from the City's 2012 CDBG proceeds, thereby funding the continuation of the Minor Home Repair Program through 2013.
- All other provisions of the original contract and approved amendments remain in effect.

Expenditure Required: \$50,000

Source of Funds: 2012 Community Development Block Grant Fund

Policy Issue

Should the City continue to contract with BRI to operate and administer the Minor Home Repair Program?

Alternative

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

Background Information

The City receives an allocation of federal CDBG dollars on an annual basis to fund projects or programs that are of benefit to low to moderate income populations. The City receives about \$500,000 annually, of which about \$400,000 is available for projects and programs. Given a high number of inquiries from Westminster residents seeking financial assistance for minor home repairs, the City Council allocated CDBG funding beginning in 2010 to create the Minor Home Repair Program. The City, having limited staffing and technical capacity to administer the program, issued a Request for Qualifications (RFQ) from non-profit organizations with the capacity to operate and administer the program on behalf of the City. Through this process the City selected Brothers Redevelopment, Inc. (BRI) as the preferred service provider.

BRI was selected due to the organization's extensive experience administering federal funds (including CDBG), its long-time operation of housing rehabilitation and community service programs, and in-house rehabilitation personnel to do most of the work. In instances requiring expertise (i.e. electrical, plumbing, etc.), BRI has a stable of pre-qualified specialists under contract.

The City entered into a contract with BRI on April 11, 2011, for an initial amount of \$50,000 funded with the City's 2010 CDBG allocation from HUD. On 25, 2012, the City Council authorized the contract to be amended to provide another \$50,000 in funding from the City's 2011 CDBG allocation, thereby increasing the total contractual amount to \$100,000. On May 14, 2012, the City Council authorized assignment of \$50,000 in 2012 CDBG funds to be allocated to the Minor Home Repair Program. The 2012 CDBG funds have not yet been spent. In the interest of continuing the program, and given 2012 CDBG funds has been allocated towards the Program, Staff proposes to further amend the Agreement with BRI to increase funding an additional \$50,000.

In the initial 18 months of the program, the number of applications was slow and steady. In the last 6-months, however, activity has increased substantially, whereby BRI has fully expended the previous allocation of \$100,000. These funds have been used to provide housing rehabilitation services to 32 households, at an average cost of \$3,125, since the Minor Home Repair Program was initiated. In the period January 1, 2012 through December 31, 2012, BRI assisted 19 households at an average expenditure of \$3,395 per household. Repairs made through the Minor Home Repair Program have included hot water heater replacement, furnace replacement, plumbing and electrical repairs, and repairs to gutters, doors, and windows. In addition, BRI has provided other services, such as exterior painting and American with Disabilities Act (ADA) enhancements (i.e. bathroom hand rails, entry ramps, etc.), to several households with funding from resources other than the City's Minor Home Repair Program.

SUBJECT: Third Amendment to the Agreement with Brothers Redevelopment Inc.

Page 3

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Third Amendment to the Minor Home Repair Program Contract

**THIRD AMENDMENT TO THE
AGREEMENT TO FURNISH PROFESSIONAL SERVICES TO THE
CITY OF WESTMINSTER FOR
THE WESTMINSTER MINOR HOME REPAIR PROGRAM
DATED APRIL 11, 2011**

The City of Westminster (hereinafter referred to as "City") and Brothers Redevelopment, Inc. (hereinafter referred to as "Consultant") agree to amend the Agreement described above as follows:

1. SECTION IV, CONSULTANT'S FEE, shall be modified from the amount approved by the First Amendment, dated June 25, 2012, to add an additional Fifty Thousand and 00/100 Dollars (\$50,000.00), thereby increasing the City's maximum liability under this Agreement to One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00).
2. All other terms and conditions of this Agreement and its First and Second Amendments shall remain in effect.

This Amendment is dated the 20th day of May, 2013.

BROTHERS REDEVELOPMENT, INC.

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: Jeff Martinez

Printed Name: J. Brent McFall

Title: President

Title: City Manager

Address:

2250 Eaton Street
Garden Level, Suite B
Denver, Colorado 80214

Address:

4800 W. 92nd Avenue
Westminster, Colorado 80031

Attest: _____

Attest: _____

City Clerk

Title: _____

(Corporate Seal,
if applicable)

(Seal)

Approved as to legal form and content:

City Attorney



Agenda Memorandum

City Council Meeting
May 20, 2013



SUBJECT: IGA with Clear Creek County Sheriff's Department re Detention of Prisoners at Clear Creek County Jail

Prepared By: Lee Birk, Police Chief
Debbie Mitchell, Director of General Services
Hilary Graham, Deputy City Attorney

Recommended City Council Action

Authorize the City manager to enter into an Intergovernmental Agreement with Clear Creek County Sheriff's Department to provide bed space for Westminster prisoners when space is not available at the Adams County Detention Facility.

Summary Statement

- City Council is being requested to approve the attached proposed Intergovernmental Agreement (IGA) with Clear Creek County Sheriff's Department to provide bed space for Westminster prisoners when space is not available at the Adams County Detention Facility.
- Additional agreements are being negotiated and may be entered into by staff with Jefferson County and Broomfield Detention Centers in the future.
- The services and facilities of Clear Creek County would only be used when prisoners are refused by the Adams County Detention Facility as a result of bed space limitations and when no other alternative, such as in-home detention, is available.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City enter into an Intergovernmental Agreement with the Clear Creek County Sheriff's Department to provide bed space for Westminster Municipal Court prisoners in the Clear Creek County Jail at the rate of \$50 per day per inmate?

Alternative

Continue to rely on the Adams County Detention Center for housing of prisoners and release prisoners early to maintain the five-bed limit. This is not a recommended alternative as individuals are being sentenced for appropriate lengths of stay as a deterrent to future crimes.

Background Information

The possibility of inadequate bed space at the Adams County Detention Facility has been a staff concern since Adams County Sheriff Douglas Darr imposed limits on the number of municipal prisoners the jail would allow at any point in time. Originally a soft limit of 30 beds for all Adams County municipalities was established in October, 2011 with the Westminster set at 5. The reasoning by Sheriff Darr was and continues to be that the jail does not have adequate staffing to safely hold any more than this limit. The City was informed on February 15, 2013 that the bed space limit would be enforced and that cities exceeding their limit would need to release prisoners and that the Sheriff may not accept new prisoners. This limit does not include domestic violence prisoners. The City has been exceeding the 5 bed limit by an additional 4-5 throughout 2013. To date, no prisoners have been released without our direction and the Adams County Detention Center has accepted all sentenced prisoners.

Additional agreements are being negotiated and may be entered into by staff with Jefferson County and Broomfield Detention Centers in the future. The services and facilities of Clear Creek County would only be used when prisoners are refused by the Adams County Detention Facility as a result of bed space limitations and when no other alternative, such as in-home detention, is available.

Employees from the Police Department, Municipal Court, City Manager's Office and City Attorney's Office have been actively involved in finding a solution to the difficulties Westminster faces as a result of the Adams County Detention Center limits. Presiding Judge John Stipech and Police Chief Lee Birk regularly attend meetings on this subject that include participation by Adams County Sheriff's Department personnel, other Adams County officials and staff, other municipalities' staff and municipal court judges. At this time, there is no action by the Adams County Sheriff's Office that would lead us to believe that a future agreement lifting the limits is forthcoming. Agreements with Clear Creek, Jefferson County and possibly Broomfield County are being pursued as contingencies to meeting our sentencing needs for jail space.

Under the proposed agreement, which has been reviewed and approved by the City Attorney's Office, the Clear Creek County Sheriff's Department will provide housing for Westminster prisoners at the rate of \$50 per day per prisoner, which cost includes food, clothing, housing and routine medical care. Westminster shall be responsible for the cost of medical care incurred if it is deemed medically necessary for a Westminster inmate to be transported to an outside medical facility.

This recommended IGA supports the City's Strategic Plan goal of a Safe and Secure Community by providing a contingency plan for housing individuals sentenced in the City Municipal Court if space is unavailable in the Adams County Detention Center.

Respectfully submitted,

J. Brent McFall
City Manager

**INTERGOVERNMENTAL
AGREEMENT FOR JAIL SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into on this _____ day of _____, 2013, between the **CITY OF WESTMINSTER**, a Colorado home rule municipality, **CLEAR CREEK COUNTY**, a Colorado county, and Clear Creek County Sheriff, a constitutional county officer (a “party” and collectively the “parties”).

WHEREAS, pursuant to Article XIV, Section 18, of the Colorado Constitution, and section 29-1-203, C.R.S., the City of Westminster (“Westminster” or the “City”) and the Clear Creek County (the “County”) have the power and authority to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each entity; and

WHEREAS, the County is authorized by section 17-26-101, C.R.S. to operate and does operate the Clear Creek County Detention Center, 405 Argentine Street, Georgetown, CO, 80444; and

WHEREAS, the Clear Creek County Sheriff (“CCSO”) is the keeper of the Clear Creek County Detention Center pursuant to section 17-26-102, C.R.S.; and

WHEREAS, the City has statutory authority, pursuant to C.R.S. § 31-15-401(1)(k) to establish and erect jails; and

WHEREAS, the City needs additional jail space for its inmates and CCSO has determined that it has room available at the Clear Creek County Detention Center; and

WHEREAS, the Parties wish to outline their respective rights and obligations related to the City’s use of County jail space, including reimbursement and other matters.

NOW, THEREFORE, in consideration of the above premises, the mutual promises set forth below, and for other good and valuable consideration, the City and County hereby agree as follows:

A. CLEAR CREEK COUNTY COMMITMENT

- (1) Agreement to House Inmates.** The County and CCSO agree to provide jail space at the Clear Creek County Detention Center (the “Detention Center”), as needed and as available, during the term of this Agreement. Except as otherwise provided, nothing in this Agreement shall affect the statutory or common law authority of Clear Creek County or the CCSO or their respective personnel, nor shall this Agreement limit or enhance the respective liabilities and immunities of the parties. This Agreement shall not be construed as requiring the County to house Westminster inmates in the Detention Center.
- (2) Payments for CCSO Detentions.** Westminster shall pay the CCSO \$50.00 per day per Westminster inmate housed in the Detention Center, which cost includes food, clothing, housing, and routine medical care. In addition, Westminster shall be responsible for the cost of medical care incurred if it is deemed medically necessary for a Westminster inmate to be transported to an outside medical facility.
- (3) Procedure for Inmate Placement and Transfer.** A representative of Westminster shall notify CCSO when it desires to house Westminster inmates in the Detention Center. The notification shall include the number of inmates to be housed, the anticipated date and time for delivery of the inmate(s) to the Detention Center and, for each inmate, the

inmate's name, all relevant judgment/commitment information, and any pertinent health records, and any other available information. All inmate information shall be subject to statutory limitations on disclosure. Following notification by Westminster, CCSO shall determine the amount of available space and shall notify Westminster of what space CCSO is able and willing to provide. Westminster shall be responsible for transporting and providing all necessary security for Westminster inmates to and from the Detention Center and all other venues, unless otherwise agreed.

(4) Medical Treatment. The Detention Center provides routine medical care as part of the Per Diem Rate set forth in Section (B) below, which includes but is not limited to administration of common prescription and over-the-counter medication and treatment of ordinary injuries and typical illnesses. If it is medically necessary for a Westminster inmate to be transported to receive medical care at any outside medical facility for latent, non-diagnosed medical conditions that become apparent or manifest during confinement, CCSO will provide as much notice as possible to Westminster so that, in the City's discretion, the inmate may be released from custody on a personal recognizance bond with a return date of ten (10) business days from the date of the incident prior to being transported to receive medical care. If release is not possible, Westminster shall arrange for transfer and medical care and pay all such medical and transport providers directly, with no cost to CCSO. Westminster shall provide all transport and security to and from CCSO, except in the event of a medical emergency. In the event of a medical emergency, CCSO shall arrange emergency transfer to the nearest hospital and Westminster shall bear all reasonable medical, security, and transfer expenses for the Westminster inmate.

(5) During Incarceration. While Westminster inmates are incarcerated in the Detention Center, the following shall apply:

- a) CCSO shall provide Westminster inmates with care and treatment including furnishing subsistence and routine and emergency medical care(as provided in paragraph 4, above), provide for their physical needs, retain them in safe, supervised custody, maintain discipline and control, endeavor that court imposed sentences and orders are faithfully executed, and otherwise comply with applicable law.
- b) As appropriate and available, CCSO shall make its training, and treatment programs available to Westminster inmates on the same terms they are made available to County inmates.
- c) Westminster inmates shall be subject to CCSO's rules and regulations, including disciplinary procedures.
- d) CCSO shall maintain a complete file of all records, communications, and other written materials, which pertain to its operations of inmate programs or the delivery of services to Westminster inmates for at least three (3) years after termination of this Agreement.
- e) Westminster shall have the right to inspect the Detention Center.
- f) Westminster inmates shall not be granted furloughs or leaves and shall not be assigned to work outside the Detention Center without the prior written consent of Westminster.

- g) A CCSO representative shall notify Westminster at the earliest practicable time of any emergency, significant incident, or prior authorized removal of any Westminster inmate.
- h) CCSO shall provide adequate facilities for any hearing involving a Westminster inmate, including a telephone hearing. Westminster shall reimburse CCSO for any reasonable costs incurred.

(6) Termination of Inmate Incarceration. If any Westminster inmate's commitment at the Detention Center is terminated for any reason, including reaching the total number of inmate days, CCSO shall release the inmate from the Detention Center. CCSO shall surrender any Westminster inmate to Westminster upon demand.

B. FISCAL ADMINISTRATION

Westminster shall pay the CCSO the daily cost of inmate care at the rate of Fifty Dollars (\$50.00) per inmate per day (the "Per Diem Rate") within 30 days of invoice.

C. COORDINATION AND LIAISON

Westminster agrees that during the term of this Agreement it shall fully coordinate all services hereunder through the Clear Creek County Sheriff's Office Jail Administrator. Westminster and Clear Creek County may in writing designate alternate personnel for coordination and liaison.

D. NOTICES

Notices concerning the termination of this Agreement, alleged or actual violations of the terms or conditions of this Agreement, and other notices that may or should be given to either party under this Agreement will be made to each party as follows. Notices shall be in writing, delivered by mail, delivery service or personal delivery. Notices sent via mail shall be effective three (3) days after mailing.

Notice to CCSO:

Captain Jeff Smith, Clear Creek County Jail Administrator
P.O. Box 2000
Georgetown, Colorado 80444

With copies to:

Don Krueger, Clear Creek
County Sheriff
P.O. Box 2000
Georgetown, CO 8044

For Notice to Westminster:

Westminster Police Department
Attention: Lee Birk, Chief of Police
9110 Yates Street
Westminster, Colorado 80031

With copies to:

Westminster City Attorney
Attention: Martin McCullough
4800 W. 92nd Avenue
Westminster, CO 80031

E. TERM OF AGREEMENT

The term of the Agreement shall commence as of the date first written above and shall terminate approximately one year later on April 30, 2014, and this Agreement shall be subject to successive one year renewals unless a party provides the other party with termination notice as required below. All payments under this Agreement are subject to annual appropriation of the funds. Nothing in this Agreement shall be deemed or construed as a multiple year fiscal obligation under the meaning of Colorado Constitution Article X, Section 20, also known as the TABOR Amendment.

F. STATUS OF PARTIES

The parties agree that the status of each party shall be that of an independent political subdivision and it is not intended, nor shall it be construed, that any party or any officer, employee, or agent of Clear Creek County or of CCSO is an officer, employee, loaned employee, or agent of Westminster or that any party or any officer, employee, or agent of the City is an officer, employee, loaned employee, or agent of the County or CCSO for purposes of unemployment compensation, workers' compensation, governmental immunity or for any purpose whatsoever unless otherwise provided herein. Each party acknowledges that it remains fully responsible for any and all obligations as the employer of its officers or other personnel, including, among other things, responsibility for the payment of the earnings, overtime earnings, withholdings, insurance coverage, workers compensation, medical and legal indemnity where appropriate, and all other requirements by law, regulations, ordinance, or contract. For purposes of workers' compensation, CCSO's employees will remain employees of CCSO and, in the event Westminster is deemed a "statutory employer" of CCSO's employees under C.R.S § 8-41-401(1), Westminster will maintain immunity from tort lawsuits pursuant to the exclusive remedy provisions of the Worker's Compensation Act of Colorado.

G. TERMINATION OF AGREEMENT

The parties have the right to terminate this Agreement, with or without cause, on thirty (30) days written notice to one another. However, CCSO is under no obligation to accept any Westminster inmates and may terminate services under this Agreement immediately in the event that circumstances preclude CCSO from continuing to perform its obligations under the Agreement. In such an event, CCSO may not accept additional inmates and CCSO may contact Westminster who shall arrange for prompt transfer of Westminster inmates out of the Detention Center.

H. WHEN RIGHTS AND REMEDIES NOT WAIVED

Acceptance of partial performance or continued performance after breach shall not be construed to be a waiver of any such breach.

I. EXAMINATION OF RECORDS

The parties agree that any duly authorized representative of either party, including their auditors or other financial representatives, or a state or federal grant auditor, will have access to, and the right to, examine any directly pertinent books, documents, papers, records and data of the other, involving

financial matters related to this Agreement until the expiration of seven (7) years after the final termination of this Agreement.

J. GOVERNING LAW

Each and every term, condition, or covenant is subject to and shall be construed in accordance with the provisions of Colorado law and any applicable federal law. Any action arising from this Agreement may be brought and maintained in the Clear Creek District Court, Adams County District Court, or Jefferson County District Court, all of which shall have jurisdiction of such action. No legal or equitable rights of the parties shall be limited by this Section.

K. ASSIGNMENT AND SUBCONTRACTING

Each party understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the other party

L. NO THIRD PARTY BENEFICIARY

The parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties to the Agreement, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity, including but not limited to members of the general public. The parties expressly intend that any person or entity, other than the parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

M. CONFIDENTIAL INFORMATION; OPEN RECORDS

The parties shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information concerning any matters which are not subject to public disclosure, including without limitation police records or medical records of or pertaining to persons dealt with under this Agreement and other privileged or confidential information. The parties shall comply with all applicable local, state or federal laws and requirements pertaining to maintenance and disclosure of personal, criminal justice, medical or health records or data. Such records or data may be in hardcopy, printed, digital or electronic format. If either party has custody of a record provided by the other party, which contains specialized details of security arrangements or investigations, the party in possession shall refer any request to inspect that record to the custodian party, as provided at section 24-72-204(2)(a)(VIII)(C), CRS.

N. INSURANCE

The parties are public entities within the meaning of the Colorado Governmental Immunity act (CGIA), section 24-10-101, et seq., C.R.S., as amended. The parties agree that each party is relying upon, and has not waived, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence or as otherwise provided in section 24-10-114, C.R.S.) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Therefore, at all times during the term of this Agreement, including any renewals or extensions, Westminster and the County shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA including coverage for Workers' Compensation and Employers' Liability, Commercial General Liability and Auto Liability. Westminster agrees to name Clear Creek County, its elected and appointed officials, employees and volunteers as additional insureds on its liability insurance relating to provision of services

under this Agreement, and the County agrees to do the same for the City. This obligation shall survive the termination of this Agreement.

O. PARAGRAPH HEADINGS

The captions and headings set forth in this Agreement are for convenience of reference only, and shall not be construed as defining or limiting the terms and provisions in this Agreement.

P. SEVERABILITY

If any part, term, or provision of this Agreement, except for the provisions of the Agreement requiring prior appropriation of funds, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

Q. AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS

This Agreement is intended as the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No oral representation by any officer or employee of the parties at variance with the terms and conditions of this Agreement, or any written amendment to this Agreement, shall have any force or effect or bind the parties. Amendments to this Agreement will become effective when approved by all parties and executed in the same manner as this Agreement. This Agreement and any amendments will be binding upon the parties, their successors and assigns.

R. SURVIVAL OF CERTAIN PROVISIONS

The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the parties obligations to provide insurance as set forth in Section N will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

S. LEGAL AUTHORITY

(1) Each party represents that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

(2) The person or persons signing and executing this Agreement on behalf of each party hereby represent(s) that he/she or they have been fully authorized by such party to execute this Agreement on behalf of the party and to validly and legally bind the party to all the Agreement's terms, performances and provisions.

(3) The parties will have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the parties or the person signing the Agreement on behalf of such parties to enter into this Agreement.

T. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

The parties consent to the use of electronic signatures by the other party. The Agreement,

and any other documents requiring a signature hereunder, may be signed electronically by either party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

ATTEST:

CITY OF WESTMINSTER
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CLEAR CREEK COUNTY
STATE OF COLORADO

County Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the County Attorney

CLEAR CREEK COUNTY SHERIFF

Don Krueger



Agenda Memorandum

City Council Meeting
May 20, 2013



SUBJECT: Councillor's Bill No. 20 re 2013 1st Quarter Budget Supplemental Appropriation

Prepared By: Karen Barlow, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 20 on first reading, providing for a supplemental appropriation of funds to the 2013 budget of the General, Legacy Ridge, Heritage at Westmoor, General Capital Outlay Replacement (GCORF), Parks Open Space & Trails (POST), and General Capital Improvement (GCIF) Funds.

Summary Statement

- At the end of each quarter, Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- General Fund amendments:
 - \$12,262,165 Lease Proceeds
 - \$14,480 Grant Proceeds
 - \$3,128 Miscellaneous
 - \$566 Reimbursements
- Legacy Ridge Fund amendments:
 - (\$10,372) Transfers
- Heritage at Westmoor Fund amendments:
 - \$46,000 Transfers
- General Capital Outlay Replacement Fund amendments:
 - \$14,480 Grants
- Parks, Open Space & Trails Fund amendments:
 - \$2,100 Rent
- General Capital Improvement Fund amendments:
 - \$2,400,000 Cash-in-Lieu
 - \$234,100 Transfers
 - \$14,825 Permit Fees

Expenditure Required: \$14,981,472

Source of Funds: The funding sources for these budgetary adjustments include lease proceeds, reimbursements, grants, miscellaneous, rent, cash-in-lieu, permit fees, and transfers.

Policy Issue

Does City Council support amending the appropriations for the 2013 budget of the General, Legacy Ridge, Heritage at Westmoor, General Capital Outlay Replacement, Parks Open Space & Trails, and General Capital Improvement Funds as outlined?

Alternative

The alternative would be not to amend the 2013 budget appropriations for the General, Legacy Ridge, Heritage at Westmoor, General Capital Outlay Replacement, Parks Open Space & Trails, and General Capital Improvement Funds and to utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them with their current budget or planned projects in anticipation of appropriation of these additional funds.

Background Information

The attached Councillor's Bill is a routine action addressing the need to adjust revenue and expenditure appropriations as a result of activities or events that were not anticipated during the normal budget process.

Staff is requesting the appropriation of Lease Proceeds in the amount of \$12,262,165 to the Other Financing Uses account. On January 14, 2013, the City passed an emergency ordinance to refund the 2005 Certificates of Participation (COPs). The new agreement reduced the interest rate to 2.4%, for a net-present-value savings of over \$643,000, which will be recognized over the life of the COPs. This did not extend the length of the maturity dates of the original lease terms. In order to properly reflect the receipt of the lease proceeds and the subsequent use of the proceeds on the City's books, the lease proceeds are being appropriated.

Through a contractual agreement, the City may bill the Westminster Economic Development Authority (Westminster Center East SubArea URA) for advances made or for improvements benefitting the URA and/or services rendered by City staff in implementing the Urban Renewal Plan. In 2013, City Staff originally planned to bill WEDA \$268,000. However, during the 2013/2014 budget preparation for WEDA, Staff determined that additional funds are available in WEDA. Staff now anticipates billing WEDA an additional \$232,000 and requests that the additional funds be appropriated to the Capital Project Reserve - CMO. This project is a contingency measure should the City need to complete payment on the Sears note due in February 2014. Staff continues to work with development interests in planning and pursuing redevelopment of the former Westminster Mall site, which remains one of the City Council's highest priorities. While the plan remains to have a developer on board assuming the note for the Westminster Center Urban Reinvestment Program (WURP) site by that time, Staff believes it is prudent to develop a contingency plan should unforeseen delays be experienced. Adding this proposed funding brings the total set aside to \$2.268M.

The Community Development Department in participation with Jefferson Academy Charter School is constructing a traffic signal at Wadsworth Boulevard and 99th Avenue. The new traffic signal is needed to handle the critical rush hours before and after school that will help mitigate long delays and extensive traffic backups. The Jefferson County School Land Dedication Account has been identified as the funding source for \$14,825 that represents the City's share for one half of the total project cost. These funds are being appropriated to the department's traffic signal system improvement account.

The Community Development Department is requesting appropriation of \$2,400,000. These funds are a cash-in-lieu payment from AZG, LLC for their share of the construction of the Orchard Parkway, 136th Avenue to 144th Avenue and 142nd Avenue, Orchard Parkway to Huron Street Project. The funds are being appropriated to the Orchard Parkway CIP.

Staff is requesting that \$2,100 be appropriated to the Bonnie Stewart CIP for rent funds that were collected for residential property on newly-acquired open space property. The grant provided by Jefferson County specifies that any net revenue from rental of the two residences on this property shall be spent for future improvements to this property. The rental period shall not exceed two years, and 24% of the net income shall be paid to Jefferson County. This appropriation to the CIP will allow the funds to be spent in accordance with our grant agreement.

In 2013, the Fire Department received monies from the State of Colorado Forest Service on behalf of the Wildland Team. These funds were received as reimbursement of expenses incurred during the Wildland Team deployment in 2012 to the Little Box Elder Fire in Wyoming, Wetmore and Douthit Fires in Colorado and Nebraska, Eagle Creek fire in Montana, and Minadoka fire in Idaho. Only a portion of these funds are being requested for appropriation as a transfer to GCORF. This transfer from the General Fund in the amount of \$14,480 is being appropriated to the Wildland Truck Replacement CIP in GCORF, which will assist with future wildland apparatus replacement.

Staff is requesting that transfers from GCIF to Legacy Ridge be reduced by \$10,372 and transfers from GCIF to Heritage at Westmoor be increased by \$10,372. Additionally, staff is requesting that the Legacy Salaries expense budget be reduced by \$35,628 and the Transfer expense budget to Heritage be increased by the same amount. The current Pay Plan reflects a 2.0 Full Time Equivalent (FTE) Golf Worker at Legacy Ridge and 1.0 FTE Golf Worker at Heritage Golf Courses. In reality, the Golf Worker assignments are reverse (i.e., 1.0 FTE at Legacy and 2.0 FTE at Heritage). They are being charged to the correct expenditure accounts in the correct Golf Courses during 2013. However, the funds were not budgeted to match how the staffing is utilized. As such, this supplemental appropriation request is intended to appropriate the funds in the correct Golf Course to cover the actual expense incurred during 2013. Staff will ensure this is correct for 2014 during the mid-year budget review later this summer.

In the final balancing of the 2013 Budget, the Property Liability Fund transfer payment from the General Fund was not updated correctly and reflected \$9,572 less than what should be transferred to cover expenses. This supplemental appropriation is a corrective measure to increase the transfer payment from the General Fund (i.e., expenditure) to the Property Liability Fund (i.e., revenue). No changes are needed in the expenses of the Property Liability Fund side as it currently reflects the correct total operating budget for 2013. The budget of \$9,572 is being moved from the General Fund Central Charges Professional Services account to the General Fund Central Charges Transfer expense account as a corrective measure. This action ensures the revenues and expenditures balance in the Property Liability Fund, and transfer revenue and expense between funds are balanced.

The Public Works and Utilities Department received \$566 in subrogation monies. This was for signs damaged throughout the City, and the funds are being appropriated to the Signing Materials account.

General Services received \$3,128 from the State of Colorado for the City’s drop-off recycling program. These funds are being appropriated to the department’s Solid Waste Collection Customer Service account.

These appropriations will amend General Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	1000.40620.0000	\$35,000	\$14,480	\$49,480
Misc	1000.41460.0000	0	566	566
General	1000.43060.0000	282,356	3,128	285,484
Lease Proceeds	1000.46005.0000	0	<u>12,262,165</u>	12,262,165
Total Change to Revenues			<u>\$12,280,339</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Prof Services	10010900.65100.0000	\$131,000	\$(9,572)	\$121,428
Other Fin Use	10010900.78800.0000	0	12,262,165	12,262,165
Transfers Capital Replacement	10010900.79800.0450	0	14,480	14,480
Transfers Prop/Liab Self Ins	10010900.79800.0460	735,735	9,572	745,307
Solid Waste Collect Cust Serv	10012390.67300.0702	60,044	3,128	63,172
Signing Materials	10035450.72600.0000	53,150	<u>566</u>	53,716
Total Change to Expenses			<u>\$12,280,339</u>	

These appropriations will amend Legacy Ridge Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF GCIF	2200.45000.0750	\$10,372	<u>(\$10,372)</u>	\$0
Total Change to Revenues			<u>(\$10,372)</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Heritage	22010900.79800.0230	\$0	\$35,628	\$35,628
Regular Salaries	22050720.60200.0000	384,912	(46,000)	338,912
Total Change to Expenses			<u>(\$10,372)</u>	

These appropriations will amend The Heritage at Westmoor Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF Legacy	2300.45000.0220	\$0	\$35,628	\$35,628
TRF GCIF	2300.45000.0750	328,628	<u>10,372</u>	339,000
Total Change to Revenues			<u>\$46,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Regular Salaries	23050720.60200.0000	\$324,409	<u>\$46,000</u>	\$370,409
Total Change to Expenses			<u>\$46,000</u>	

These appropriations will amend General Capital Outlay Replacement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF General Fund	4500.45000.0100	\$0	<u>\$14,480</u>	\$14,480
Total Change to Revenues			<u>\$14,480</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Wildland Truck Replacement	81145010911.80400.8888	\$100,696	<u>\$14,480</u>	\$115,176
Total Change to Expenses			<u>\$14,480</u>	

These appropriations will amend Parks, Open Space, and Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Gen Misc Rentals	5400.43060.0540	\$11,280	<u>\$2,100</u>	\$13,380
Total Change to Revenues			<u>\$2,100</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	54010900.79800.0750	\$532,579	<u>\$2,100</u>	\$534,679
Total Change to Expenses			<u>\$2,100</u>	

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Cash in lieu-Fut Cap Proj	7500.40210.0751	\$40,000	\$2,400,000	\$2,440,000
General	7500.43060.0000	375,583	14,825	390,408
TRF - Open Space	7500.45000.0540	0	2,100	2,100
TRF WEDA	7500.45000.0680	268,000	<u>232,000</u>	500,000
Total Change to Revenues			<u>\$2,648,925</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Traffic Signal System Improvement	80175030143.80400.8888	\$402,866	\$14,825	\$417,691
Capital Project Reserve-CMO	81275005186.80400.8888	2,036,000	232,000	2,268,000
Bonnie Stewart CIP	81275030001.80400.8888	710	2,100	2,810
Orchard Pkwy, 136 to 144	81375030997.80400.8888	0	<u>2,400,000</u>	2,400,000
Total Change to Expenses			<u>\$2,648,925</u>	

These adjustments will bring the City’s accounting records up-to-date to reflect the various detailed transactions.

The proposed action supports the City Council’s strategic goals of Strong, Balanced Local Economy, Financially Sustainable City Government Providing Exceptional Services, Safe and Secure Community, Vibrant Neighborhoods in One Livable Community and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
 City Manager
 Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **20**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2013 BUDGETS OF THE GENERAL, LEGACY
RIDGE, HERITAGE AT WESTMOOR, GENERAL CAPITAL OUTLAY REPLACEMENT,
PARKS OPEN SPACE & TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2013 ESTIMATED
REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2013 appropriation for the General, Legacy Ridge, Heritage at Westmoor, General Capital Outlay Replacement, Parks Open Space & Trails, and General Capital Improvement Funds initially appropriated by Ordinance No. 3655 is hereby increased in aggregate by \$14,981,472. This appropriation is due to the receipt of funds from lease proceeds, reimbursements, grants, miscellaneous, rent, cash-in-lieu, permit fees, and transfers.

Section 2. The \$14,981,472 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A dated May 20, 2013 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$12,280,339
Legacy Ridge Fund	(10,372)
Heritage at Westmoor Fund	46,000
General Capital Outlay Replacement Fund	14,480
Parks, Open Space & Trails Fund	2,100
General Capital Improvement Fund	<u>2,648,925</u>
Total	<u>\$14,981,472</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 20th day of May, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of June, 2013.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
May 20, 2013



SUBJECT: Councillor's Bill No. 21 re Concessionaire Agreement with Top One, Inc. for Christopher Fields

Prepared By: Donald M. Tripp, Director of Parks, Recreation and Libraries
Rachel Harlow-Schalk, Sr. Projects Officer

Recommended City Council Action

Pass Councillor's Bill No. 21 on first reading authorizing the City Manager to enter into a two-year lease agreement with the option of a three year additional term with Top One, Inc. to operate a concession stand at Christopher Fields that sells a variety of ballpark type foods and beverages.

Summary Statement

- The City is interested in opening a concession stand at Christopher Fields to include the sale of beer during adult athletic and concert events. The City is not interested in being the vendor of the concession stand and has negotiated with Top One, Inc. to be the vendor.
- The City has experience working with Top One, Inc. who operates Benders restaurant inside the Ice Centre at the Promenade near Christopher Fields.
- Being the first athletic field that will be selling beer, it was important that a vendor be chosen whose reputation and experience with the City is in good standing.
- In order for beer to be sold by Top One, Inc. at the Fields in the concession area, the City's Municipal Code must be revised.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

1. Should the City offer concessions at Christopher Fields through a vendor?
2. Should the concessionaire at Christopher Fields sell beer?
3. Should the City seek competitive bids for vendor services at Christopher Fields?

Alternatives

1. City Council could decide that the City does not need to sell concessions at the Fields or that the City should run the concession stand. There are currently no funds available for the City to take on this new service and Staff does not recommend the City manage the stand. The City is currently engaged in similar concession agreements at Legacy Ridge and Heritage Golf Courses. The ability of the City to yield a profit from the agreement and offer greater service to visitors of the Fields makes the endeavor worthwhile through a private vendor.
2. City Council could decide to move forward on the concessions through a private vendor, but not include beer sales. This alternative is not recommended because of the added service it offers to adult visitors and the potential to yield greater profit from the concessions. A liquor license is a privileged license and the holder must prove, through an extensive evaluation, that they can responsibly sell liquor. Top One, Inc. runs Benders located within the Ice Centre at the Promenade, which includes a liquor license. Not only does the City already have a good working relationship with Top One, Inc., the company already responsibly operates a liquor license in Westminster.
3. City Council could decide to move forward on the concessions through a private vendor and direct Staff to seek competitive bids. Not only does the City have a good working relationship with Top One, Inc. the company already responsibly operates a liquor license in Westminster. Staff does not recommend the contract be competitively bid and believes the public's best interest will be served by a negotiated contract with Top One, Inc.

Background Information

For the convenience of visitors and the additional potential revenue, staff has been investigating the implementation of contracting a vendor to operate a concession stand in the existing concession area at Christopher Fields at City Park. To offer this service and ensure the City does not take on the overhead and liability of running the stand, staff have pursued work with a vendor. Top One, Inc. who operates Benders in the Ice Centre at the Promenade located near Christopher Fields has been identified as the best vendor to support this new service.

Staff is also interested in allowing the sale of beer through the stand at adult sport and concert events. A liquor license is a privileged license and the holder must prove, through an extensive evaluation, that they can responsibly sell liquor. Top One, Inc. not only has a good working relationship with the City and is located near the Fields, the company already responsibly operates a liquor license in Westminster. During adult athletic events, beer consumption will not include dug-outs or the fields themselves. During adult concert events, beer consumption will be allowed. As a result, based on the recommendation of the City Manager, City Council is asked to find that the public interest will be best served by a negotiated contract with Top One, Inc.

A survey by Staff of neighboring parks and recreation jurisdictions found the sale of food and beverages common. The one jurisdiction surveyed that sells beer within their concessions was Erie who manages the concessions including the sale of beer. Last year, after paying for staffing and other operational costs the concession yielded a \$10,000 profit. Erie also did not note any alcohol-related incidents at their complex. Westminster currently offers concessions, including beer, at both municipally owned golf courses.

It should be noted that the City's experience in allowing concessionaires at the golf courses to serve alcoholic beverages on the course has not been problematic and has created no disturbances in adjacent neighborhoods. Offering concessions that include the sale of beer at athletic fields will be a new activity in Westminster, but not a service new to the organization. Staff believes there is potential for profit generation from the concessions along with the added convenience of concession sales to visitors. Staff anticipates using funds received to support the recreation scholarship program offered to residents who cannot afford activities.

A summary of the major points of the concession agreement includes:

- The term of the agreement is two years with the option of a three year additional term for a total of five years.
- Top One, Inc. will make minor facility changes to the existing concession area at Christopher Fields to ensure their full ability to sell food and beverages at the location.
- Concession fee of 12% of Top One, Inc.'s gross sales will be returned monthly to the City as result of the agreement.
- Annually, Top One, Inc. and the City will agree to the list of adult sport events at which concessions will be sold at the Fields.
- Top One, Inc. will be charged \$300 per month for utilities for the first month after which time a review of utilities costs will be conducted. Top One, Inc. will be responsible for long-distance telephone charges.
- Once per year, the menu pricing will be reviewed with staff and will be subject to staff approval.
- Top One, Inc. will provide small wares equipment and provide quality food and beverage service to attendees.
- Top One, Inc. will hire and train staff to offer high-quality guest service, with attention to following local, city, and state health code and liquor sales requirements.

Offering concessions through a vendor at Christopher Fields supports the City's Strategic Plan Goal of a Financially Sustainable City Government Providing Exceptional Services by diversifying revenue sources and improving customer service to visitors at the Fields.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance with Concessionaire Agreement and Exhibits A-E

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **21**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE APPROVING A CONCESSIONAIRE AGREEMENT BETWEEN
THE CITY OF WESTMINSTER AND TOP ONE, INC., FOR THE LEASE OF THE
CONCESSION AREA AT CHRISTOPHER FIELDS
AT CITY PARK, 5875 WEST 104TH AVENUE, WESTMINSTER, CO.**

WHEREAS, the City of Westminster has a concession area available for a concession operator;
and

WHEREAS, it is in the City's best interest to sell food and beverages at Christopher Fields; and

WHEREAS, Top One, Inc. has extensive restaurant experience; and

WHEREAS, the substantial form of the lease agreement (the "Lease") has been agreed to by the parties; and

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease between the City and Top One, Inc. for the lease of the concession area at Christopher Fields at City Park located at 5875 West 104th Avenue, Westminster, CO, is approved in substantially the form attached hereto as Attachment 1.

Section 2. Because proof of the concessionaire's lawful right to occupy the premises is required for the liquor license application contemplated by the Lease, City Council hereby grants conditional approval of the Lease, which approval will be made final subject to passage on second reading. Within the City Clerk's discretion, the liquor license application may be considered complete for processing purposes following adoption on First Reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 20th day of May 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 10th day of June, 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

**ATTACHMENT 1
COUNCILLOR'S BILL NO. 21**

**CITY OF WESTMINSTER
CONCESSIONAIRE AGREEMENT - CHRISTOPHER FIELDS**

This AGREEMENT made this _____ day of May, 2013, by and between the **CITY OF WESTMINSTER**, a municipal corporation of the State of Colorado (“City”) and **TOP ONE, INC.**, d/b/a **BENDERS BAR AND GRILL**, a Colorado corporation (“Concessionaire”).

WHEREAS, the City desires to make available food and beverage services for the use and convenience of spectators and participants at Christopher Fields Softball Complex, located at 5875 W. 104th Avenue within the City; and

WHEREAS, the Concessionaire is willing and able to provide such services pursuant to the terms and conditions of this Agreement, including any attachments, appendices, exhibits and addendums that may be incorporated into and make a part thereof.

NOW, THEREFORE, the City and Concessionaire agree as follows:

In consideration of the payments hereinafter provided for, the keeping and performance of the covenants and agreements by the Concessionaire hereinafter set forth, the City hereby grants to said Concessionaire the right to operate a food and beverage concession at Christopher Fields Softball Complex in the County of Adams, City of Westminster, State of Colorado, which is shown in Exhibit A of this Agreement. The Concessionaire has reviewed the plans, drawings, and other materials relating to the Premises and Concession Facility, and has had access to and has negotiated with various City officials, and accepts the terms and conditions of this Agreement.

1. Definitions.

The following terms, as used in this Agreement, are defined as follows:

- (a) “City” – City of Westminster, Colorado.
- (b) “Concession” – The right granted to the Concessionaire to sell and serve food and beverages to spectators and participants at Christopher Fields on, at or from the Premises or Concession Facility.
- (c) “Concessionaire” – The entity to which the City has granted the right to operate the Concession on, at or from the Premises and Concession Facility, subject to the terms and conditions herein. This term also includes the agents, employees, or assignees of said Concessionaire.
- (d) “Concession Facility” – The structure shown on Exhibit A of this Agreement, designated as such.
- (e) “Director” – Director of the Department of Parks, Recreation and Libraries of the City of Westminster, Colorado, or designee.

(f) “Manager” – The Park Services Manager of the Department of Parks, Recreation and Libraries of the City of Westminster, Colorado, or designee.

(g) “Off Season” – Approximately November through February of each year, as formalized by the schedule of games, events, and tournaments supplied by the City each year.

(h) “Premises” – The concession building, bleachers, walkways, playing fields and dugouts as shown in Exhibit A. The Premises is synonymous with the Special Event Perimeter..

(i) “Season” – Approximately March through October of each year, as formalized by the schedule of games, events, and tournaments supplied by the City each year.

(j) “Special Event Perimeter” – The area coterminous with the Premises and shown on Exhibit A.

(k) “Typical Consumption Perimeter” – The same area as defined as the Premises and the Special Event Perimeter but specifically excluding the playing fields and dugouts as shown on Exhibit A.

2. PURPOSE.

(a) It is the intent of this Agreement to provide for a complete concession operation upon the Premises and Concession Facility covered by this Agreement, with only such exceptions and limitations as may be specifically noted herein.

(b) In interpreting this Agreement, words describing materials or work that have a well-known technical or trade meaning, unless otherwise specifically defined, shall be construed in accordance with such well-known meaning recognized by the trade.

3. TERM OF AGREEMENT: RENEWAL.

(a) The term of this Agreement shall be for two and one-half (2 ½) years, from June 1, 2013, through December 31, 2015, unless renewed for one additional three (3) year term or unless terminated earlier as provided for in Section 23 hereof.

(b) The City shall give written notice to Concessionaire on or before July 1, 2015, of its intent to renew this Agreement for an additional three (3) years, calendar years 2016 through 2018, or of its intent to terminate. The Concessionaire shall respond to the City regarding its desire to renew or terminate within thirty (30) days of the City’s notice and no later than August 1, 2015. Termination will occur on December 31, 2015, or the renewal term shall begin on January 1, 2016, provided that the parties reach agreement as provided below.

(c) The three (3) year renewal shall be subject to the discretion of the City and the City’s determination of satisfactory performance by the Concessionaire of the terms and conditions of this Agreement, as well as mutual agreement between the parties regarding the monthly Base Concession Fee to be paid under Paragraph 11 of this Agreement. If the parties are unable to mutually agree upon the monthly Base Concession Fee to be paid under paragraph

11 of this Agreement by September 1, 2015, then the City shall have the right to immediately request bids for a new Concessionaire at the Premises.

4. SCOPE OF WORK.

(a) The scope of work to be performed under this Agreement is the furnishing of a top quality Concession operation for the sale and service of food and beverages to spectators and participants of at Christopher Fields at such prices and under such standards and guidelines of operation as will assure prompt, courteous, and convenient services to the spectators and participants. The Concessionaire shall comply with the Standards and Guidelines of Operations, attached hereto and incorporated herein as Exhibit C.

(b) The privilege granted by this Agreement shall be an exclusive right to provide for the sale of all food, beverages, and catering services on the Premises and the Concession Facility, except as noted because of prior City obligations in the 2013 Season Schedule, set forth in Exhibit B, which is attached hereto and incorporated herein. The City reserves the right to conduct or operate other concessions upon the Premises and Concession Facility if they do not compete with the Concessionaire. Any rights not specifically granted to the Concessionaire herein are retained by the City.

(c) The Concessionaire will:

(i) Provide all food and beverage services available on the Premises and the Concession Facility;

(ii) Provide all mobile or peddler services for food and beverages;

(iii) Comply with the City's Use Regulations for Parks, except as specifically permitted otherwise herein;

(iv) Provide all temporary food and beverage facilities as agreed to by the Manager and the Concessionaire;

(v) Employ, train, staff, and manage all personnel required to properly operate and maintain the Concession;

(vi) Provide daily maintenance of the Concession Facility and Premises;

(vii) Make any necessary repairs to non-City owned equipment. Concessionaire is responsible for City-owned equipment repairs only if a private equipment repair company finds that repairs needed are due to concessionaire damage or neglect. City-owned equipment is listed in Exhibit E.

(viii) Obtain all licenses, permits, and certificates required to operate the Concession, including, but not limited to, an Optional Premises Liquor License;

(ix) Operate the Concession in a manner fully supportive, and in compliance with, the Standards and Guidelines of Operations set out in Exhibit C to this Agreement;

(x) Operate the Concession Facility as a public facility in a non-discriminatory manner at all times;

(xi) Promote and market the Concession to the general public; but Concessionaire shall not place or permit any sign, advertisement, display, notice, or other lettering to be exhibited or fixed to any part of the Premises or Concession Facility without the City's prior written approval.

(xii) Provide any and all equipment in addition to that provided by the City, which is necessary to provide the required level of services.

5. USE OF PREMISES.

(a) Concessionaire shall have the right to possession of the Premises and Concession Facility for the limited purpose of the sale and service of food and beverages, including alcoholic beverages, subject to the Standards and Guidelines of Operations set out in Exhibit C of this Agreement. Use of the Premises and Concession Facility by Concessionaire for the sale and service of alcohol beverages shall be in compliance with the Colorado Liquor Code, Section 12-47-101, *et seq.*, C.R.S.; Title V, Chapter 14, of the Westminster Municipal Code; and Title VI, Chapter 9, of the Westminster Municipal Code. Concessionaire shall have control of and responsibility for the Premises and Concession Facility with respect to the sale and service of all alcoholic beverages. Concessionaire shall not use or permit the Premises or Concession Facility to be used for any purpose that is prohibited by any law or regulation of the State of Colorado or the City of Westminster. In the event the rights granted Concessionaire under this Agreement are insufficient to obtain a liquor license for the sale of alcoholic beverages at the Premises and the Concession Facility, the City will grant such additional rights to Concessionaire as are required to obtain approval of the liquor license.

(b) Entertainment of any nature shall be subject to approval of the Manager, which approval shall not be unreasonably withheld. If the Manager disapproves any entertainment, the Concessionaire shall terminate said entertainment immediately.

(c) City hereby grants Concessionaire a non-exclusive and limited license to use of the City's logos, copyrights, trademarks, and trade names for use on t-shirts and uniforms worn by employees of Concessionaire, and on Concession menus, napkins, matches, signage, cups, and any other reasonable usage in connection with operation of the Concessionaire. The use of such logos, copyrights, trademarks and trade names will be in proper manner including use of any design or symbol as may be required by the City. The City retains the right to review and approve any and all uses of City logos, copyrights, trademarks, and trade names used by Concessionaire in connection with the operation of the Concession. Concessionaire warrants that any use of logos, copyrights and trademarks, and used in connection with operation of the Concession will be done without violation of any rights therein. When possible and appropriate, the City will include Concessionaire's name in advertising for Christopher Fields.

(d) Concessionaire shall maintain all signs or advertisements approved by the City in good and attractive condition at the Concessionaire's expense.

6. RESTRICTIONS ON USE OF PREMISES.

(a) Concessionaire shall not:

(i) Permit any unlawful practice to be carried on or committed on the Premises or Concession Facility;

(ii) Make any use or allow the Premises or Concession Facility to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by the City; including storage or use or permitting to be kept or used on the Premises or the Concession Facility any inflammable fluids, toxic materials, or substances of any nature reasonably deemed dangerous by the City or the City's insurance carriers without obtaining prior written consent of the City, except for small quantities of cleaning products incidental to their permitted uses described in this Agreement;

(iii) Use the Premises or Concession Facility for any purpose that creates a nuisance or injures the reputation of the Premises or the City;

(iv) Permit any odors to emanate from the Premises or Concession Facility in violation of any local, state, or federal law;

(v) Use any portion of the Premises or Concession Facility for storage or other purposes except as is necessary and required with its use specified in this Agreement;

(vi) Permit its employees to park anywhere upon the Premises except in employee parking, as designated by the Manager and shown in Exhibit A to this Agreement; provided, however, designated employee parking may be modified from time to time by the Manager upon prior notice to Concessionaire;

(vii) Permit tobacco products to be used by any person in, on, or at the Concession Facility;

(viii) Conduct, or allow to be conducted, gambling on site; and

(ix) Concessionaire shall not place or permit any sign, advertisement, display, notice, or other lettering to be exhibited or fixed to any part of the Premises or Concession Facility without the City's prior written approval.

7. IMPROVEMENTS.

The City retains the right to modify or alter the improvements of the Premises and Concession Facility at any time and in any manner; provided, however, such modifications or alterations shall only occur during the Off Season with the exception of any emergency work deemed necessary by the City. Concessionaire shall make no improvements or alterations to the Premises or Concession Facility without prior written approval by the City; provided however, that concessionaire may without prior City permission make emergency corrections necessary to prevent imminent injury to persons or property. Concessionaire will make initial improvements to the Concession Facility, at its cost, with prior City approval. To the extent any of those improvements are fixtures, the fixtures shall be listed on Exhibit E, shall become City property, and shall remain part of the Concession Facility at the end of this Agreement at no cost to the City.

8. MAINTENANCE.

All maintenance and repairs to the Premises and Concession Facility including plumbing, water lines, sewer lines and City-owned equipment shall be the responsibility of the City; provided, however, that any maintenance and repairs, regardless of cost, necessitated by the negligence or intentional acts of the Concessionaire shall be the sole responsibility of the Concessionaire. As part of the City's preventative maintenance program, the City may require an annual "closure for repairs" in order to rejuvenate the Premises and Concession Facility; provided, however, such closure shall occur during the Off Season with the exception of emergency work deemed necessary by the City.

9. EQUIPMENT.

(a) The Concessionaire shall furnish the equipment and supplies listed in Exhibit D, attached hereto and incorporated herein by this reference. Concessionaire shall be responsible for replacing and keeping in service all items listed in Exhibit D. All such items shall remain the property of Concessionaire at the termination of this Agreement.

(b) The City will furnish fixtures and personal property, as set out in Exhibit E, attached hereto and incorporated herein by this reference, which items shall remain the property of the City. Concessionaire shall be responsible for daily cleaning of all City-owned equipment, furniture, fixtures, and personal property set out in Exhibit E during the term of this Agreement, which items shall be kept in proper repair and working order, and be in good and serviceable condition at the termination of this Agreement, except for normal wear and tear. The City shall be responsible for maintenance and replacement of its equipment, furniture, fixtures, and personal property when the City deems such replacement is necessary; provided however, if replacement is necessary due to negligence of Concessionaire, Concessionaire shall bear the cost of replacement. Any and all requests for repairs or contract maintenance of City-owned equipment requires approval of the Manager prior to any service contractors being notified.

10. UTILITIES.

(a) The City shall deliver water, sewer, basic telephone, electricity, and gas to the Premises and Concession Facility for the operation of the Concession. The cost of each shall be borne as set forth in subsections (b) and (c) below.

(b) The City shall pay for electricity, water, sewer and basic telephone line costs for the Concession Facility and shall charge to Concessionaire, as an estimated monthly cost for those services, the amount of three hundred dollars (\$300.00) per month, payable at the time and place directed by the City, for the initial three (3) months of this Agreement. The City and the Concessionaire shall review Concessionaire's actual utility usage during the first three (3) months of this Agreement and shall agree in writing upon a corresponding monthly utility payment, which shall be due and payable during the fourth (4th) month of this Agreement and thereafter (the "Monthly Utility Payment"). The Monthly Utility Payment shall be made separate from Concession Fee set forth in Section 16 below and as directed by the City.

(c) The Concessionaire is responsible to directly contract with a separate long-distance or internet company for such installation and service and to pay all long-distance or internet costs.

11. OTHER OPERATIONS AND ACTIVITIES.

The Concessionaire shall conduct the Concession granted to it without infringement upon the rights of others, or any interference in the operation of Christopher Fields in general, or any facilities adjacent thereto. It shall not engage in any business to sell any commodity upon, in, or around the Premises or Concession Facility other than as expressly set out in this Agreement. The Concessionaire shall cooperate so as not to interfere with the holding or carrying on of any event upon the Premises or Concession Facility, and shall not create unreasonable noise or annoyance to those participating in or attending such events.

12. HOURS OF OPERATION.

(a) For the first Season of this Agreement, the schedule of games, events and tournaments shall be as set forth in Exhibit B. By February 1 of each year thereafter, the City shall provide Concessionaire with an initial schedule of games, events and tournaments for the upcoming Season, which schedule shall be subject to change within the City's sole discretion and upon reasonable notice to the Concessionaire. Each year's Season schedule, and direction from the City, shall form the basis for Concessionaire's use of the Typical Consumption Perimeter or the Special Event Perimeter related to the Optional Premises License and for Concessionaire's deactivation of the Optional Premises License, as required by Section 13 below.

(b) The Concession Facility shall be open for business on every day during Season on which a game, event or tournament is scheduled. The Concession Facility shall be open no less than one (1) hour before the first scheduled game of a day and until one (1) hour after the start of the last scheduled game of a day. The Concession Facility shall not operate during the Off Season. The Concessionaire shall provide adequate staff at all times. The Concessionaire and Manager will communicate and make a joint decision regarding hours of operation for such things as severe weather delays or cancellations.

(c) If Concessionaire fails to open on time, a twenty-five (\$25.00) penalty for each late opening will be assessed, to be billed monthly. Ongoing problems with late openings may result in the termination of this Agreement.

(d) Concessionaire's hours of operation may be adjusted by the mutual agreement of the Concessionaire and the City.

13. PERMITS AND LICENSES.

(a) The Concessionaire shall procure, supply, and post, at its own expense, in places to be designated by the City, all permits and licenses necessary for the operation of the Concession and shall pay, at its own expense, all taxes assessed or levied against its business and merchandise.

(b) The Concessionaire shall apply for an Optional Premises Liquor License within fifteen (15) business days after the date this Agreement is fully executed and shall maintain such license during the term of this Agreement. The Director will fully cooperate with

Concessionaire in the application for such liquor license. The Concessionaire shall pay all expenses necessary to obtain the liquor license. Nothing contained in this Agreement shall be construed to guarantee that the City will approve the issuance of any license. In the event such license is denied, or in the event that such license is issued but later revoked or suspended BY THE LOCAL OR STATE LIQUOR LICENSING AUTHORITIES, such denial, suspension, or revocation may be deemed a material breach of this Agreement, and the City may immediately terminate this Agreement. No transfer of the license shall be made without the approval of the City and only as part of an assignment of this Agreement. Upon termination, the City may designate a transferee of the liquor license. The Concessionaire agrees to take all actions necessary to promptly transfer the existing license to the transferee.

(c) As part of operation of the Optional Premises License, Concessionaire agrees as follows:

(i) To specify in the Optional Premises Liquor License the Special Event Perimeter as the liquor licensed premises; however, Concessionaire shall cooperate with the City to limit consumption of alcoholic beverages to only the Typical Consumption Perimeter, except during City special events, as identified in Exhibit B, or as approved in writing in advance by the Manager.

(ii) To sell only malt liquors, as defined by Section 12-47-103, C.R.S., (commonly and hereinafter referred to as “Beer”) by a sixteen (16) ounce plastic cup or less, for on-premises consumption;

(iii) To sell only one (1) Beer per one (1) adult showing valid identification at the time of each sale;

(iv) To deactivate the Optional Premises License, using the notice process identified in Section 5-14-11(I), W.M.C., and Section 12-47-310(4), C.R.S., as may be amended, during the Off Season and during specific events or dates during the Season as directed by the City;

(v) To cooperate in all manner with the City, including but not limited to the use of security and the posting of signage at the Concession Facility and elsewhere on the Premises, to prohibit consumption of Beer and all other alcoholic beverages beyond the Typical Consumption Perimeter except when use of the Special Event Perimeter is specifically authorized in advance by the Manager

(vi) To pay a twenty-five dollar (\$25.00) penalty for each instance of unauthorized alcohol consumption in the dugouts and on the playing fields, as determined by the Manager, to be billed monthly. Ongoing problems with unauthorized consumption of alcoholic beverages in the dugouts and on the playing fields may result in the termination of this Agreement;

(vii) To contract for private security services according to the details contained within Exhibit C to ensure compliance with this Agreement and all applicable laws and ordinances.

14. AUTHORITY OF MANAGER

(a) The Manager shall interpret and apply the Standards and Guidelines of Operations provided for in this Agreement and shall interpret and apply all other exhibits attached hereto. The Manager shall decide all questions that may arise as to the Concessionaire's fulfillment of such Standards and Guidelines. The Manager may revise such Standards and Guidelines from time to time with thirty (30) days written notice to the Concessionaire. In the event the Concessionaire disagrees with a decision of the Manager, Concessionaire shall have the right to appeal the decision to the Director, provided such appeal is in writing and filed with the Director within ten (10) days after the Concessionaire's receipt of the Manager's written decision. The Director shall make a determination within twenty (20) days after his receipt of the appeal. The decision of the Director shall be in writing and shall be sent to each party at the addresses set out in Section 30(a) of this Agreement. The decision of the Director shall be final.

(b) The Concession menu, prices and standards of operation must be approved by the Manager in accordance with Exhibit C.

(c) If the service being performed by the Concessionaire does not meet the Standards and Guidelines of Operations set out in this Agreement, the Manager shall immediately notify the Concessionaire, and the failure shall be deemed a default.

15. ACCESS AND INSPECTION.

The Director or his designee may enter the Premises and Concession Facility at any reasonable time for the purpose of inspecting the same. Any entry onto or inspection of the Concession Facility by the City pursuant to this section shall not constitute interference with the operations of the Concessionaire and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope and length of the inspection is reasonable.

16. PAYMENTS.

(a) Concession Fee. The Concession Fee of twelve percent (12%) of Concessionaire's gross sales is due to the City prior to the twentieth (20th) day of the month for each preceding month. The Concession Fee will be paid to the City without notice or demand, and without deduction or offset, at the address specified for the City in Section 30 – "Notices", or such other place as the City shall designate. In addition, the Concessionaire shall provide a report to the Park Services Manager that details monthly gross sales. Said report is also due no later than the 20th day of the month for the preceding month.

(b) Books and Records. Concessionaire and each licensee or concessionaire of Concessionaire shall keep a permanent, accurate set of records of all gross sales derived from the conduct of the Concession, including all point-of-sale records, tapes, and printouts; sales reports and ledgers; files; computer records and disks; cash register tapes, sales slips, order records, and invoices; copies of all tax returns filed with any governmental authority that reflect in any manner sales, income, or revenue generated in connection with the Concession, as may be reasonably required in order to ascertain, document, or substantiate gross sales. All such records shall be retained for at least three (3) years after the end of the calendar year to which they relate.

(d) Late Payment. If Concessionaire fails to pay the Concession Fee after a five (5) day grace period, the unpaid amount will be subject to a late payment charge equal to five percent (5%) of the unpaid amount. This late payment charge will constitute liquidated damages and will be payable to the City together with such unpaid amount. The payment of this late

payment charge will not constitute a waiver by the City of any default by Concessionaire under this Agreement.

(e) Additional Concession Fees. All other amounts, liabilities, and obligations that Concessionaire assumes or agrees to pay pursuant to this Agreement, including any payment of utilities or late payment charges shall constitute additional concession fees (hereinafter referred to as "Additional Concession Fees"). If Concessionaire fails to pay any Additional Concession Fees, the City shall have the same rights, powers, and remedies provided herein or by law for nonpayment of Concession Fee. Concessionaire shall pay the Additional Concession Fee upon the City's demand, unless otherwise expressly provided herein, without offset or deduction of any nature.

(e) Accounting Controls and Procedures. The City shall have the right at any time, and from time to time, to review and approve the internal accounting controls and procedures utilized in connection with, or that are designed for, the operation of the Concession.

17. SECURITY DEPOSIT.

Not used.

18. OTHER PAYMENT OBLIGATIONS.

(a) The Concessionaire shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Concession, and shall maintain all licenses, municipal, state or federal, required for the conduct of business, and shall not permit any of said taxes or fees to become delinquent. The Concessionaire shall furnish to the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of the social security, unemployment compensation and all taxes and fees referenced above. The Concessionaire shall pay promptly when due all bills, debts, and obligations, included, but not limited to, its portion of charges for water, sewer, gas, and electricity as set out herein, as well as all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Concession, and shall not permit the same to become delinquent or suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the City under this Agreement. All such costs and expenses of the Concessionaire are to be borne by the Concessionaire.

(b) The City shall promptly pay all bills, debts, obligations, and fees of whatever nature applicable to its operation of Christopher Fields, in general, including but not limited to, payment of its portion of the utility service provided to Concessionaire hereunder and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the Concessionaire under this Agreement. The City shall maintain all municipal, state, or federal licenses required for the conduct of the City business.

19. INDEMNIFICATION.

The Concessionaire agrees to indemnify and hold harmless the City of Westminster, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss

of any kind whatsoever, which arise out of Concessionaire's operation of the Concession and liquor license, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Concessionaire, any subcontractor of the Concessionaire, any subcontractor of the Concessionaire for whom Concessionaire is liable, or any officer, director, shareholder, member, employee, representative, or agent of the Concessionaire, or which arise out of any workers' compensation claim of any employee of the Concessionaire or of any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Concessionaire, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

20. ATTORNEYS FEES.

If any action is brought to recover and Concession Fee or Additional Concession Fees, or on account of any Event of Default or other breach of this Agreement, or for the recovery of the possession of the Premises and Concession Facility, or otherwise, the prevailing party shall be entitled to recover from the other party, as part of prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment.

21. INSURANCE.

(a) Concessionaire shall procure and continuously maintain at its own expense the minimum insurance coverages listed below, with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) Commercial General Liability Insurance with combined single limit of \$3,000,000 per occurrence. This policy must include Contractor Liability; Products Liability; Broad Form Property Damage including, but not limited to, coverage for any damage to any City personal or real property due to fire or water related to Concessionaire's operations pursuant to this Agreement; and Personal Injury;

(ii) Owned, hired, and non-owned automobile liability coverage with \$1,000,000 limit;

(iii) Statutory workers' compensation on all employees;

(iv) All risk insurance for full insurable replacement value of City-owned equipment and personal property.

(v) Liquor liability with \$1,000,000 limit.

(b) The required insurance policies, except Workers' Compensation and Property, shall be endorsed to include the City of Westminster as an additional insured as its interests may appear under this Agreement. The City of Westminster shall be named "Loss Payee" on the property insurance covering City equipment and personal property. Every policy required above shall be primary insurance, and any insurance carried by the City, its elected officials, officers, employees, or others working on behalf of the City, or carried by or provided through any self-

insurance pool of the City, shall be excess and not contributory insurance to that provided by Concessionaire.

(c) The Certificate of Insurance provided to the City shall be completed by Concessionaire's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to the commencement of the Agreement. The certificate shall identify this Agreement and shall provide the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. Certificates of insurance shall be marked to identify this Agreement and shall be sent to:

Park Services Manager
City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031

A certified copy of any policy shall be provided to the City of Westminster upon its request.

(d) The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitation or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et. seq.*, C.R.S., as from time to time amended, or otherwise available to the City of Westminster, its elected officials, officers, or employees.

22. NON-DISCRIMINATION.

(a) The Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government setting forth the provisions of the Equal Opportunity Laws.

(b) Concessionaire shall not discriminate against any customer, guest, employee or visitor because of race, color, religion, age, sex, disability, or national origin and shall treat all persons with dignity and respect. Failure to comply with this paragraph shall be an event of default.

23. TERMINATION.

(a) This Agreement may be terminated, the Concessionaire may be entitled to an abatement or reduction of the Concession Fee or Additional Concession Fees hereunder, and the Concessionaire may be entitled to quit all or any part of the Premises or Concession Facility or be released from any obligations hereunder upon thirty (30) days prior written notice for the following reasons:

(i) Damage to all or a substantial part of the Premises or Concession Facility not caused by Concessionaire;

(ii) Condemnation or other taking of all or a substantial part of the Premises or Concession Facility;

(iii) Any limitation or prevention of, or any interference with, any use or possession of all or a substantial part of the Premises or Concession Facility by the City;

(iv) Force majeure causing an inability to perform, due to factors beyond Concessionaire's control such as acts of God, flood, war, riot, fire, explosion, strikes, or acts of government which last for a period greater than one hundred eighty (180) days;

(v) Any final order or judgment by any court, administrative agency or other governmental authority requiring such, or

(vi) Any material breach by the City as provided herein.

(b) This Agreement may be terminated by the City upon thirty (30) days prior written notice if any of the following occurs:

(i) Concessionaire fails to make any payment when due of the Concession Fee or Additional Concession Fees; provided, however, Concessionaire shall have a grace period of five (5) business days within to make such payment to the City; or

(ii) ANY MATERIAL BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

(iii) Concessionaire, while in possession of the Premises, files a petition for bankruptcy or insolvency or for reorganization under the Bankruptcy Act, or voluntarily takes advantage of such Act by answer or otherwise, or makes an assignment for the benefit of creditors;

(iv) If proceedings are instituted against Concessionaire under any bankruptcy or insolvency law or if a receiver or trustee is appointed for all or substantially all of Concessionaire's property, and such proceedings or receivership or trusteeship are not vacated or dismissed within thirty days after such institution or appointment.

(v) The City may, as the non-breaching party, enter the Premises and Concession Facility, remove any personal property, and store such property in a public warehouse or elsewhere at the cost of Concessionaire.

24. DELIVERY AFTER TERMINATION.

Concessionaire will deliver the Premises and all City-owned equipment thereon to the City at the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear, or loss and damage not otherwise caused by Concessionaire.

25. CUMULATIVE RIGHTS. No right or remedy is intended to be exclusive of any other right or remedy and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity. The failure of either party to insist at any time upon the strict performance of any covenant or to exercise any right contained in this Agreement shall not be construed as a future waiver. The City's receipt of any Concession Fee or Additional Concession Fees with knowledge of the breach of any covenant contained in this Agreement shall not be deemed a waiver of such breach. Neither party shall be deemed to have made any waiver of this or any provision of this Agreement unless expressed in writing and signed by such party.

26. VENUE AND GOVERNING LAW.

Venue for any and all legal action regarding this Agreement shall lie in the District Court of Adams County, Colorado, and this Agreement shall be governed by the laws of the State of Colorado, and the Charter and Municipal Code of the City of Westminster. Concessionaire agrees that if personal service on Concessionaire cannot be reasonably accomplished, any and all notices, pleadings, and process may be made by serving two (2) copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by mailing by return mail an additional copy of the same to Concessionaire at the address shown in Section 29 herein; that said service shall be considered as valid personal service and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading, or answer is not made.

27. INDEPENDENT CONTRACTOR.

For the purposes of defining Concessionaire's relationship with City, it is understood and agreed that Concessionaire is an independent contractor and nothing herein contained shall constitute or designate the Concessionaire or any of its employees or agents as agents or employees of the City, nor shall Concessionaire be deemed to be engaged in a partnership or joint venture with the City. The Concessionaire understands and agrees that Concessionaire is not entitled to nor shall receive any City benefits, including vacation, worker's compensation, sick pay or any other benefits from City.

28. ASSIGNMENT.

Neither Concessionaire, nor Concessionaire's successors or assigns, shall assign this Agreement, in whole or in part, nor shall this Agreement be assigned or transferred by operation of law, or otherwise, without the prior consent in writing of the City in each instance. The sale or transfer of a controlling interest, or any interest in excess of fifty percent (50%) of the capital shares of Concessionaire or its assigns, or any merger that effects a similar transfer of a controlling interest in Concessionaire or its assigns, shall be deemed to be an assignment of this Agreement. If this Agreement is assigned or transferred, or the Premises or Concession Facility are occupied by anyone other than the Concessionaire, the City may, after default by Concessionaire, collect Concession Fees from the assignee, transferee, or occupant, and apply the net amount collected to the Concession Fees reserved herein, but no such assignment, transfer, occupancy or collection shall be deemed a waiver of any agreement, term, covenant or condition of this Agreement, or the acceptance of the assignee, transferee, or occupant, or a release of Concessionaire from the performance or further performance by Concessionaire of the agreements, terms, covenants and conditions hereof, and the party originally constituting the Concessionaire under this Agreement shall continue liable under this Agreement in accordance

with all the agreements, terms, covenants, and conditions of this Agreement. The consent by the City to an assignment or transfer shall not in any way be construed to relieve Concessionaire from obtaining the express consent in writing of the City to any further assignment or transfer.

29. NOTICES.

(a) All notices, demands and communications hereunder shall be personally served or given by certified or registered mail or via trackable overnight courier, and

(i) If intended for City, shall be addressed to City at:

City of Westminster
Attn: Director of Parks, Recreation and Libraries
4800 W. 92nd Avenue
Westminster, Colorado 80031

With a copy to:

City Attorney
City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031

(ii) If intended for Concessionaire, shall be addressed to:

Top One, Inc., d/b/a Benders Bar and Grill
9416 Desert Willow Trail
Highlands Ranch, CO 80129

(b) Any notice given by mail shall be deemed delivered when sent by certified mail or via trackable overnight courier, addressed as above, with postage prepaid, or when served personally at the applicable address.

30. ENTIRE AGREEMENT.

This is the entire agreement between the parties and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or written, of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this writing.

31. SEVERABILITY.

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby. It is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

TOP ONE, INC. d/b/a
BENDERS BAR AND GRILL

CITY OF WESTMINSTER

JAMES M. ARMSTRONG
Corporate President

J. BRENT MCFALL
City Manager

Attest:

Attest:

PATRICIA J. ARMSTRONG
Corporate Secretary

City Clerk

Approved as to Legal Form:

City Attorney

List of Exhibits

Exhibit A - Map of Premises, Christopher Fields Softball Complex

Exhibit B - 2013 Season Schedule (note exception to exclusive concession services)

Exhibit C - Standards and Guidelines of Operations

Exhibit D - Equipment and Supplies Provided by Concessionaire

Exhibit E - Fixtures and Personal Property Provided by City

Exhibit A to Concessionaire Agreement- Christopher Fields



License Perimeter
Consumption Perimeter

Concession Facility



0 55 110 220 330 440 Feet



EXHIBIT B
2013 SEASON SCHEDULE AT CHRISTOPHER FIELDS
Schedule is subject to change due to weather or participation

Typical Consumption Area, as defined in the Agreement, applies except as noted below or as otherwise authorized in writing by the Manager.

Summer Leagues

- Sundays – May 12-August 11 – 2pm – 9:30pm
- Mondays – May 13-August 12 – 6:15pm-10:30pm
- Tuesdays – May 14-August 6 – 6:15pm-10:30pm
- Wednesdays – May 15-August 7 – 6:15pm-10:30pm
- Thursdays – May 16- August 8 – 6:15pm-10:30pm
- Fridays – May 17-August 16 – 6:15pm-10:30pm

Fall Leagues

- Mondays – August 26-October 21 – 6:15pm-10:30pm
- Tuesdays – August 27-October 22 – 6:15pm-10:30pm
- Wednesdays – August 28-October 23 – 6:15pm-10:30pm
- Thursdays – August 29-October 24 – 6:15pm-10:30pm
- Fridays – September 6-November 1 – 6:15pm-10:30pm

Saturday Tournaments

First games are scheduled at 8am and end by 8pm

- June 1-2 - boys baseball
- June 15 - adult slow pitch
- June 22 - adult slow pitch
- **July 1-7 - Sparkler girls fast pitch¹**
- July 27 - City league rain date if necessary
- August 3 - City league rain date if necessary
- August 17-18 - City post season adult slow pitch
- August 24-25 - City post season adult slow pitch
- September 7 - CSSTL senior slow pitch
- September 21 - adult slow pitch
- October 5 - adult slow pitch
- October 12 - adult slow pitch
- October 26 - adult slow pitch

Special Events²

- Westminster Faire

¹ For the 2013 Season, this tournament is excluded from Concessionaire's otherwise exclusive right to provide for the sale of all food, beverages, and catering services on the Premises and the Concession Facility.

² Special Event Consumption Area (which includes dugouts and playing fields) applies during Special Events.

EXHIBIT C
STANDARDS AND GUIDELINES OF OPERATIONS

(Capitalized terms used herein have the same meaning as set forth in the Agreement.)

A. Cleanliness Standards

1. The Concessionaire will maintain, at all times, the Concession Facility and all equipment, fixtures, paraphernalia, materials, utensils and other items therein, in a clean and sanitary manner. Concessionaire shall keep the Concession Facility clear of broken glass, litter, debris, and garbage. Concessionaire shall dispose of any waste water or other waste fluid in the sanitary sewer. In the event waste fluids may not legally be disposed of in the sanitary sewer, Concessionaire is responsible for disposing of same in an appropriate and lawful manner.
2. The Concessionaire shall comply with all applicable health and sanitation laws and regulations, including:
 - a. The sanitation code of the U.S. Food Service Industry as published by the National Restaurant Association.
 - b. All state of Colorado acts and regulations governing food service operations.
 - c. All applicable City and county public health and sanitation regulations.
 - d. Any specific guidelines established by the Manager.
3. At all times, the Concessionaire shall permit and facilitate inspection of the food/beverage areas by the City and by public health/sanitation/building/fire authorities so authorized.
 - a. The Concessionaire shall provide a copy of all health department inspections to the Manager on the same day the inspection form was issued. All health department violations are to be corrected within the time period allowed by the health inspector unless approval for a delay is granted by the health department or the Manager.
 - b. Failure to pass health inspections, unless all failures are corrected within the time period allowed by the Health Department, is a material breach of this Agreement and may result in termination.
4. Concessionaire shall conduct inspections of the food service facilities once weekly. An inspection checklist shall be prepared and completed by Concessionaire for each inspection and the checklists shall be made available to the Manager upon request. The inspection report shall include corrective measures taken or to be taken by Concessionaire. Concessionaire shall also conduct daily inspections and take immediate corrective measures in all areas of the Premises and Concession Facility.

5. The City shall conduct a formal inspection of the food service facilities a minimum of four times per year, or as deemed necessary by the City. The Concessionaire shall accompany the City's designated representative during the inspection.

6. Failure to comply with this section, after notice from the City, shall be an event of default.

B. Facility and Equipment Maintenance

1. The Concessionaire shall be responsible for the daily cleanliness of all equipment and facilities for food and beverage handling at the Concession Facility. Prior to the first day of business under this Agreement, the Manager and the Concessionaire will conduct a walk-through inspection of all equipment and the facilities to note any repair/replacement items responsible to the City.

2. Upon installation by the vendor, the City shall be responsible for maintenance, repair or replacement of electrical, plumbing, and sewer systems, HVAC, the exterior of the building, parking lots, and City-owned equipment. The City may, as it deems necessary, replace floor coverings that are worn or damaged by ordinary usage. However, floor coverings that are worn or damaged because of actions or omissions of Concessionaire shall be paid for by Concessionaire.

3. Failure to comply with this section, after notice from the City, shall be an event of default.

C. Custodial Maintenance

1. The Concessionaire will be responsible for custodial maintenance of the Concession Facility.

2. The City shall be responsible for custodial maintenance of the Premises outside the Concession Facility itself.

3. Custodial maintenance of the Concession Facility shall include, but not be limited to, routine sweeping, vacuuming, dusting, spill clean-up, debris and litter pick-up, laundry of linens and cloths, as well as carpet cleaning, window cover cleaning, interior and exterior window washing, and painting of walls and ceilings. All areas will be kept clean and neat at all times.

4. The City shall be responsible for snow removal of the parking lot and sidewalks.

5. Concessionaire shall be responsible for trash removal service. Concessionaire shall not discharge any grease into building drains and must keep all grease in proper containers for disposal. If grease is incorrectly disposed in the drain system, Concessionaire shall be responsible for cleaning or repairing drains.

6. Failure to comply with this section, after notice from the City, shall be an event of default.

D. Security and Beer

1. The Concessionaire shall be responsible for security at the Concession Facility and on the Premises and for enforcing the limits of the Typical Consumption Area (except when directed by the City to use the Special Event Consumption Area).

2. Concessionaire shall hire off-duty Westminster Police Officers as needed to act as security guards to ensure the safe, responsible and orderly consumption of Beer and to enforce the Typical Consumption Area perimeter, which excludes the playing fields, dugouts, and parking lot. At a minimum, one security guard shall be present any time it is anticipated, based on statistics from prior seasons, that there will be a crowd of two hundred fifty people or more.

3. Concessionaire shall install permanent signage, approved by the City, at sufficient locations along the perimeter of the Premises and at the border of the Typical Consumption Area indicating "Alcohol Prohibited Beyond this Point."

4. Only for City special events, as identified in Exhibit B to this Agreement and as identified in subsequent written notice from the Manager, will the Special Event Consumption Area apply.

E. Menu and Pricing

1. No less than once at the beginning of each Season, the Concessionaire shall submit a detailed menu and price schedule of all items it proposes to sell, including size, weight and amount of each item. All prices are subject to City approval. The Concessionaire shall plan and prepare imaginative menu selection with an adequate variety of products, in consultation with the City. Any City contract commitments regarding sole sources, i.e. beverage products, will be utilized by Concessionaire.

2. Concessionaire shall adhere strictly to all pure food laws and regulation as adopted by the State of Colorado or the County Health Department. Food shall be prepared in such a way as to be acceptable to most patrons. Hot food shall be hot and cold food shall be cold. The amount of food served shall be sufficient in relation to price and other services offered. Service shall be prompt, giving attention to the patron's needs and promoting a friendly relationship. The food shall complement the facility and shall reflect the eating preferences of most patrons.

3. Failure to comply with this section, after notice from the City, may be grounds for termination.

F. Entertainment

All costs for amenities such as background music, live entertainment, cable/satellite TV, and bar video games are the responsibility of Concessionaire. The Manager shall approve any installation prior to installation.

G. Employee Conduct and Appearance

1. Concessionaire shall be responsible for employment and compensation of its own employees. All employees shall provide prompt and courteous service to all customers and the

general public. Concessionaire shall provide qualified supervision, competent management staff, and numbers of employees necessary to maintain good service. Employees shall be clean and maintain appropriate clothing and appearance. Concessionaire shall at all times enforce strict discipline and good order among employees.

2. Failure to comply with this section, after notice from the City, may be grounds for termination.

H. Customer Service

1. Complaints from customers must be forwarded to the Manager, in writing, within one working day. All complaints, whether received by Concessionaire or the City, are to be reviewed by Concessionaire and the customer contacted by Concessionaire or its designated on-site manger within 48 hours of the filing of the complaint. A written report of the result of the follow-up will be provided to the Manager within five days.

2. If the City receives ongoing customer service complaints, the City may require a performance audit, utilizing customer surveys to determine customer satisfaction. Customers will be asked if they are “very satisfied,” “satisfied,” “dissatisfied,” or “very dissatisfied” with the operations of Concessionaire. A reasonable number of customers shall be surveyed. The acceptable performance standard shall be 75 percent of the surveyed customers rating satisfied or very satisfied. A rating below 75 percent satisfaction may be grounds for termination of this Agreement. If a survey indicates less than 75 percent satisfaction, Concessionaire may request a second survey by an independent third party, at the sole cost of Concessionaire. If the second survey indicates customer satisfaction rating of 75 percent or above, Concessionaire will be deemed to have met the standard of acceptable performance.

EXHIBIT D
EQUIPMENT AND SUPPLIES PROVIDED BY CONCESSIONAIRE

- 1 stainless steel counter
- 1 floor-standing freezer/refrigerator, 72 inches by 30 inches OR an under-the-counter unit, 48 inches by 36
- 2 commercial microwave ovens (approximately 1,000-1,200 watts each)
- 1 hot dog roller grill
- 1 bun warmer
- 1 nacho warmer
- 1 cheese/chili warmer/dispenser
- 1 heated pretzel display case
- 1 ice machine, 250-lb capacity
- 1 3-tap beer dispenser/cooler
- 1 pizza oven (small unit that fits one pizza at a time)
- 1 point-of-sale/cash register/credit card processor

EXHIBIT E
FIXTURES AND PERSONAL PROPERTY PROVIDED BY CITY

22' x 13' Concession Facility structure with cement floor, water tap, hanging light fixtures, and electrical outlets

Per Section 7 of the Agreement, the following fixtures will be installed by Concessionaire as initial improvements to the Concession Facility, at its cost, with prior City approval. These items shall become City property and shall remain part of the Concession Facility at the end of this Agreement at no cost to the City.

1 hand sink
1 3-compartment sink



Agenda Memorandum

City Council Meeting
May 20, 2013



SUBJECT: Councillor's Bill No. 22 re Early Supplemental Appropriation of FY2012 Carryover Funds for Promenade Light Towers Electrical Conversion

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

Pass Councillor's Bill No. 22 on first reading, authorizing the early appropriation of FY2012 carryover funds into the FY2013 budget of the General Capital Improvement Fund in the amount of \$110,721 for the Promenade Light Tower Conversion project.

Summary Statement

- An early supplemental appropriation is requested to fund the Promenade light tower project scheduled for completion in June 2013. Finance Staff is finalizing the audit and has identified that funds are available in the General Capital Improvement Fund (GCIF) through FY2012 carryover for this expense.
- The Promenade Light Towers are located at the Westminster Promenade between The Westin Westminster Hotel and the Promenade Lake and are being converted to light emitting diode (LED) to increase durability and energy efficiency.
- On April 8, 2013, City Council awarded the contract for this work to Kelly Electrical Services Inc. in the amount of \$110,721 from 2012 carryover.

Expenditure Required: \$110,721

Source of Funds: 2012 General Capital Improvement Fund Carryover

Policy Issue

Should Council appropriate funds as set forth in the attached Councillor's Bill as proposed?

Alternatives

1. City Council could decide not to appropriate the funds for the Promenade Light Tower conversion to light emitting diodes (LED) at this time. Staff does not recommend this option as there are health and safety concerns regarding pedestrian lighting in this area and the contract was authorized at the April 8 City Council meeting to proceed with installation.
2. City Council could decide not to appropriate 2012 carryover funds at this time, directing Staff to utilize Park Renovation Program funds in the GCIF. City Council could then decide to either replenish the Park Renovation Program budget through carryover later this summer or leave the reallocation and reduction of the Park Renovation Program budget. This is not recommended as Staff is currently updating a citywide inventory and assessment of city parks, facilities and other amenities to identify a more comprehensive repair and replacement program that these funds will help support.

Background Information

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

When originally constructed in 2000, neon light tubes were used to light each tower. The lights perpetuated ongoing complaints from the Westin Westminster Hotel as they were so bright guests could not keep the light out of their rooms at night. The original lighting design did not allow for modification that would regulate light intensity. With the development of LED lighting systems, installation now allows flexibility in the intensity of the light. There is also an added bonus of having color options for seasonal displays (red and green for the holidays; red, white and blue for the fourth of July; etc). The electrical conversion to LED will not only save in operating costs, but, also provide much needed pedestrian and ambient lighting in this area of the Westminster Promenade thereby addressing safety concerns expressed by the Westin Westminster Hotel.

The contract with Kelly Electrical Inc. in the amount of \$100,656 for the electrical conversion of the Westminster Promenade light towers to LED plus a 10-percent contingency of \$10,065, for a total expenditure not to exceed \$110,721 was approved at the April 8, 2013, City Council meeting. In the agenda memorandum, the funding source was noted as 2012 General Fund carryover. Traditionally, Staff waits for the full City audit to be complete and the formal presentation and approval by City Council in June prior to returning to City Council for authorization for the use of carryover. However, given the time sensitive nature of this project associated with safety concerns raised that the new lighting will help address, Staff is recommending the early appropriation of FY2012 carryover from the General Capital Improvement Fund (GCIF) so that this project may proceed as authorized. Finance staff has substantially completed the audit and finalizing components but is confident that these funds are indeed available for appropriation in the GCIF; as such, Staff is requesting City Council approve this supplemental appropriation at this time. Staff will return in August with the remaining carryover requests after the audit is presented to City Council in June.

This appropriation will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7501.40020.0000	\$0	<u>\$110,721</u>	\$110,721
Total Change to Revenues			<u>\$110,721</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Promenade Light Tower Conv	81375050058.80400.8888	\$0	\$110,721	\$110,721
Total Change to Expenses			<u>\$110,721</u>	

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **22**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

A BILL

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2013 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3655 is hereby increased by \$110,721. This appropriation is due to the appropriation of 2012 carryover.

Section 2. The \$110,721 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 C, dated May 20, 2013, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$110,721</u>
Total	<u>\$110,721</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 20th day of May, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10^h day of June, 2013.

ATTEST:

Mayor

City Clerk