



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. Employee Service Awards
 - B. Presentation of Proclamation to Eagle Scout
 - C. Small Business Week Proclamation
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda
 - A. Fleet Maintenance Cumulative Purchases of Over \$50,000
 - B. 87th Avenue and Wadsworth Boulevard Lift Station Replacement Project Budget Transfer
 - C. 2013 Open Drainage Maintenance Contract
 - D. 2013 Wastewater Collection System Point Repairs Contract
 - E. Standley Lake Bypass Project Design Contract Amendment
 - F. Purchase of 9.91-acre Hewit-Hawn Property at SE Corner of 112th Avenue & Sheridan Boulevard for Open Space
 - G. Colorado Brownfields Revolving Loan Fund Coalition Grant Application - LDC Regional Storm Water Detention
 - H. Second Reading of Councillor's Bill No. 18 Amending Recreation Facility Definition in Section 5-14-11, W.M.C.
 - I. Second Reading of Councillor's Bill No. 20 re 2013 1st Quarter Budget Supplemental Appropriation
 - J. Second Reading of Councillor's Bill No. 21 re Christopher Fields Concessionaire Agreement
 - K. Second Reading of Councillor's Bill No. 22 re Early Supplemental Appropriation of FY2012 Carryover Funds
9. Appointments and Resignations
 - A. Resolution No. 18 re Appointments to Fill Vacancies on Boards and Commissions
10. Public Hearings and Other New Business
 - A. Public Hearing re Wandering View Amended PDP and ODP
 - B. Sixth Amended Wandering View PDP and Tenth Amended Wandering View Filing 4, 1st Replat OPD
 - C. Councillor's Bill No. 23 re Housekeeping Amendments to Title VII, W.M.C., Health and Sanitation
 - D. Councillor's Bill No. 24 re Proposed EDA with Bradburn Northern Associates, LLC, aka Continuum Partners
 - E. Resolution No. 19 Designating the Official Newspaper of the City
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
 - A. City Council
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 20, 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 Bob Briggs, Mark Kaiser, Mary Lindsey, and Scott Major were present at roll call. Councillor Herb Atchison was absent. Acting City Manager Stephen P. Smithers, City Attorney Martin McCullough, and City Clerk Linda Yeager were also present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of May 13, 2013, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. Smithers announced that immediately following this meeting, City Council would meet in executive session in consultation with the City Attorney to discuss and provide direction on the proposed acquisition of property for the 87th and Wadsworth Lift Station Replacement Project pursuant to Section 1-11-3(C)(2), (7) and (8), W.M.C., and Section 24-6-402(4)(a), (b) and (e), CRS.

COUNCIL REPORTS

Councillor Major reported having attended the Shred-A-Thon for Crime Stoppers at the Police Department, the pancake breakfast at Valley Bank to support maintenance of the Armed Forces Tribute Garden, and the Armed Forces Day ceremonies at the Armed Forces Tribute Garden. Bill Walenczak, former Director of Parks, Recreation and Libraries and the person whose inspiration it was to build the Tribute Garden, was honored at the ceremony and presented with a plaque of appreciation. All events had been well attended.

Councillor Briggs reported that after the pancake breakfast and Armed Forces Day ceremony on Saturday, he also attended the Westminster Grange's salute to veterans. The After Year Singers performed and their music was enjoyed by all in attendance.

Mayor McNally reported that in addition to the above Saturday activities, she had gone to the Bowles House and enjoyed the quilt display sponsored by the Westminster Historical Society in celebration of its 25th Anniversary. A quilt made of woolen scraps had brought fond memories of her grandparents to her mind. She and Councillor Briggs had attended the Adams County Open Space Awards Program where the City received two grant awards. Evidence of Adams County Open Space Grant Awards were located throughout the various municipalities in the County, as well as unincorporated portions of the County. The partnership made great strides possible in developing open space resources for everyone's enjoyment.

Councillor Lindsey reported having attended the Westminster Elks Relay for Life event on Sunday. The weekend had been full of events and they were all successful.

CITIZEN COMMUNICATION

Liz Smith of the Jefferson Center for Mental Health apologized for her absence on May 13 when May was proclaimed Mental Health Month. She thanked City Council for its support of the community health center in Westminster and left for distribution information about the services provided by the agency.

PROCLAMATIONS

Mayor Pro Tem Winter presented certificates to Danny Yeager, Bobbi Strange, Vince Alcon, and Ali Starr, graduating senior members of the 2012-2013 Youth Advisory Panel, in acknowledgement of their service. She summarized the group's accomplishments and voiced appreciation for its advice to the Council. She read a proclamation the Mayor had signed in recognition of the group's contributions and called on other members of the panel to come forward for a group photograph. Unable to attend was Meagan White.

Mayor McNally read an email she had received from a member of the first Youth Advisory Panel, in which the member told of her journey since graduating from high school and attributed much of the foundation for her success to her experiences while serving on the Youth Advisory Panel.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the April 2013 Financial Report as presented; 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 Section 4-1-26, W.M.C.; authorize the City Manager to enter into a third amendment to the Agreement, in substantially the same form as distributed in the agenda, with Brothers Redevelopment Inc. providing an additional \$50,000 in funds to continue operating the Minor Home Repair Program; and 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 was not available at the Adams County Detention Facility.

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

COUNCILLOR'S BILL NO. 20 – 1ST QUARTER 2013 BUDGET SUPPLEMENTAL APPROPRIATION

Councillor Kaiser moved, seconded by Councillor Lindsey, to pass on first reading Councillor's Bill No. 20, as revised, providing for a supplemental appropriation of funds to the 2013 budget of the General, Legacy Ridge, Heritage at Westmoor, General Capital Outlay Replacement, Parks Open Space & Trails, and General Capital Improvement Funds. Councillor Lindsey seconded the motion and it carried unanimously at roll call.

COUNCILLOR'S BILL NO. 21 APPROVING CHRISTOPHER FIELDS CONCESSIONAIRE AGREEMENT

Mayor Pro Tem Winter moved, seconded by Councillor Kaiser, to pass on first reading Councillor's Bill No. 21 authorizing the City Manager to enter into a two-year lease agreement, including the option of a three-year additional term, with Top One, Inc. to operate a concession stand that sells a variety of ballpark type foods and beverages at Christopher Fields. On roll call vote, the motion passed unanimously.

COUNCILLOR'S BILL NO. 22 AUTHORIZING EARLY CARRYOVER SUPPLEMENTAL APPROPRIATION

It was moved by Councillor Briggs and seconded by Councillor Major to pass on first reading Councillor's Bill No. 22 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. The motion passed unanimously on roll call vote.

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 7:19 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, General Services Director
Dee Martin, Workforce Planning & Compensation Manager

Recommended City Council Action

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

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the fourth grouping of 2013, employees with 20 years of service will be celebrated tonight.
 - Presentation of 20-year certificates and pins - Councillor Briggs

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

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

Rachel Harlow-Schalk	Senior Projects Officer	General Services
Lance Johnson	Golf Operations Superintendent	Parks, Recreation & Libraries

On June 12, 2013, the City Manager will host an employee awards luncheon. During this time, fifteen (15) employees will receive their 15-year service pin, nine (9) employees will receive their 10-year service pin, and six (6) employees will receive their 5-year service pin. Recognition will also be given to those celebrating their 20th anniversary. This is the fourth luncheon in 2013 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the fourth luncheon is 385 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Background on employees being recognized



Agenda Item 6 B

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Presentation of Eagle Scout Proclamation

Prepared By: Valerie White, Administrative Secretary

Recommended City Council Action

Mayor McNally will present a proclamation to Lucas A. Droste for achieving the rank of Eagle Scout.

Summary Statement

Lucas A. Droste achieved the rank of Eagle Scout upon the completion of his community service project for the Westminster Historical Society.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Lucas A. Droste's project to achieve the rank of Eagle Scout was completed at the Westminster Historical Society's Office located at 4350 West 76th Avenue in south Westminster. Lucas worked in conjunction with the City's Parks Department to remove and replace old mulch, landscaping fabric and edging. Additionally, Lucas added decorative river rock to the landscaping, creating a more beautiful look than when he started.

Lucas will be present at Monday's night meeting to accept a proclamation for his achievement.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, the Eagle Scout rank is one that is achieved through many years of effort; and

WHEREAS, Eagle Scouts have been trained in the skills of leadership, teamwork and commitment to goals; and

WHEREAS, Eagle Scouts have acquired many skills through merit badge work that will stay with them for the rest of their lives; and

WHEREAS, the rank of Eagle Scout is a credential that many successful adults hold; and

WHEREAS, Eagle Scouts have demonstrated their interest in high achievement; and

WHEREAS, the effort to attain the Eagle Scout badge requires a community service project; and

WHEREAS, Lucas A. Droste worked in conjunction with the City of Westminster Parks Department to remove and replace the existing bark mulch and edging at the Westminster Historical Society's Office.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby offer my congratulations on the achievement of attaining the rank of Eagle Scout.

Dated this 10th day of June, 2013.

Nancy McNally, Mayor



Agenda Item 6 C

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Small Business Week Proclamation

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Councillor Kaiser to present a proclamation to Ryan Johnson, Economic Development Specialist, on behalf of the business community proclaiming the week of June 17th as “Small Business Week” in the City of Westminster.

Summary Statement

- For the past several years, the Small Business Administration has hosted its annual Small Business Week to recognize small businesses for their role as essential ingredients to the continued strength, and wellbeing of the national economy. This year, Small Business Week will take place beginning June 17th through June 21st.
- Westminster also recognizes the contributions of its small businesses to the local economy.
- The Mayor, on behalf of City Council, is requested to proclaim the week of June 17th as “Small Business Week” in the City of Westminster.
- Ryan Johnson, Economic Development Specialist, will be present at Monday night’s meeting to accept this proclamation on behalf of all Westminster businesses.
- During Small Business Week, City Staff will:
 - Provide information and links on the City website as well as social media encouraging businesses to reach out to resources for small businesses.
 - Invite the Westminster Window to attend the City Council meeting on June 10th to report on the proclamation.
 - Provide information in The Weekly with access to resources for small businesses.
 - Send an email blast to all recipients of the business newsletter with information on how to access resources for small businesses.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Beginning on Monday, June 17th and lasting through Friday, June 21st, the Small Business Administration (SBA) will be hosting its annual Small Business Week. This event takes place all across the country and features exciting and informative events targeted at helping small businesses start, grow and thrive.

The City of Westminster offers many services to help businesses in Westminster including the Small Business Scholarship Program and the Small Business Capital Project Grant, which have become popular programs among the list of services provided. A complete list of business services offered by the City of Westminster is attached. The City of Westminster also benefits from having the North Metro Small Business Development Center (SBDC) located at Front Range Community College. The SBDC provides low or no cost classes or advising sessions for existing businesses or startups with topics ranging from business plans and strategic planning to legal issues and securing financing.

Small Business Week recognizes the vital role that small businesses play in the success of the City. Small businesses provide employment, shopping, entertainment and recreational opportunities for all citizens. Small businesses contribute to the City’s operating funds through revenue generated from sales and use tax, accommodations and admissions tax, as well as property tax collections. Small businesses also enrich the quality of life in Westminster by supporting community organizations with financial and in-kind contributions. The high caliber mix of retail, service, and corporate office establishments found in Westminster is virtually unparalleled in northwest metro Denver.

Currently, there are roughly 3,000 businesses in the City of Westminster, the vast majority of which are considered small businesses (having fewer than 500 employees). It is appropriate that these businesses be publicly recognized for their contributions to the community by proclaiming the week of June 17th as “Small Business Week” and encouraging all citizens to support their local businesses. “Small Business Week” meets the following City’s strategic plan goals: Financially Sustainable City Government Providing Exceptional Services, and Building a Strong Balanced Local Economy.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Proclamation
Business Services Sheet

WHEREAS, The City of Westminster benefits greatly from having a healthy and diverse business community; and

WHEREAS, Westminster businesses provide employment, shopping, entertainment and recreational opportunities to its citizens; and

WHEREAS, The success of small and local business in Westminster is critical to the City's financial stability; and

WHEREAS, The Small Business Administration will be hosting its annual Small Business Week beginning June 17th and lasting through June 21st; and

WHEREAS, It is fitting that official recognition be given to the importance that Westminster businesses play in the continued strength and well being of our city.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim the week of June 17, 2013, as

Small Business Week

in the City of Westminster, and encourage all citizens to support Westminster businesses.

Signed this 10th day of June, 2013.

Nancy McNally, Mayor

BUSINESS SERVICES PROGRAM

The City of Westminster is committed to serving the needs of all Westminster businesses.
The following services and resources are available to help your business.

SMALL BUSINESS CAPITAL PROJECT GRANT:

The program provides financial assistance to encourage the growth of existing businesses in Westminster with 50 or fewer employees. The program is designed to compensate 10% (up to \$5,000) for one-time project related costs.

SMALL BUSINESS SCHOLARSHIP GRANT:

The program reimburses 50% of the cost of tuition, fees, and required materials, up to \$500 per business, per calendar year, after successful completion of courses. Applicants must be Westminster business owners/employers with 50 employees or less, and courses must be related to their field of business.

WESTMINSTER GREEN GUIDE:

This guide is intended to assist you in your efforts to be more environmentally sustainable. To view the *Green Guide*, visit the Environmental Services page at <http://www.ci.westminster.co.us/Environment/WasteRecycling/RecyclingGuide.aspx>

REAL ESTATE:

Economic Development staff can provide you with up-to-date information about availability in commercial land and buildings, as well as average lease rates and CAM charge information.

BUSINESS DIRECTORY:

The online listing of all licensed businesses in Westminster is available thru the City web site. It is a great place to find businesses nearby to purchase goods and services and provides an opportunity to list your business website to gain exposure. Visit the site at <https://www.ci.westminster.co.us/busdir/default.asp>

SHOP WESTMINSTER

The Shop Westminster program encourages Westminster residents and businesses to shop locally to benefit the community and businesses in the City. Citizens and businesses are encouraged to look for the *Shop Westminster* decal where they shop as part of the "buy local" campaign. To get a Shop Westminster decal or stickers, contact Economic Development at 303-658-2108.

BUSINESS QUESTIONS:

Want to know what is being built on a specific corner? Need to know who to call about State regulations? Want to know about City sign regulations or have other questions? The Economic Development staff is a great point of contact for a variety of business related issues. Call, e-mail, or drop by anytime.

DOING BUSINESS WITH THE CITY

Westminster believes in open, fair competition and strives to ensure that all vendors in the City have equal opportunity to compete for City business. Licensed businesses in the City can be placed on the Bid List by contacting the Purchasing Office or clicking on "Bids & Purchasing" on the City website.

COLLEGE HILL LIBRARY:

Located next to Front Range Community College, the library has a myriad of products and services available to businesses, from the obvious to the unexpected. Web access to library services and resources is <http://www.ci.westminster.co.us/Libraries.aspx>

- Business Source Elite provides full text for over 2170 businesses journals covering management, economics, finance and international business.
- Regional Business News is a full text newswire database covering world wide business news.
- Reference USA contains detailed information on over 12 million businesses.
- Thousands of books on business-related topics including accounting, management, creating a business plan, entrepreneurial resources, and computer handbooks.
- Free series of business classes for small business owners
- Free study rooms for 6 or fewer people to meet
- Meeting rooms for rent that seat anywhere from 7 to 80 people.
- Personal computers and professional quality printers

NORTH METRO SMALL BUSINESS DEVELOPMENT CENTER

The North Metro Small Business Development Center offers information & counseling related to business plans, leadership skills, sales strategies, web page creation, marketing, staff management, technology, and everything else you need to know to run your business.

RECREATION FACILITIES:

As a Westminster business your employees are eligible for discounted admissions to the City's recreation facilities. In addition, meeting rooms are available to accommodate groups up to 300 people.

POLICE & FIRE DEPARTMENTS

In addition to keeping the City safe, police & fire personnel provide training in the areas of fire extinguisher utilization, first aid/CPR, emergency planning, fire alarm drills, security surveys, robbery prevention, and many more. Most of these trainings are free of charge.

CONTACT US

Contact Economic Development if you have questions or would like more information about any of the programs listed above. We can put you in contact with the right person / program.

ecodevo@cityofwestminster.us
303-658-2108

Updated February 2013



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Fleet Maintenance Cumulative Purchases of Over \$50,000

Prepared By: Jeffery Bowman, Fleet Manager

Recommended City Council Action

Determine that the public interest will be best served and approve Fleet Maintenance cumulative purchases in 2013 with TCI Tire Centers for purchases not to exceed \$130,000 through year end.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council for approval. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- The Fleet Maintenance Division uses a number of vendors to provide tires and tire services required to maintain City of Westminster vehicles. Total aggregate purchases from TCI Tire Centers will likely exceed \$50,000 during 2013, as purchases have already totaled \$38,517. Staff is asking for approval of purchases not to exceed \$130,000 for tires and tire services from TCI Tire Centers through 2013.

Expenditure Required: \$130,000

Source of Funds: 2013 Fleet Maintenance Fund

Policy Issue

Should Council approve the cumulative purchase of tires and tire services from TCI Tire Centers that total over \$50,000 in 2013?

Alternative

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

Background Information

The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council for approval. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000. Fleet Maintenance has identified one vendor where the total cumulative purchases or expenses will exceed \$50,000 for the year 2013 and thus require Council authorization. Staff is seeking approval for this expenditure for the calendar year 2013. Funds are available in the Fleet Maintenance Commodities account.

Fleet Maintenance uses a variety of tire vendors to provide tires and tire services. These on-going purchases include routine, competitively bid parts and services. Some are sole-source purchases since the needed item(s) are only stocked by either sole vendors or a limited number of vendors in our area.

To date, Fleet Maintenance has identified TCI Tire Centers as a vendor that will accumulate over \$50,000 in orders during 2013, as purchases have already totaled \$38,517. TCI Tire Centers has the State Bid on the Michelin tires used for the City's Fire apparatus and is the most frequently used vendor for recap tires for heavy duty tandem trucks.

Staff anticipates that it will be purchasing additional tires and services from TCI for the remainder of the year that will not exceed \$130,000. The City's approach to these types of collective purchases from a single vendor is to assure that purchases in excess of \$50,000 are identified in advance and brought to City Council for approval.

This approach helps achieve the City Council's Strategic Plan Goals of "Safe and Secure Community" and "Financially Sustainable City Government Providing Exceptional Services" by meeting the following objectives: maintaining well equipped Police and Fire Departments and spending tax dollars in a responsible manner.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: 87th Avenue and Wadsworth Boulevard Lift Station Replacement Project Budget Transfer

Prepared by: Dan Strietelmeier, Senior Engineer
Stephen Grooters, Senior Projects Engineer

Recommended City Council Action

Authorize the transfer of \$216,980 from the Open Cut Sewer Capital Improvement account into the 87th Avenue and Wadsworth Boulevard Lift Station Replacement Project to provide funds necessary to complete the project.

Summary

- Based on the results of the 2006 Utility System Infrastructure Master Plan, the 87th Avenue and Wadsworth Boulevard sanitary sewer lift station and structures were scheduled for replacement.
- City Council awarded RN Civil Construction a contract for the project construction on April 22, 2013 and construction of the new lift station is now underway.
- The project will accomplish four main objectives including: 1) Relocating the lift station away from traffic, 2) Adding a redundant discharge pipeline for reliability, 3) Adding a buried overflow storage tank to reduce the risk of spills, and 4) Relocating the lift station out of the storm water drainage way prone to flooding conditions.
- The construction contract includes several work restrictions negotiated with the property owners in an attempt to minimize the impact of the construction on the businesses in the area.
- Council approved funding for this project in the Utility Fund and due to unanticipated cost increases additional funds are required to complete this project.
- Savings from completed projects are available in the Open Cut Sewer Capital Improvement Project account to fully fund this project without the need to reduce project scope. Staff is requesting this transfer as this project and its scope remain the highest priority use for the funds.

Expenditure Required: \$216,980

Source of Funds: Utility Fund Capital Improvement Program
- Open Cut Sewer Project Account

Policy Issues

Should City Council authorize the movement of Open Cut Sewer Project savings to complete the full scope of this project?

Alternatives

City Council could choose not to authorize the movement of Open Cut Sewer Project savings to this project account. However, without this authorization there are insufficient funds in the project account to complete the full scope of this project. The project scope could be reduced but this is not recommended because the full project scope is necessary to meet the project goals of improving the reliability of the sewer system. Project savings are available in the Open Cut Sewer capital improvement account and this project is the highest priority use of these funds.

Background Information

Utility system master planning performed in 2006 evaluated the condition and performance of the City's sanitary sewer collection system and lift stations and provided recommendations for improvements. One of the recommended improvements was to replace the existing 87th Avenue and Wadsworth Boulevard lift station. There were four main drivers for this replacement including: 1) the age and condition of the existing equipment and structures, 2) improving emergency storage volume, 3) relocating the station out of the storm water channel that is prone to flooding, and 4) moving the existing station away from the street to improve safety for operations crews and reduce the risk of damage from traffic accidents.

Design of the new lift station was initiated in 2011 and included an analysis of several alternative sites, including rebuilding on the existing site. The recommended site for the new lift station is on the west side of Wadsworth Boulevard near the Standley Lake Shops retail center. Construction on this site has a lower estimated project cost than the original site, meets all of the objectives for the project including resolving the concerns listed previously and meets several additional factors including:

- Being in close proximity to existing sanitary sewer pipelines and infrastructure to help limit costs and the extent of construction
- Minimizing aesthetic impacts to the residential neighborhood
- Maximizing the relative separation from commercial businesses
- Maintaining safe, easy access for construction and maintenance
- Providing the ability for above ground structures to remain outside of Colorado Department of Transportation (CDOT) Right of Way

City staff have worked closely with the property owners throughout design and agreements have been executed authorizing the City to proceed with construction. Based on the overall project costs and bids for construction additional funds in the amount of \$216,980 are required to allow the full scope of the project to proceed. Savings are available in the Open Cut Sewer account from several projects completed during the economic downturn and the resulting extremely competitive bid climate. Staff are requesting transfer of these funds at this time as this project is the highest priority use.

A summary of the total project budget is listed below:

<u>Project Component</u>	<u>Amount</u>
Existing Site Interim Improvements	\$6,837
Planning, Design, Permitting, Land Costs, Easements, Appraisals, and Miscellaneous Costs	\$1,194,231
RN Civil Contract with Contingency	<u>\$3,577,200</u>
Total Project Cost	\$4,778,268
<u>Funding Sources</u>	
87 th and Wadsworth Lift Station Replacement Account	\$4,561,288
Open Cut Sewer Account	<u>\$216,980</u>
Total Funding	\$4,778,268

The 87th Avenue and Wadsworth Boulevard Lift Station Replacement Project helps achieve the City Council’s Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Vibrant Neighborhoods In One Livable Community” by contributing to the objectives of well-maintained City infrastructure and facilities. With the new lift station in place, residents will receive more reliable sewer services with reduced risk of system failures.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 C

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: 2013 Open Drainage Maintenance Contract

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

Recommended City Council Action

Based on report and the recommendation of the City Manager, determine that the public interest would best be served by accepting the sole bid from A. Moot Point Construction Company for Open Drainage Maintenance for 2013 in the amount of \$75,600, and authorize a contingency of \$7,560 for a total 2013 project budget not to exceed \$83,160; and authorize the City Manager to execute a contract for 2013 with the option for two additional one-year renewals for 2014 and 2015.

Summary Statement

- The City utilizes the services of a private contractor to perform open drainage maintenance that includes brush cutting, debris, silt and vegetation removal as well as to reestablish flow in open drainage ways.
- As proposed, annual contract renewals for 2014 and 2015 will require agreement by both parties and any price adjustments will be based on the Consumer Price Index for all urban customers.
- City Council approved funds in the 2013 Storm Drainage Fund –Street Maintenance account for open drainage maintenance. Although the bid came in over the approved funded amount A. Moot Point Construction Company has agreed to honor their prices not to exceed \$83,160, by reducing the scope of work.
- Formal bids were solicited from four contractors with one contractor responding.
- The sole bidder, A. Moot Point Construction Company meets all of the City bid requirements and has successfully performed open drainage maintenance services for the City for the past seven years and throughout the Denver metro area over the past twelve years.
- A contingency is included here for potential additional maintenance that may be needed due to severe storm events.

Expenditure Required: \$ 83,160

Source of Funds: 2013 Storm Drainage Fund
Street Operations Division Operating Budget

Policy Issue

Should Council award this bid to the sole bidder, A. Moot Point Construction Company, for the 2013 Open Drainage Maintenance Project, with two, one year extensions in 2014 and 2015?

Alternative

One alternative is to discontinue the services of a private contractor. This alternative would require the City to hire a minimum of two full-time employees and invest in the equipment necessary to perform open drainage maintenance. City Staff does not recommend performing open drainage maintenance “In-House.” Initial equipment outlay would be substantial and ongoing FTE, equipment maintenance, and equipment replacement expenses are not cost effective.

Background Information

The City has utilized the services of an open drainage contractor for several years on an as needed basis; however, this year staff formulated a prioritized list of maintenance areas that will exceed the \$50,000 threshold requiring a formal bidding process in accordance with City purchasing procedures. This also allows the City to have a contractor on board if their services are needed after a severe storm event.

The following bids were received:

A. Moot Point Construction Company	\$132,400
Quick’ Hoe & Landscaping Service, Inc.	No Bid
Westminster Excavating, Inc.	No Bid
Long Reach Excavator of Colorado	No Bid
This contract is not to exceed	\$83,160

Formal bid request were solicited in accordance with city bidding requirements for the Open Drainage Maintenance Project to four contractors; however, A. Moot Point Construction Company was the only vender to submit a bid. A. Moot Point Construction Company meets all of the City bid requirements and has successfully performed open drainage maintenance services for The City of Westminster and throughout the Denver metro area. A. Moot Point Construction Company has been in business for twelve years and all references responded positively, having no reservation in any facet of operations.

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

This contract helps achieve Council’s Strategic Plan Goals of a “Financially Sustainable City Government Providing Exceptional Services” and “Vibrant Neighborhoods in One Livable Community” by meeting the following objectives: well maintained City infrastructure and facilities, and maintain and improve neighborhood infrastructure and housing by keeping Westminster open drainage areas clean and free from silt, vegetation and debris buildup.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Location List and Map

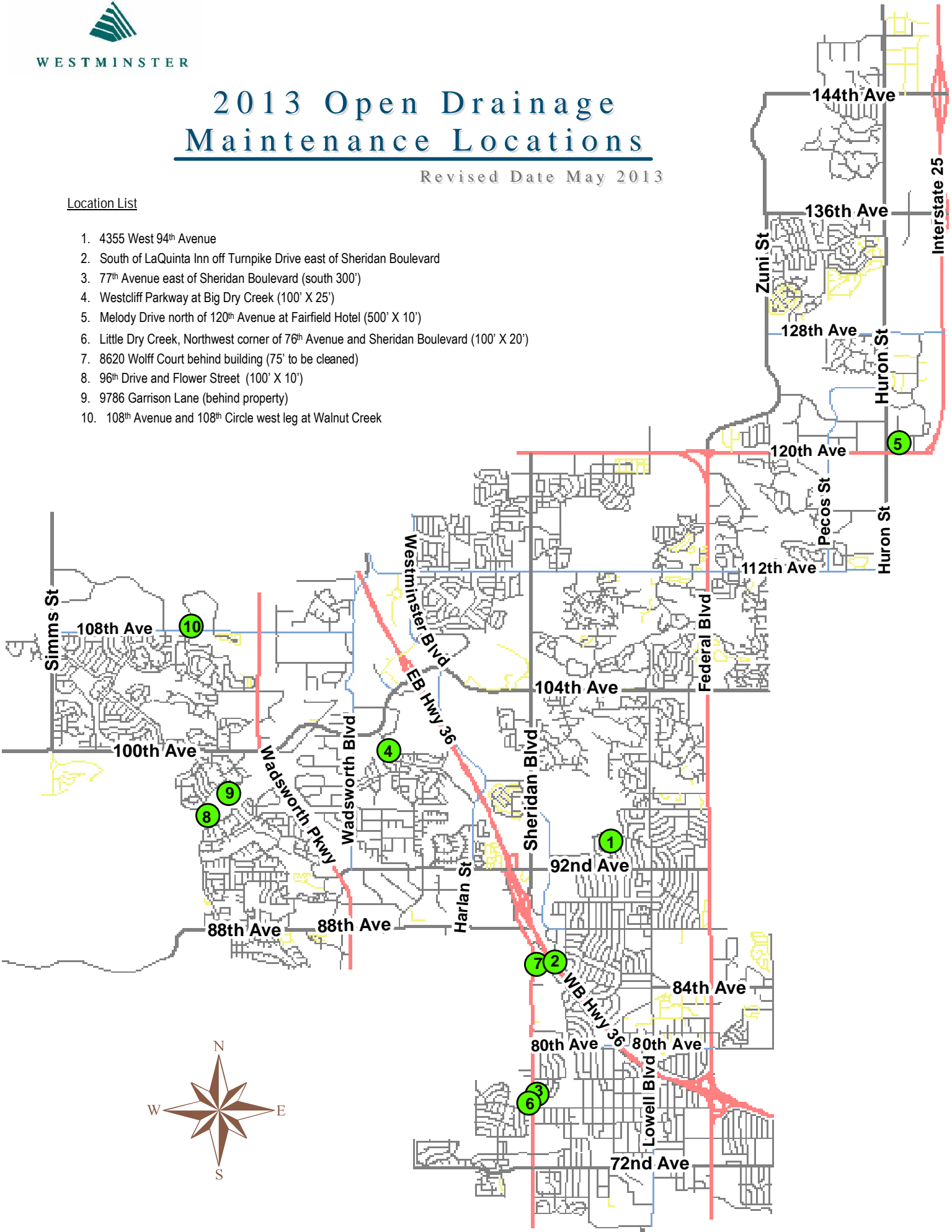


2013 Open Drainage Maintenance Locations

Revised Date May 2013

Location List

1. 4355 West 94th Avenue
2. South of LaQuinta Inn off Turnpike Drive east of Sheridan Boulevard
3. 77th Avenue east of Sheridan Boulevard (south 300')
4. Westcliff Parkway at Big Dry Creek (100' X 25')
5. Melody Drive north of 120th Avenue at Fairfield Hotel (500' X 10')
6. Little Dry Creek, Northwest corner of 76th Avenue and Sheridan Boulevard (100' X 20')
7. 8620 Wolff Court behind building (75' to be cleaned)
8. 96th Drive and Flower Street (100' X 10')
9. 9786 Garrison Lane (behind property)
10. 108th Avenue and 108th Circle west leg at Walnut Creek





Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: 2013 Wastewater Collection System Point Repairs Contract

Prepared By: Stephen Gay, Utilities Operation Manager
Robert L. Booze, Distribution and Collection Superintendent

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder, Quick's Hoe & Landscape Service, in the amount of \$67,000 to complete wastewater collection system repairs, and authorize a 10% contingency budget of \$6,700 for a total budget of \$73,700.

Summary Statement

- This project includes the open cut excavation of seven sanitary sewer mains that have been found to have significant holes, bellies, or cracks/fractures in the pipe and two manhole installations. The contractor will be responsible to remove asphalt, excavate, repair, backfill and replace asphalt on each excavation.
- Formal bids were issued and a bid opening took place on May 15, 2013. Four contractors bid on this project. The lowest responsible bid was submitted by Quick's Hoe & Landscape Service. This contractor has been utilized by the City in the past and has provided a satisfactory work product.
- Adequate funds are budgeted for this expenditure in the 2013 Public Works and Utilities, Utility Fund, Capital Improvements Budget.

Expenditure Required: \$73,700

Source of Funds: Public Works and Utilities Capital Improvements Budget

Policy Issue

Should the City accept the bid submitted by Quick’s Hoe & Landscape Service to complete the needed sewer line rehabilitation project for point repairs as specified in the contract documents?

Alternative

Council could choose to delay this sanitary sewer line rehabilitation project. This is not recommended as this may lead to additional sewer line failures and damages that may occur due to line collapse.

Background Information

The 2013 Wastewater Collection System Improvement Project includes the open cut excavation of seven sanitary sewer mains that have been found to have either significant holes, bellies, or cracks/fractures in the pipe, along with two new manhole installations. The contractor will be responsible to remove asphalt, excavate, repair, backfill and replace asphalt on each excavation. These point repairs were identified as priorities through the annual wastewater collection system maintenance program that includes the televised inspection and condition rating of sanitary sewer lines throughout the City. The defects in these lines are so severe that trenchless lining alone will not provide a suitable repair. One of the sewer lines involved in this work will be scheduled for trenchless lining after the repairs have been made.

These “point repairs” include the total length of the sewer pipe up to twenty five feet in length and up to thirteen feet in depth. All of the repairs are on eight inch diameter pipe. Defects in the sewer line can eventually cause the sewer’s structural support to fail and can cause a total line collapse. The selected sewer lines related to this project were identified as a priority for repair due to the severity of the defect found in relation to the specific section of sewer line. The contractor will commence work in early July, 2013, and will complete this project by October 1, 2013.

The project work will take place in a variety of locations throughout the City. A listing of addresses/locations of the areas to be completed is attached to this Agenda Memorandum, along with a map that illustrates these locations.

The 2013 Wastewater Collection System Project was advertised for notice and bids were accepted until Thursday, May 15, 2013 at 2:30, when the project bid opening took place. The City has utilized the services of Quick’s Hoe & Landscape Service, Inc. in the past and has been satisfied with the quality of their work.

The results of the submitted bids are as follows:

Quick’s Hoe & Landscape Service	\$67,000
Underground Infrastructure Technologies	\$88,354
Levi Contractors, Inc.	\$94,400
Brannan Construction Company	\$139,425

This project helps achieve the City Council’s Strategic Plan Goals of “Financially Sustainable City Government,” “Safe and Secure Community,” and “Vibrant Neighborhoods and Commercial Areas” by meeting the objectives of well-maintained City infrastructure and facilities, citizens safe anywhere in the City, and maintaining and improving neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: 2013 Wastewater Collection System Point Repair Work Site Listing
2013 Wastewater Collection System Improvements – Location Listing Map

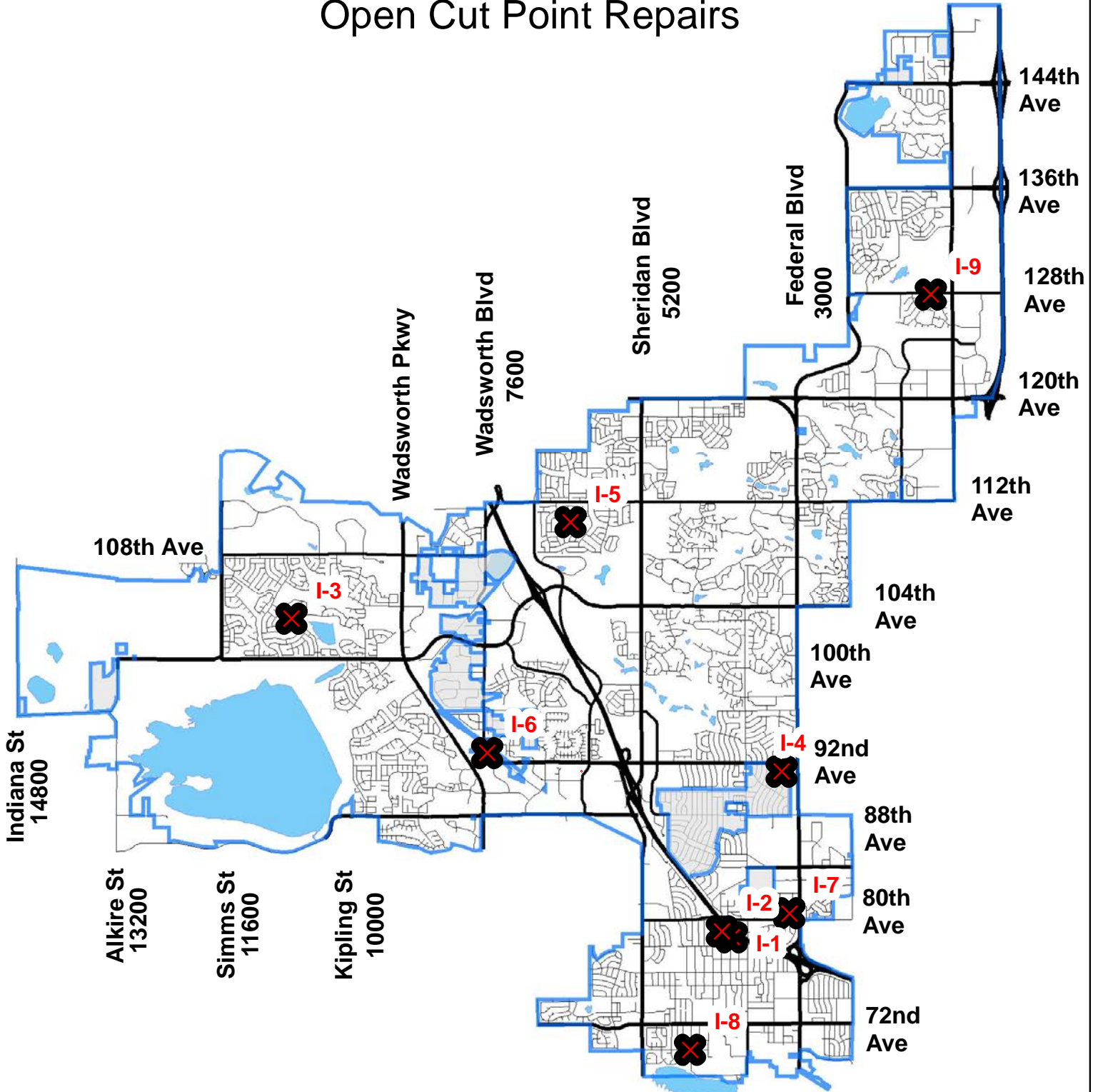
2013 WASTEWATER COLLECTION SYSTEM POINT REPAIR WORK SITE LISTING

	Map Indicator	Address
1.	I-1	7850 Maria Street
2.	I-2	7950 Maria Street
3.	I-3	10541 Countryside Drive
4.	I-4	9139 Hunter Street
5.	I-5	10941 Kendall Street
6.	I-6	7569 92nd Avenue
7.	I-7	8040 Grove Street
8.	I-8	7000 Utica Street
9.	I-9	12735 Kalamath Court




WESTMINSTER

2013 Wastewater Collection System Improvements Open Cut Point Repairs



Legend

 Point Repairs





Agenda Item 8 E

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Standley Lake Bypass Project Design Contract Amendment

Prepared By: Stephanie Bleiker, Senior Engineer
Stephen Grooters, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract amendment with Hatch Mott & MacDonald, Inc. for design of two new scope items in the amount of \$113,000, increasing the project budget from \$590,923 to \$703,923.

Summary Statement

- The City's water supply system is set up to divert raw water from various sources and deliver that water through several conveyance systems to Standley Lake and then via multiple pipelines to the City's water treatment facilities.
- Because all water must go through Standley Lake and its outlet works, additional system redundancy is desired to maintain reliable service should facilities be taken offline for emergencies, maintenance, or other reasons. A bypass pipeline was determined to be the best way to achieve that redundancy.
- The project is currently in final design with engineering services contracted to Hatch, Mott & McDonald, Inc. (HMM). Staff is pleased with their services and the project is on-schedule and within budget.
- During the design process the project team identified two new scope items to incorporate into the project: 1) Replacing an existing flow control gate on Farmers' Highline Canal that is currently limited in its ability to accurately control flow rates and 2) Replacing an existing emergency release valve and vault with one of larger size and capacity.
- Staff supports adding these items to the project, has negotiated a competitive fee with HMM for their design, and is now seeking Council approval to add this effort to the contract through an amendment.
- Adequate funds are available in the project fund for design of the proposed new scope items.

Expenditure Required: \$113,000

Source of Funds: Utility Fund – Standley Lake Bypass Pipeline capital account

Policy Issue

Should the City execute an amendment to HMM's engineering services agreement for the new design work?

Alternative

1. The City could decide not to approve the amendment and choose not to replace the flow control gate or the emergency release valve and vault. This is not recommended because both of these improvements will protect this City's raw water infrastructure and are recommended by the project team to support the new bypass pipeline.
2. Council could choose to request proposals for design of the new scope items. This is not recommended as Staff believes that HMM provides the best value for this project. HMM is intimately familiar with the requirements of the project and the City's infrastructure involved and the negotiated scope is competitive for the work. Their knowledge will streamline the work and provide the best value to the City.

Background Information

During development of the 2009 Comprehensive Water Supply Plan, Council gave Staff direction to pursue added redundancy to the City's raw water supply system. The need for redundancy in the City's raw water supply system is focused on Standley Lake and the Standley Lake outlet works because all of the City's raw water is routed through these two parts of the City's raw water infrastructure. In 2011, Council authorized a focused study to identify the most cost-effective means to accomplish water supply system redundancy. The outcome of that study was the recommendation to construct a new 48-inch, 3,000 foot (+/-) pipeline from the Farmers' High Line Canal to the City's water treatment plant raw water pipelines. The pipeline project is currently in final design with engineering services contracted to Hatch, Mott & McDonald, Inc. (HMM). Staff is pleased with their services and the project design is on-schedule and within budget.

During design the project team identified two new scope items that Staff is requesting be incorporated into the project:

1. **Replacing an existing flow control gate** - The project team determined that the condition and capabilities of an existing gate on Farmers' Highline Canal are insufficient to accurately control the flows to the bypass pipeline. Replacing this gate will allow operations staff to remotely control the gate with higher accuracy and minimize risks associated with canal flooding or ice accumulation during winter operations.
2. **Replacing an existing emergency release valve and vault** - The pipeline that supplies raw water to the City's Northwest Treatment Facility is equipped with an existing emergency release valve/vault. This release structure is located along Big Dry Creek adjacent to Wadsworth Blvd. During design the project team determined that the capacity of the existing emergency release structure is inadequate under various operational scenarios associated with the proposed Standley Lake Bypass Pipeline. A new, larger size and capacity valve/vault is recommended to enhance safety and increase protection of the existing raw water supply pipeline.

Staff supports adding these two items to the project, has negotiated a competitive fee of \$113,000 with HMM for their design, and adequate funds are available in the project fund for their design. The addition of the two items will not impact the contingency already included in the original contract. Staff is now seeking Council approval to add this effort to the design contract through an amendment.

Overall, the project is on schedule and design and permitting are anticipated to be completed fall 2013. The project's construction component has been included in the 2014 Capital Improvement Program at an estimated cost of \$5,500,000, with construction completion anticipated by the middle of 2014. Staff intends to return to Council to amend the contract with HMM for subsequent engineering construction services upon successful completion of the project design and bid phases.

The timely progress on the Standley Lake Bypass Study will assist the City in meeting the City Council's Strategic Plan goals of providing "Financially Sustainable City Government Providing Exceptional Services," "Safe and Secure Community" and ensuring "Vibrant Neighborhoods In One Livable Community." With a water supply system that has reliable water delivery in place, the City can deliver water to its customers when interruptions would otherwise interfere.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Map

STANDLEY LAKE BYPASS PROJECT

Request for New-Scope Engineering Design Items





Agenda Item 8 F

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Authorize the Purchase of the 9.91-acre Hewit-Hawn Property located south of Big Dry Creek at the Southeast Corner of 112th Avenue and Sheridan Boulevard for Open Space

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Authorize the purchase of the approximately 9.91-acre Hewit-Hawn property located south of Big Dry Creek at the southeast corner of 112th Avenue and Sheridan Boulevard for open space for \$1,215,798 plus closing costs not to exceed \$5,000 and authorize the City Manager to execute all documents required to close on the purchase of the property.

Summary Statement

- The City has been negotiating with the landowner to purchase 9.91-acres from the Hewit-Hawn families for \$1,215,798 or \$2.82 per square foot. The City commissioned an appraisal that values the property at \$1,403,000 or \$3.25 per square foot. The owners have agreed to donate the difference between the appraisal and the purchase price.
- The City has been awarded a grant from Adams County for 50% of the purchase price which is \$607,899. The remainder of the funds (\$607,899) are proposed to be funded from a waiver of recovery fees owed by the seller of this parcel for improvements to Sheridan Boulevard and for a water line that the City built to serve this property. The fees owed against this property come to \$607,899.
- Purchasing this property for open space will provide a buffer to Big Dry Creek in this area. The City originally purchased a narrow strip of land along the creek on which to build the trail but did not have funds at the time to purchase an adequate amount of property to buffer the creek and trail from existing and future development. City staff is currently processing a development proposal for the Hewit-Hawn property directly south of the proposed acquisition parcel. The City's Open Space Advisory Board considers this purchase a high priority acquisition due to the goal of preserving at least 1,000 feet on each side of Big Dry Creek to serve as a wildlife corridor.

Expenditure Required: \$607,899 in the form of a waiver of recovery fees plus closing costs not to exceed \$5,000
\$607,899 grant from Adams County to be provided at closing

Source of Funds: Waiver of recovery fees and Adams County Open Space grant

Policy Issue

Does City Council approve the waiver of recovery fees owed to the City for improvements to Sheridan Boulevard and for a water line to serve this property in exchange for the purchase of this property for open space?

Alternative

City Council could choose not to authorize the acquisition or the waiver of fees at this time. Staff does not recommend this option because acquisition of this property is a high priority for the Open Space Advisory Board to provide a buffer to Big Dry Creek and staff has negotiated a purchase price under appraised value. The City has also received a grant award from Adams County towards the purchase of this property. The City does not have sufficient open space cash funding to provide the match.

Background Information

The 9.91-acre Hewit-Hawn property is part of a larger parcel owned by this partnership located at the southeast corner of 112th Avenue and Sheridan Boulevard. The property south of Big Dry Creek is zoned to allow residential development. Purchasing 9.91-acres leaves approximately 43 acres to be developed south of the creek. The City currently owns the creek and a narrow amount of land (approximately 100 to 250 feet wide) along the creek. Colorado Parks and Wildlife recommends providing at least 1,000 feet on each side of a major creek corridor for wildlife to use. Purchasing this property will enlarge the buffer south of the creek to around 600 to 800 feet wide. The proposed acquisition property consists of approximately 50% floodplain and 50% upland habitat. Acquisition of this property will also preserve existing wetlands as well as a beautiful riparian corridor with huge Cottonwood trees along Cotton Creek. The existing Cotton Creek Trail crosses this property on a temporary (and revocable) trail easement.

The City and the Hewit-Hawn families commissioned an appraisal that values the property at \$1,403,000. The owners agreed to sell the property to the City for \$1,215,798, which is \$187,202 less than appraised value. Staff proposes waiving the recovery fee of \$586,641 for improvements to Sheridan Boulevard between 107th Avenue and Big Dry Creek and \$21,258 for a water line to serve this property for a total of \$607,899 against this property. Waiving the recovery fees will allow the City to preserve this property without using City open space funds. Since the POST bond funds have been depleted, funds available for acquisitions are minimal. The remainder of the funds will come from a grant secured from Adams County for \$607,899. This represents a 50% grant match.

This acquisition supports the City’s Strategic Plan Goals of “Financially Sustainable City Government” and “Beautiful City” by increasing revenues that support defined City projects and by providing the City with increased open space and trails.

Respectfully submitted,

J. Brent McFall
City Manager

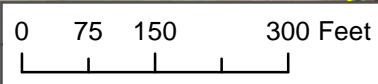
Attachment

- Vicinity Map

City of Westminster Big Dry Creek Buffer Proposed Open Space Acquisition



- Proposed Acquisition
- Open Space
- Parks
- Existing Trails
- Streams





Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Colorado Brownfields Revolving Loan Fund Coalition Grant Application for Little Dry Creek Regional Storm Water Detention Area

Prepared By: Andrew Hawthorn, Senior Civil Engineer
Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Authorize City staff to pursue a grant from the Colorado Brownfields Revolving Loan Fund Coalition program for asbestos removal and soil and groundwater remediation at the site of the Barnum Printing building, located within the proposed Little Dry Creek Regional Storm Water Detention area.

Summary Statement

- City staff wishes to pursue a grant from the Colorado Brownfields Revolving Loan Fund Coalition program for assistance with the remediation of asbestos, soil and groundwater contamination found on the former Barnum Printing site.
- Staff recommends requesting up to \$200,000; it is anticipated that the City would receive the full amount.
- This grant does not require a direct match. The total project cost associated with cleanup, grading and improvements to the Little Dry Creek area would be considered the local contribution.
- This grant can be used towards asbestos remediation and demolition of the building as well as remediation of the soil and ground water contamination.

Expenditure Required: \$0

Source of Funds: Little Dry Creek Regional Detention
Colorado Brownfields Revolving Loan Fund Coalition Grant

Policy Issue

Should the City seek a grant for assistance in covering costs associated with remediation of asbestos, soil and groundwater at the former Barnum Printing site?

Alternative

Council could choose not to pursue grant funding for the remediation of the contamination. City staff recommends pursuing the grant to assist the City with the cost of the remediation. Remediation of the contamination must be achieved before work can begin on the excavation of the larger Little Dry Creek regional detention park and open space area. This remediation work is time sensitive due to other major projects occurring in this same area.

Background Information

The City acquired the Barnum Printing property in 2010 with the intent to use the land as part of the larger Little Dry Creek Regional Detention/Park and open space project. A site investigation for environmental contamination revealed the presence of tetrachloroethylene (PCE), an industrial solvent, in the groundwater within the property limits and asbestos within the roofing materials. To more efficiently address the remediation, a Voluntary Clean Up application (VCUP) was prepared and submitted to the Colorado Department of Health and Environment Brownfields Program. This VCUP application addresses the remediation of the PCE from the soil and groundwater as well as removal of asbestos from the roofing materials. As a part of this process, the City can apply for grant money up to \$200,000 to help with the cost of the voluntary clean up. A voluntary clean up, under guidance from the State Brownfields Program, is preferred over a superfund site clean-up process that is directed by the United States Environmental Protection Agency (EPA).

With Council's approval, staff will pursue the Brownfields grant and is expected to receive a response from the Colorado Brownfields Revolving Loan Fund Coalition before the end of June. At that time, assuming that the grant request is approved, staff will seek Council's approval to receive and use the grant.

City Council action on this item meets elements of four goals in the City's Strategic Plan: 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



Agenda Item 8 H

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Second Reading Councillor's Bill No. 18 re Amend Westminster Municipal Code Section 5-14-11 Regarding the Definition of Outdoor Sports and Recreation Facility

Prepared By: Rachel Harlow-Schalk, Sr. Projects Officer

Recommended City Council Action

Pass Councillor's Bill No. 18 on second reading amending Westminster Municipal Code Section 5-14-11 adding athletic fields to the definition of an Outdoor Sports and Recreation Facility under the optional premise liquor license.

Summary Statement

- On May 13, 2013, City Council passed Councillor's Bill No. 18 on first reading to amend the definition of an Outdoor Sports and Recreation Facility under the optional premise license.
- The City is interested in selling concessions at Christopher Fields to include the sale of beer during adult sport events. The City is not interested in being the vendor of the concessions and is working with a potential vendor on a lease for the Fields.
- The type of liquor license best suited for a vendor at an outdoor sports or recreation facility is an optional premise license. The current definition of an optional premise Outdoor Sports and Recreation Facility is, "a facility that consists of a golf course or tennis facility or both."
- To allow for an optional premise license application at Christopher Fields to be accepted by the Special Permit and License Board, the definition of Outdoor Sports and Recreation Facility must be expanded to include athletic fields.
- Pursuing the sale of food and beverages, including beer, through a lease with a private vendor at Christopher Fields will not only enhance services at the fields, but also allows the City to develop a potential additional revenue source without the overhead and liability associated with a city-run concession.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. **3679**

COUNCILLOR'S BILL NO. **18**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Lindsey - Kaiser

A BILL

FOR AN ORDINANCE AMENDING SECTION 5-14-11 OF THE WESTMINSTER MUNICIPAL
CODE CONCERNING THE DEFINITION OF OUTDOOR SPORTS AND RECREATION FACILITY

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-14-11, subsection (D) W.M.C, is hereby AMENDED as follows:

(D) DEFINITIONS: The following terms shall be defined as provided below. Terms not defined in this subsection (D) shall be defined consistent with State law:

“Athletic field” shall mean a prepared surface outdoors for use while playing or participating in an organized sport.

"Outdoor Sports and Recreational Facility" shall mean a facility that consists of an athletic field, golf course, tennis court, or some combination thereof.

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of May, 2013.

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

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Second Reading 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 second 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

- City Council action is requested to adopt the attached Councillor’s Bill on second reading, authorizing a supplemental appropriation to the 2013 Budget of the General, Legacy Ridge, Heritage at Westmoor, General Capital Outlay Replacement, Parks Open Space & Trails, and General Capital Improvement Funds.
 - General Fund amendments total: \$12,280,339
 - Legacy Ridge Fund amendments total: \$ (10,372)
 - Heritage at Westmoor Fund amendments total: \$ 46,000
 - General Capital Outlay Replacement Fund amendments total: \$ 14,480
 - Parks, Open Space & Trails Fund amendments total: \$ 2,100
 - General Capital Improvement Fund amendments total: \$ 2,648,925
- This Councillor’s Bill was approved on first reading on May 20, 2013.

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.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. **3680**

COUNCILLOR'S BILL NO. **20**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Kaiser - Lindsey

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 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 Item 8 J

Agenda Memorandum

City Council Meeting
June 10, 2013



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

Prepared By: Rachel Harlow-Schalk, Sr. Projects Officer

Recommended City Council Action

Pass Councillor's Bill No. 20 on second 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

- On May 20, 2013, City Council passed 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.
- 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.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. **3681**

COUNCILLOR'S BILL NO. **21**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Winter – Kaiser

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

N



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
June 10, 2013



SUBJECT: Second Reading of 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 second 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

- City Council action is requested to pass the attached Councillor’s Bill on second reading, which appropriates funds for the electrical conversion of the Promenade Light Towers to LED.
- 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.
- This Councillor’s Bill was passed on first reading May 20, 2013.

Expenditure Required: \$110,721

Source of Funds: 2012 General Capital Improvement Fund Carryover

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. **3682**

COUNCILLOR'S BILL NO. **22**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Briggs - Major

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



Agenda Item 9 A

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Resolution No. 18 re Appointments to Fill Vacancies on Boards and Commissions

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 18 making appointments to fill vacancies on the Special Permit and License Board.

Summary Statement

- The Westminster Municipal Code establishes the membership composition of each City Board and Commission and, in some instances, sets forth expertise requirements for membership where professional experience is valuable to the Board's role.
- In late April of this year, Jennifer Shannon resigned from the Special Permit and License Board.
- Citizens interested in serving on boards and commissions were interviewed by Council in March.
- If adopted, the attached resolution officially appoints Mark L. Whitney, the current alternate member, to complete Ms. Shannon's unexpired term as a regular member through December 31, 2014. Further, the resolution appoints Brian Harms as the alternate member to the Board with a term that will expire on December 31, 2013.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to fill vacancies on the Special Permit and License Board so a full complement of qualified members can fulfill established duties?

Alternative

Do not fill the vacancies at this time. This is not recommended as City Council invested the time into completing interviews and identifying qualified citizens to fill the vacancies. In addition, having this Board function with full membership permits continuation of its efforts as outlined in the Westminster Municipal Code.

Background Information

As a result of Jennifer Shannon's resignation from the Special Permit and License Board, a resolution has been prepared to fill Ms. Shannon's vacancy by appointment of the alternate member, Mark L. Whitney, to regular membership on the Board and to appoint Brian Harms to the alternate member position. Mr. Whitney's term of office will expire on December 31, 2014; Mr. Harms on December 31, 2013.

By appointing Messrs. Whitney and Harms to the Special Permit and License Board as outlined in the attached resolution, they will be engaged in their community and will be actively supporting City Council's Strategic Plan Goals of a Strong, Balanced Local Economy by retaining and expanding current and new businesses.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment - Resolution

RESOLUTION

RESOLUTION NO. **18**

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION FOR THE CITY OF WESTMINSTER
BOARD AND COMMISSION NEW APPOINTMENTS**

WHEREAS, it is important to have each City Board or Commission working with its full complement of authorized members to carry out the business of the City of Westminster with citizen representation; and

WHEREAS, City Council conducted interviews of citizens who responded to the 2013 Boards and Commissions' recruitment and, from the pool of eligible citizens, has selected individuals to fill existing vacancies; and

WHEREAS, a vacancy exists on the Special Permit and License Board as a result of Jennifer Shannon's resignation in April 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the following individuals are hereby appointed to the Westminster Special Permit and License Board with terms of office to expire on the dates reflected.

BOARD/COMMISSION	NAMES OF APPOINTEES	TERM OF OFFICE
Special Permit and License Board	Mark L. Whitney (regular member) Brian Harms (alternate member)	December 31, 2014 December 31, 2013

PASSED AND ADOPTED this 10th day of June, 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Public Hearing and Action on the Sixth Amended Wandering View Preliminary Development Plan and Tenth Amended Wandering View Filing 4, 1st Replat Official Development Plan

Prepared By: Michele McLoughlin, Planner III

Recommended City Council Action

- 1) Hold a public hearing.
- 2) Approve the Sixth Amended Wandering View Preliminary Development Plan and Tenth Amended Wandering View Filing 4, 1st Replat Official Development Plan with the following conditions:
 - a) All illegal and non-conforming signs will be removed from rights-of-way and landscaped areas, and all illegal, non-permitted banners will be removed.
 - b) All dead and missing plant materials will be replaced.

Both of these conditions will be met prior to the issuance of any business license, building permits, or certificates of occupancy, required after the adoption date of this approval. This recommendation is based on a finding that the criteria set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code have been met.

Summary Statement

- The applicant has a proposed user (a small fitness center), for the Valle View shopping center located at the northwest corner of 104th Avenue and Federal Boulevard. Fitness Center is not currently an allowed use within the center on either the Preliminary Development Plan (PDP) or the Official Development Plan (ODP).
- The applicant is proposing to amend the Commercial Retail uses to add neighborhood retail and office uses for both the Preliminary Development Plan and the Official Development Plan for Filing 4, 1st Replat, which is the 8.35 acres of commercial retail at the southeast corner of the Wandering View subdivision.
- The Official Development Plan is also proposed to be amended to establish the required parking for the overall center at 5 spaces per thousand square feet of retail/restaurant area. The current required parking is 5 per thousand for everything except the large restaurant pad (Lodos), which is 1 per fifty. Since there are several other restaurants in the center, the 5 per thousand will even out the overall parking.
- No other changes are proposed to either the existing PDP or the existing ODP.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

At the regularly scheduled meeting of the Planning Commission on May 28, 2013, the Planning Commission voted unanimously to recommend to City Council the approval of the Sixth Amended Wandering View Preliminary Development Plan and Tenth Amended Wandering View Filing 4, 1st Replat Official Development Plan.

Policy Issues

Should the City approve the Sixth Amended Wandering View Preliminary Development Plan and the Tenth Amended Wandering View Filing 4, 1st Replat Official Development Plan?

Alternative

Deny the Sixth Amended Wandering View Preliminary Development Plan and Tenth Amended Wandering View Filing 4, 1st Replat Official Development Plan. This alternative is not recommended since, in staff's opinion, the proposed Preliminary Development Plan and Official Development Plan are in compliance with criteria set forth in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code (WMC).

Background Information

Nature of Request

The Sixth Amended Wandering View PDP and Tenth Amended Wandering View Filing 4, 1st Replat ODP are proposed specifically to add additional retail commercial land uses such as a small fitness center, specific small retail users, and various office uses in the commercial area. Some uses deemed too large for the center such as a supermarket and a gasoline outlet, are proposed to be eliminated. No other changes to the existing PDP and ODP are proposed.

Location

The site is generally located at the northwest corner of Federal Boulevard and 104th Avenue.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice for the City Council hearing was published in the Westminster Window on May 16, 2013.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Three signs were posted on the property on May 30, 2013.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner's associations registered with the City within 300 feet of the subject property. The required notices were mailed on May 29, 2013.

Applicant

Trec Valle Vista, LLC
7200 S. Alton Way, Suite A-320
Englewood, Colorado 80112

Property Owners

Trec Valle Vista, LLC
 7200 S. Alton Way, Suite A-320
 Englewood, Colorado 80112
 Ronald Boraks, Manager
 Grove Street Land Company, LLC
 1946 Market Street
 Denver, CO 80202
 Christopher Myers, Manager

JP Morgan Chase Bank, National Association
 P.O. Box 810490
 Dallas, TX 75381

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	CLUP Designation	Use
North: Autumn Chase Filing. 1	PUD	R-8	Single Family Attached Residential
West: Wandering View	PUD	City Owned Open Space	City Owned Open Space
South: Northpark Filing 8	PUD	Retail Commercial	Retail Commercial
East: Metro Ventures Filing 1	PUD	Retail Commercial	Automobile Dealership

Project Information

The following information provides examples of how, in staff’s opinion, the Wandering View PDP and the Wandering View Filing 4, 1st Replat ODP comply with the City’s land development regulations and design guidelines and the criteria contained in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached).

Preliminary Development Plan (PDP) Application

Section 11-5-14 (A) sets forth the standards for approval of Planned Unit Developments, Preliminary Development Plans and Amendments to Preliminary Development Plans. Staff is of the opinion that the approval of the proposed Sixth Amended Wandering View Filing Preliminary Development Plan satisfies all of the following criteria:

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies. *The land uses proposed by this amendment are in conformance with the City's Comprehensive Plan and all City Codes, ordinances and policies.*
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles. *This criterion is not affected by the proposed amendment.*
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly

- identified on the Preliminary Development Plan. *This criterion is not affected by the proposed development.*
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area. *This criterion is not affected by the proposed amendment.*
 5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development. *This criterion is not affected by the proposed amendment.*
 6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area. *This criterion is not affected by the proposed amendment.*
 7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic. *This criterion is not affected by the proposed amendment.*
 8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans. *Wandering View subdivision is already developed so this criterion is not applicable.*
 10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15. *This criterion is not applicable to this already developed subdivision.*
 11. The applicant is not in default or does not have any outstanding obligations to the City. *The center has several dead and missing trees and plant materials. The owners are currently in the process of replacing them, which they do on a yearly basis. Tenants have also been notified of illegal signs being placed in the right-of-way and illegal banners on the buildings and will remove them.*

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Official Development Plan (ODP) Application

Section 11-5-15(A) sets forth the Standards for Approval of Official Development Plans and Amendments to Official Development Plans. Staff is of the opinion that the approval of the proposed Tenth Amended Wandering View Filing No. 4, 1st Replat Official Development Plan satisfies all of the following criteria:

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies. *The proposed plan is in conformance with the Title XI of the Westminster Municipal Code and the Retail Commercial Design Guidelines.*
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD). *The proposed plan is in conformance with the approved Preliminary Development Plan which designates this parcel as retail commercial.*
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles. *This criterion is not affected by the plan.*

4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan. *This criterion is not affected by the plan.*
5. The plan is compatible and harmonious with existing public and private development in the surrounding area. *This criterion is not affected by the plan.*
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development. *This criterion is not affected by the plan.*
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area. *This criterion is not affected by the plan.*
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features. *This criterion is not affected by the plan.*
9. Building height, bulk, setbacks, lot size, and lot coverage are in accordance with sound design principles and practice. *This criterion is not affected by the plan.*
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials. *This criterion is not affected by the plan.*
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development. *This criterion is not affected by the plan.*
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate. *This criterion is not affected by the plan.*
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity. *This criterion is not affected by the plan.*
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions, and in a manner that creates minimum hazards for vehicles and or pedestrian traffic. *This criterion is not affected by the plan.*
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic. *This criterion is not affected by the plan.*
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans. *This criterion is not affected by the plan.*
17. The applicant is not in default or does not have any outstanding obligations to the City. *The center has several dead and missing trees and plant materials. The owners are currently in the process of replacing them, which they do on a yearly basis. Tenants have also been notified of illegal signs being placed in the right-of-way and illegal banners on the buildings and these will be removed.*

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

Traffic and Transportation: Not applicable for these amendments.

Site Design: The Wandering View subdivision is located at the northwest corner of 104th Avenue and Federal Boulevard and contains approximately 152.7 acres. The overall site is developed with Single Family Detached, Single Family Attached, Open Space, Public/Quasi Public, and Commercial Retail. The 13.2 acre Commercial Retail location is at the southeast corner of the subdivision.

Fencing: Not applicable for these amendments.

Architectural Design: Not applicable for these amendments. The Retail Commercial Center is built out except for one small building envelope.

Landscape Design: Not applicable for these amendments.

Parks/Trails/Open Space: Not applicable for these amendments.

Signage: No changes to the signage requirement are proposed as part of the Amended PDP and Amended ODP.

Lighting: Lighting is existing. No lighting changes are proposed as part of the Amended PDP and Amended ODP.

Referral Agency Responses

No referrals were sent for this land use change.

Neighborhood Meeting and Public Comments

A neighborhood meeting was not held for this property as the proposed uses are generally remaining the same, but becoming more specific.

Strategic Plan

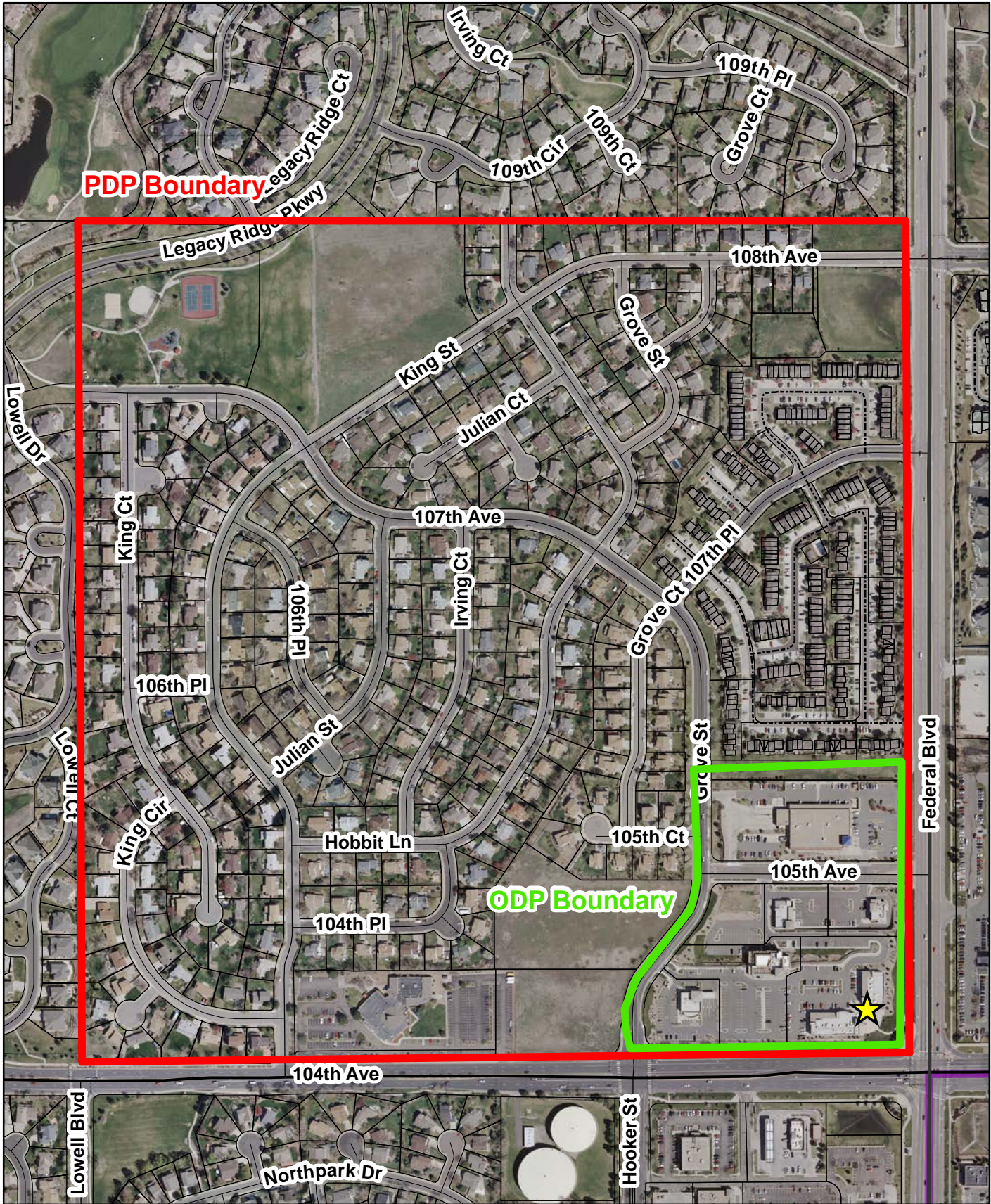
The requests meet the City Council's Strategic Plan goal of *Strong, Balanced Local Economy* by adding additional land uses to the allowable uses for the Commercial Retail area, thereby broadening the tax base to the City, and by providing additional neighborhood retail uses to support the adjacent residential neighborhoods.

Respectfully submitted,

J. Brent McFall
City Manager

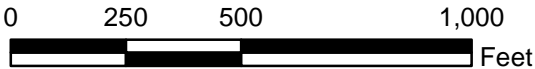
Attachments

- Attachment A - Vicinity Map
- Attachment B - Criteria and Standards for Land Use Applications
- Attachment C – PDP Amendment
- Attachment D – ODP Amendment



Wandering View PDP / Filing 4 First Replat ODP

DWG / 16 May 2013



Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

Official Development Plan (ODP) Application

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.

2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

LEGAL DESCRIPTION

THE SOUTHWEST ONE-QUARTER OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN IN ADAMS COUNTY COLORADO EXCEPTING THE FOLLOWING PARCEL DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST ONE-QUARTER; THENCE N90°00'00"E ALONG THE SOUTH LINE OF SAID SOUTHWEST ONE-QUARTER A DISTANCE OF 659.84 FEET, BEING THE POINT OF BEGINNING, THENCE N00°00'28"W A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 104TH AVENUE COINCIDENTAL WITH A POINT ON THE WEST LINE OF A PARCEL OF LAND DESCRIBED IN BOOK 1204, PAGES 395-396, ADAMS COUNTY RECORDS, THENCE ALONG SAID PARCEL OF LAND BY THE FOLLOWING COURSES AND DISTANCES, N00°00'28"W A DISTANCE OF 300.00 FEET, THENCE S89°59'52"E A DISTANCE OF 1056.00 FEET, THENCE S00°00'28"E A DISTANCE OF 300.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 104TH, THENCE S00°00'28"E A DISTANCE OF 30.00 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTHWEST ONE-QUARTER, THENCE 1056 00 FEET TO THE POINT OF BEGINNING.

THE SOUTHWEST ONE-QUARTER OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 68 WEST, LESS DESCRIBED EXCEPTION CONTAINS 152.7 ACRES MORE OR LESS.

FULL FORCE AND EFFECT

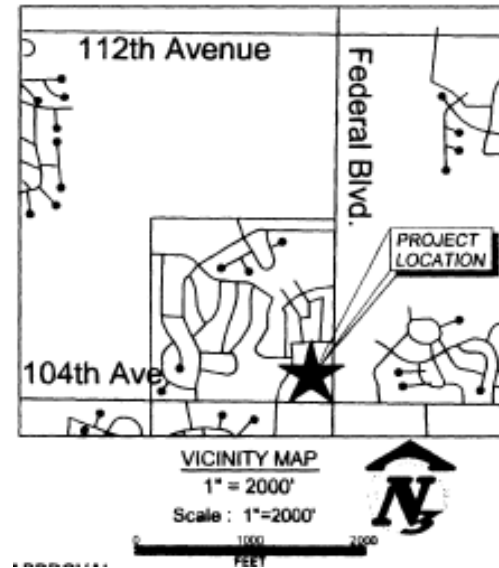
ALL PROVISIONS OF THE 2ND AMENDED PDP RECORDED AUGUST 12, 1983 AT RECEPTION #B454091 AND SUBSEQUENT PDP AMENDMENTS SHALL REMAIN IN FULL FORCE AND EFFECT, EXCEPT AS NOTED HEREIN.

SUMMARY OF AMENDMENTS

- FIRST AMENDED TO INCLUDE THE LOCATION OF COLLECTOR STREETS AND THE ALLOCATION AND CONFIGURATION OF PARK, MULTI-FAMILY, AND COMMERCIAL PARCELS, WITH NO INCREASE IN DENSITY
- SECOND AMENDED TO INCLUDE THE SEPARATION OF WANDERING VIEW PUD IN ACCORDANCE WITH SECTION 11-5-4 I (D) FOR WANDERING VIEW I PUD AND WANDERING VIEW II PUD
- THIRD AMENDED TO INCLUDE REZONING PART OF MULTI-FAMILY PARCEL TO SINGLE FAMILY B, AND RECONFIGURE THE GROVE STREET COLLECTOR STREET TO 104TH AVENUE TO REFLECT ACTUAL CONDITIONS
- FOURTH AMENDED TO INCLUDE LANGUAGE TO SPECIFICALLY DEFINE THE USES AND REVISE THE DESIGN PARAMETERS ALLOWED FOR THE COMMERCIAL PARCEL ALONG RELOCATED 105TH PLACE
- FIFTH AMENDED TO INCLUDE LANGUAGE TO SPECIFICALLY ESTABLISH MAINTENANCE RESPONSIBILITY FOR THE STORM SEWER WITHIN FEDERAL BOULEVARD LOCATED BETWEEN 105TH AVENUE AND 108TH AVENUE
- SIXTH AMENDED TO INCLUDE REDEFINING OF PERMITTED AND PROHIBITED COMMERCIAL RETAIL USES

SIXTH AMENDED PRELIMINARY DEVELOPMENT PLAN WANDERING VIEW SUBDIVISION

A PLANNED UNIT DEVELOPMENT
IN THE CITY OF WESTMINSTER,
COUNTY OF ADAMS, STATE OF COLORADO
SHEET 1 OF 2



OWNER WANDERING VIEW SUBDIVISION BLOCK 1

TREC VALLE VISTA, LLC
7200 S. ALTON WAY, SUITE A-320
ENGLEWOOD, CO 80112

ATTENTION: RONALD BORAKS, MANAGER
TELEPHONE: 303.669.1209

GROVE STREET LAND COMPANY, LLC
1946 MARKET STREET
DENVER, CO 80202

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
P.O. BOX 810490
DALLAS, TX 75381

PURPOSE OF AMENDMENT

AMEND COMMERCIAL RETAIL USES

OWNER APPROVAL

I, RONALD BORAKS, AS MANAGER OF TREC VALLE VISTA, LLC, A DELAWARE LIMITED LIABILITY COMPANY, PROPERTY OWNER, DO SO APPROVE THIS SIXTH AMENDED PRELIMINARY DEVELOPMENT PLAN FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

RONALD BORAKS, MANAGER

I, CHRISTOPHER P. MYERS, AS MANAGER OF GROVE STREET LAND COMPANY, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROPERTY OWNER, DO SO APPROVE THIS SIXTH AMENDED PRELIMINARY DEVELOPMENT PLAN FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

CHRISTOPHER MYERS, MANAGER

THE UNDERSIGNED, AS AUTHORIZED SIGNATORY FOR JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION DULY ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA, DO SO APPROVE THIS SIXTH AMENDED PRELIMINARY DEVELOPMENT PLAN FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

SIGNATURE

NAME: _____

TITLE: _____

CITY APPROVAL

APPROVED BY THE PLANNING COMMISSION OF THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

CHAIRMAN

ACCEPTED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

MAYOR

ATTEST: CITY CLERK

ADAMS COUNTY:
CLERK AND RECORDER'S CERTIFICATE:

RECEPTION NO.

ACCEPTED FOR FILING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF ADAMS COUNTY AT BRIGHTON, COLORADO ON THIS ____ DAY OF _____, 2013.

ADAMS COUNTY CLERK AND RECORDER

BY: DEPUTY CLERK

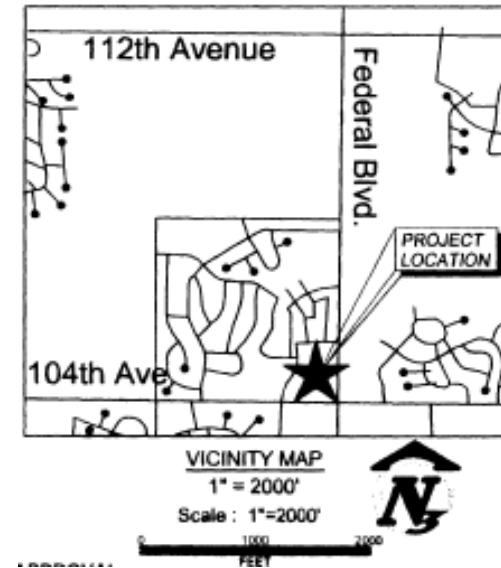
VALLE VISTA
WANDERING VIEW SUBDIVISION
WEST 104TH AVENUE & FEDERAL BOULEVARD
WESTMINSTER, COLORADO

PREPARED BY:
RONALD BORAKS

DATED:
MAY 6, 2013

**SIXTH AMENDED
PRELIMINARY DEVELOPMENT PLAN
WANDERING VIEW SUBDIVISION**

A PLANNED UNIT DEVELOPMENT
IN THE CITY OF WESTMINSTER,
COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 2



COMMERCIAL RETAIL PERMITTED USES

PERMITTED USES IN COMMERCIAL RETAIL ARE LISTED BELOW:

1. ANTIQUE SHOP
2. APPAREL AND ACCESSORY STORE
3. ART STUDIO/ART GALLERY
4. ART & CRAFTS/DRAFTING SUPPLY
5. AUDIO VISUAL SALES-SERVICE
6. BAKERY
7. BARBER AND BEAUTY SHOP
8. BED AND BATH SHOP
9. BIKE SHOP
10. BOOKSTORE
11. CAMERA SUPPLY
12. CARPET AND RUG STORE
13. CELLULAR SALES AND SERVICE
14. CHINA AND GLASSWARE
15. CLEANING/LAUNDRY/TAILOR
16. COMPUTER AND ACCESSORIES
17. COSTUME SHOP
18. CUSTOM CRAFTS
19. DANCE STUDIO
20. DRAPERIES & WINDOW COVERING
21. DRUG STORE
22. FABRIC STORE
23. FLORIST AND PLANT SHOP
24. HOBBY STORE
25. JEWELRY/WATCH SALES/REPAIR
26. KITCHEN, COOKWARE STORE
27. LEATHER GOODS AND LUGGAGE
28. LIQUOR STORE
29. MASSAGE THERAPIST
30. MEDICAL EQUIPMENT SALES-RENTAL
31. MEDICAL SPA
32. MUSIC/VIDEO SALES-RENTAL

PERMITTED USES IN COMMERCIAL RETAIL CONTINUED:

33. NAIL SALON
34. OPTICAL STORE
35. PAINT AND WALLPAPER STORE
36. PET STORE/PET GROOMING
37. PHOTOGRAPHY/PROCESSING STUDIO
38. PRINT SHOP
39. RESTAURANTS
40. SADDLE AND TACK STORE
41. SHOE SALES/REPAIR
42. SPORTING GOODS
43. STATIONARY AND CARD SHOP
44. TANNING SALON
45. TOY/HOBBY STORE
46. TRAVEL AGENCY
47. TV AND ELECTRONIC APPLIANCE REPAIR
48. ACCOUNTING/BOOKKEEPING OFFICE
49. ADMINISTRATIVE OFFICE
50. ADVERTISING OFFICE
51. FITNESS STUDIO/AEROBICS/BALLET/DANCE/PILATES EXERCISE AND INSTRUCTION; NO SUCH USE TO EXCEED 2000 SQUARE FEET
52. APPRAISAL SERVICES
53. BANK & FINANCIAL INSTITUTION
54. COUNSELING/CONSULTING SERVICE
55. DESIGN/ENGINEERING OFFICE
56. EMPLOYMENT AGENCY
57. ENGINEERING & TECHNICAL OFFICE
58. INSURANCE OFFICE
59. FINANCIAL SERVICES OFFICE
60. LEGAL OFFICE
61. MAIL CENTER
62. MEDICAL/DENTAL/VETERINARY OFFICE AND CLINIC
63. REAL ESTATE OFFICE
64. UNITED STATES POST OFFICE

COMMERCIAL RETAIL PROHIBITED USES

PROHIBITED USES IN COMMERCIAL RETAIL ARE LISTED BELOW:

1. ADULT BOOK STORE SELLING OR EXHIBITING PORNOGRAPHIC MATERIALS
2. AMUSEMENT ARCADE, AMUSEMENT PARK, AMUSEMENT RIDES OR CARNIVAL
3. AUTOMOBILE SALES OFFICE, SHOWROOM, OR STORAGE FACILITY
4. BAIL BONDS BUSINESS
5. BOAT SALES OFFICE, SHOWROOM, OR STORAGE FACILITY
6. BINGO AND SOCIAL GAMING
7. BULK FUEL SALES
8. FACTORY
9. FLEA MARKET
10. PAWN SHOP
11. HEAD SHOP
12. INDUSTRIAL, MANUFACTURING OR WAREHOUSE USE
13. JUNK YARD
14. MASSAGE PARLOR
15. OFF TRACK BETTING ESTABLISHMENT
16. STOCK YARD
17. THEATER
18. THE USE OF CELLULAR TELEPHONE ANTENNAS THROUGH FURTHER AMENDMENT TO THE ODP TO REVIEW LOCATIONS, HEIGHT, NEED FOR SCREENING AND OTHER AESTHETIC CONCERNS.
19. RADIO AND TV TOWERS AND MICROWAVE TRANSMISSION
20. INDOOR ENTERTAINMENT WITH MORE THAN 12 MACHINES OF AMUSEMENT
21. HOTEL / MOTEL / RESORT
22. MOTOR VEHICLE, RECREATIONAL, VEHICLE AND COMMERCIAL EQUIPMENT DEALER INCLUDING AUTOMOBILES, AIRCRAFT, BOATS, CAMPERS, MOBILE HOMES, TRUCKS, TRAILERS, HEAVY EQUIPMENT, CONSTRUCTION EQUIPMENT AND FARM IMPLEMENTS.

VALLE VISTA
WANDERING VIEW SUBDIVISION
WEST 104TH AVENUE & FEDERAL BOULEVARD
WESTMINSTER, COLORADO

PREPARED BY:
RONALD BORAKS

DATED:
MAY 6, 2013

**TENTH AMENDED
OFFICIAL DEVELOPMENT PLAN
WANDERING VIEW SUBDIVISION
FILING NO. 4, FIRST REPLAT
A PLANNED UNIT DEVELOPMENT
IN THE CITY OF WESTMINSTER,
COUNTY OF ADAMS, STATE OF COLORADO
SHEET 1 OF 2**

LEGAL DESCRIPTION

PART OF THE SOUTHWEST ONE-QUARTER OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN IN THE CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO

BLOCK 1, WANDERING VIEW SUBDIVISION FILING NO. 4
TOTAL ACREAGE 8.35

FULL FORCE AND EFFECT

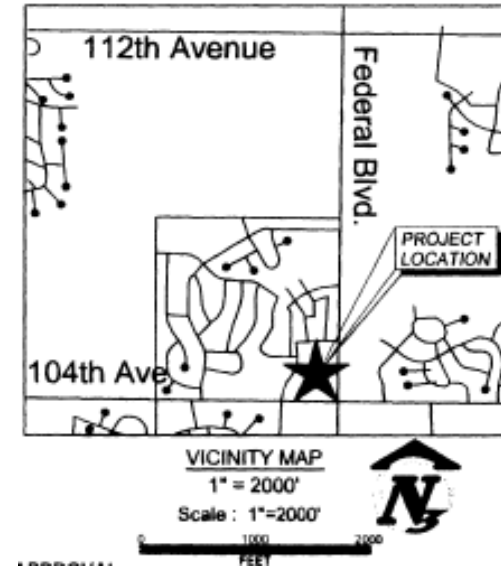
ALL PROVISIONS OF THE ORIGINAL ODP RECORDED ON JANUARY 6, 2006 AT RECEPTION # 2006010600020390 AND SUBSEQUENT ODP AMENDMENTS SHALL REMAIN IN FULL FORCE AND EFFECT, EXCEPT AS NOTED HEREIN.

PURPOSE OF AMENDMENT

- AMEND COMMERCIAL RETAIL USES
- AMEND OVERALL PARKING TO REQUIRE PARKING FOR ALL USES AT 5 SPACES PER 1000 SQUARE FEET

SUMMARY OF AMENDMENTS

- SECOND AMENDED RECORDED APRIL 7, 2006 UNDER RECEPTION NO. 20060407000356200
- THIRD AMENDED RECORDED SEPTEMBER 15, 2006 UNDER RECEPTION NO. 20060915000934380
- SEVENTH AMENDED RECORDED DECEMBER 16, 2010 UNDER RECEPTION NO. 201000087646
- AMENDMENT IN INSTRUMENT RECORDED DECEMBER 23, 2011 UNDER RECEPTION NO. 2011000085013
- TENTH AMENDED TO INCLUDE REDEFINING OF PERMITTED AND PROHIBITED COMMERCIAL RETAIL USES



OWNER WANDERING VIEW SUBDIVISION BLOCK 1

TREC VALLE VISTA, LLC
7200 S. ALTON WAY, SUITE A-320
ENGLEWOOD, CO 80112

ATTENTION: RONALD BORAKS, MANAGER
TELEPHONE: 303.669.1209

GROVE STREET LAND COMPANY, LLC
1946 MARKET STREET
DENVER, CO 80202

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
P.O. BOX 810490
DALLAS, TX 75381

OWNER APPROVAL

I, RONALD BORAKS, AS MANAGER OF TREC VALLE VISTA, LLC, A DELAWARE LIMITED LIABILITY COMPANY, PROPERTY OWNER, DO SO APPROVE THIS SIXTH AMENDED PRELIMINARY DEVELOPMENT PLAN FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

RONALD BORAKS, MANAGER

I, CHRISTOPHER P. MYERS, AS MANAGER OF GROVE STREET LAND COMPANY, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROPERTY OWNER, DO SO APPROVE THIS SIXTH AMENDED PRELIMINARY DEVELOPMENT PLAN FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

CHRISTOPHER MYERS, MANAGER

THE UNDERSIGNED, AS AUTHORIZED SIGNATORY FOR JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION DULY ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA, DO SO APPROVE THIS SIXTH AMENDED PRELIMINARY DEVELOPMENT PLAN FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER THIS ____ DAY OF _____, 2013.

SIGNATURE

NAME: _____

TITLE: _____

CITY APPROVAL

APPROVED BY THE PLANNING COMMISSION OF THE CITY OF WESTMINSTER
THIS ____ DAY OF _____, 2013.

CHAIRMAN

ACCEPTED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER
THIS ____ DAY OF _____, 2013.

MAYOR

ATTEST: CITY CLERK

ADAMS COUNTY:
CLERK AND RECORDER'S CERTIFICATE:

RECEPTION NO. _____

ACCEPTED FOR FILING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF ADAMS COUNTY AT BRIGHTON, COLORADO ON THIS ____ DAY OF _____, 2013.

ADAMS COUNTY CLERK AND RECORDER

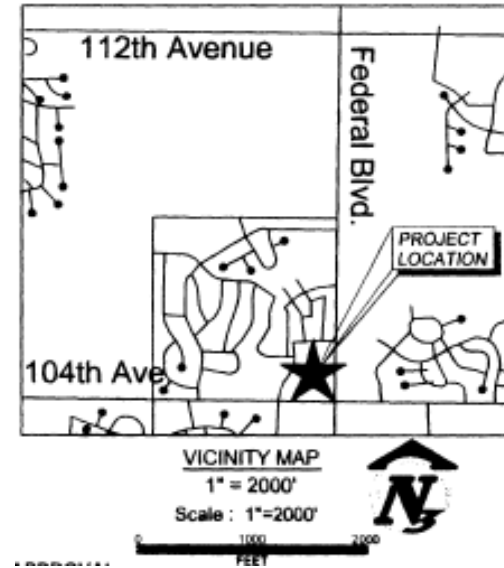
BY: DEPUTY CLERK

**VALLE VISTA
WANDERING VIEW SUBDIVISION
WEST 104TH AVENUE & FEDERAL BOULEVARD
WESTMINSTER, COLORADO**

PREPARED BY:
RONALD BORAKS

DATED:
MAY 14, 2013

**TENTH AMENDED
OFFICIAL DEVELOPMENT PLAN
WANDERING VIEW SUBDIVISION
FILING NO. 4, FIRST REPLAT
A PLANNED UNIT DEVELOPMENT
IN THE CITY OF WESTMINSTER,
COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 2**



COMMERCIAL RETAIL PERMITTED USES

PERMITTED USES IN COMMERCIAL RETAIL ARE LISTED BELOW:

1. ANTIQUE SHOP
2. APPAREL AND ACCESSORY STORE
3. ART STUDIO/ART GALLERY
4. ART & CRAFTS/DRAFTING SUPPLY
5. AUDIO VISUAL SALES-SERVICE
6. BAKERY
7. BARBER AND BEAUTY SHOP
8. BED AND BATH SHOP
9. BIKE SHOP
10. BOOKSTORE
11. CAMERA SUPPLY
12. CARPET AND RUG STORE
13. CELLULAR SALES AND SERVICE
14. CHINA AND GLASSWARE
15. CLEANING/LAUNDRY/TAILOR
16. COMPUTER AND ACCESSORIES
17. COSTUME SHOP
18. CUSTOM CRAFTS
19. DANCE STUDIO
20. DRAPERIES & WINDOW COVERING
21. DRUG STORE
22. FABRIC STORE
23. FLORIST AND PLANT SHOP
24. HOBBY STORE
25. JEWELRY/WATCH SALES/REPAIR
26. KITCHEN, COOKWARE STORE
27. LEATHER GOODS AND LUGGAGE
28. LIQUOR STORE
29. MASSAGE THERAPIST
30. MEDICAL EQUIPMENT SALES-RENTAL
31. MEDICAL SPA
32. MUSIC/VIDEO SALES-RENTAL

PERMITTED USES IN COMMERCIAL RETAIL CONTINUED:

33. NAIL SALON
34. OPTICAL STORE
35. PAINT AND WALLPAPER STORE
36. PET STORE/PET GROOMING
37. PHOTOGRAPHY/PROCESSING STUDIO
38. PRINT SHOP
39. RESTAURANTS
40. SADDLE AND TACK STORE
41. SHOE SALES/REPAIR
42. SPORTING GOODS
43. STATIONARY AND CARD SHOP
44. TANNING SALON
45. TOY/HOBBY STORE
46. TRAVEL AGENCY
47. TV AND ELECTRONIC APPLIANCE REPAIR
48. ACCOUNTING/BOOKKEEPING OFFICE
49. ADMINISTRATIVE OFFICE
50. ADVERTISING OFFICE
51. FITNESS STUDIO/AEROBICS/BALLET/DANCE/PILATES EXERCISE AND INSTRUCTION; NO SUCH USE TO EXCEED 2000 SQUARE FEET
52. APPRAISAL SERVICES
53. BANK & FINANCIAL INSTITUTION
54. COUNSELING/CONSULTING SERVICE
55. DESIGN/ENGINEERING OFFICE
56. EMPLOYMENT AGENCY
57. ENGINEERING & TECHNICAL OFFICE
58. INSURANCE OFFICE
59. FINANCIAL SERVICES OFFICE
60. LEGAL OFFICE
61. MAIL CENTER
62. MEDICAL/DENTAL/VETERINARY OFFICE AND CLINIC
63. REAL ESTATE OFFICE
64. UNITED STATES POST OFFICE

COMMERCIAL RETAIL PROHIBITED USES

PROHIBITED USES IN COMMERCIAL RETAIL ARE LISTED BELOW:

1. ADULT BOOK STORE SELLING OR EXHIBITING PORNOGRAPHIC MATERIALS
2. AMUSEMENT ARCADE, AMUSEMENT PARK, AMUSEMENT RIDES OR CARNIVAL
3. AUTOMOBILE SALES OFFICE, SHOWROOM, OR STORAGE FACILITY
4. BAIL BONDS BUSINESS
5. BOAT SALES OFFICE, SHOWROOM, OR STORAGE FACILITY
6. BINGO AND SOCIAL GAMING
7. BULK FUEL SALES
8. FACTORY
9. FLEA MARKET
10. PAWN SHOP
11. HEAD SHOP
12. INDUSTRIAL, MANUFACTURING OR WAREHOUSE USE
13. JUNK YARD
14. MASSAGE PARLOR
15. OFF TRACK BETTING ESTABLISHMENT
16. STOCK YARD
17. THEATER
18. THE USE OF CELLULAR TELEPHONE ANTENNAS THROUGH FURTHER AMENDMENT TO THE ODP TO REVIEW LOCATIONS, HEIGHT, NEED FOR SCREENING AND OTHER AESTHETIC CONCERNS.
19. RADIO AND TV TOWERS AND MICROWAVE TRANSMISSION
20. INDOOR ENTERTAINMENT WITH MORE THAN 12 MACHINES OF AMUSEMENT
21. HOTEL / MOTEL / RESORT
22. MOTOR VEHICLE, RECREATIONAL, VEHICLE AND COMMERCIAL EQUIPMENT DEALER INCLUDING AUTOMOBILES, AIRCRAFT, BOATS, CAMPERS, MOBILE HOMES, TRUCKS, TRAILERS, HEAVY EQUIPMENT, CONSTRUCTION EQUIPMENT AND FARM IMPLEMENTS.

**VALLE VISTA
WANDERING VIEW SUBDIVISION
WEST 104TH AVENUE & FEDERAL BOULEVARD
WESTMINSTER, COLORADO**

PREPARED BY:
RONALD BORAKS

DATED:
MAY 14, 2013



Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Councillor's Bill No. 23 re Housekeeping Amendments to Specific Chapter Sections in Title VIII of the Westminster Municipal Code, Health and Sanitation

Prepared By: Linda Yeager, City Clerk
Stu Feinglas, Water Resource Analyst
John Burke, Senior Engineer

Recommended City Council Action

Pass Councillor's Bill No. 23 on first reading adopting housekeeping amendments to specific Chapter Sections in Title VIII of the Westminster Municipal Code, Health and Sanitation.

Summary Statement

- As City Council is aware, the Westminster Municipal Code (W.M.C. or Code) is a codification of general ordinances of the City and serves as a major resource to Staff and citizens, both in print and electronically.
- Staff attempts to keep the Code current by regularly seeking Council approval of necessary amendments. Council has requested Staff to review and update the Code on a regular basis to maintain accuracy and ensure it is as free of errors as possible. In general, state, federal and city codes benefit from regular housekeeping measures such as those being proposed at this time for Westminster.
- Staff considers these proposed amendments to be primarily housekeeping in nature, but beyond the scope of authority granted to the City Clerk in Section 1-1-5, W.M.C., to correct errors of punctuation, capitalization, formatting, grammar and spelling, and internal references.
- Staff believes these amendments will improve the overall quality of the Code.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City make general housekeeping and administrative amendments to the Westminster Municipal Code as proposed?

Alternatives

1. Direct Staff to leave the current Code provisions in place and do not advance the recommendations through the formal ordinance adoption process. Staff does not recommend this alternative because the proposed amendments result in standardized formatting, updated provisions, and numerous minor corrections to Titles.
2. Direct Staff to make only certain changes to the Code, while excluding others. Although this approach would help address some issues in the Code, Staff does not recommend this alternative because it may not address all of the concerns with the current Code.

Background Information

In response to Council's request to regularly review and maintain the City Code, in January 2012, the City Clerk's Office began a comprehensive review of each Code provision for typographical, grammatical, cross-reference and other errors, and outdated or inaccurate information, while applying standard formatting conventions. Although the Westminster Municipal Code contains a section on "Rules for Construction," standard formatting conventions were only recently established by Staff. The attached ordinance is the fourth of its kind and contains those amendments identified thus far within Title VIII, including the deletion or correction of outdated information that is beyond the scope of authority granted to the City Clerk.

The changes proposed focus on clarifying text for consistency of interpretation; listing definitions alphabetically and reorganizing portions of them for ease of understanding; updating references to specific City-approved documents so they are consistently named and more readily found and identified in website searches; conforming ambiguous or inaccurate language to reflect actual historic practice; reorganizing for clarity the allowed uses section; and deleting portions of provisions whose dates have already passed and therefore are no longer pertinent.

Tap fees and base data for tap calculations have been changed to reflect current values. Due to the water requirements of residential fire sprinkler systems recently required by the City, standard single family meter sizes have been increased from 5/8" to 3/4" throughout the water and wastewater sections of the code. Definitions relating to Reclaimed Water, have been simplified where possible to avoid duplication and added to provide consistency with the City's Landscape Regulations.

Revisions to the Municipal Code support all of the City's Strategic Plan goals. In concert with the Charter, the Municipal Code serves as a foundation for the City's operations and incorrect or out-of-date information could potentially have a significant impact on the community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **23**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 8-4-1, 8-4-3, 8-4-4, 8-6-14, 8-6-15, 8-6-16, 8-7-3, 8-7-7, 8-7-13, 8-7-20, 8-7-21, 8-7-22, 8-7-27, 8-8-5, 8-11-3, 8-11-5, 8-11-9, 8-11-10, 8-11-11, 8-11-12, 8-12-1, 8-12-5 AND 8-12-8 OF THE WESTMINSTER MUNICIPAL CODE AS HOUSEKEEPING MEASURES THROUGH MARCH 2013

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-4-1, "Administrative Officer," W.M.C., is hereby AMENDED to read as follows:

8-4-1: DEFINITIONS: (1634 1805 1999) The following words, terms and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrative Officer" shall mean the City Manager, Community Development Director, ~~Community Development Program Administrator~~Code Enforcement Supervisor, Fire Chief, Chief of Police, or Chief Building Official.

Section 2. Section 8-4-3, subsection (A), W.M.C., is hereby AMENDED to read as follows:

8-4-3: COMPLAINT OF NUISANCE, RIGHT OF ENTRY IN EMERGENCY: (1634 1999)

(A) A person may make a complaint of the existence of a public nuisance to a Code Enforcement Officer, a Community Service Officer, a Fire Marshal, a member of City Council, the City Manager or his designee, or the ~~Community Development Program Administrator~~Code Enforcement Supervisor. Such complaint shall include, whenever possible, the nature of the public nuisance, the location, including the address, the name of the owner, occupant, or manager of the property, the duration of the nuisance and the name and address of the complainant. Complaints shall be referred to the appropriate Code Enforcement Officer, Community Service Officer, or Fire Marshal.

Section 3. Section 8-4-4, subsection (C)(2), W.M.C., is hereby AMENDED to read as follows:

8-4-4: SUMMARY ABATEMENT; NOTICE TO ABATE; ACTION TO ABATE A PUBLIC NUISANCE: (1634 1646 1661 1999)

(C) When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the following procedure shall apply:

(2) The action to declare and abate a public nuisance shall be brought by the City in the name of the people of the City, by the filing of a complaint, which shall be verified or supported by an affidavit. Summons shall be issued and served as in civil cases, and any employee of the City of Westminster, ~~including employees~~

~~of the Community Development Programs Administration Division,~~ who is over the age of eighteen (18), may serve the summons and verified complaint upon the respondent. Trial shall be to the Court.

Section 4. Sections 8-6-14, 8-6-15 and 8-6-16, W.M.C., are hereby AMENDED to read as follows:

8-6-14: RESTRICTION ON FIREPLACE INSTALLATIONS: (2092)

(A) ~~On and after January 1, 1993, a~~Any new or remodeled fireplace to be installed in any dwelling in the City shall be one (1) of the following:

- (1) A gas appliance;
- (2) An electric device; or
- (3) A fireplace or fireplace insert that meets the most stringent emissions standards for wood stoves established by the Colorado Air Quality Control Commission, or any other clean burning device that is approved by the Commission.

8-6-15: RESTRICTION ON WOOD-BURNING DEVICES: (2092) ~~On and after January 1, 1993, n~~No used wood-burning device shall be sold or installed in the City, unless such device meets the most stringent standards adopted by the Colorado Air Quality Control Commission.

8-6-16: CERTIFICATION REQUIRED: (2092) ~~On or after January 1, 1993, n~~No person shall install, offer to install, advertise to sell, offer to sell, or sell a new fireplace in the City unless:

- (1) The particular model of the fireplace or the particular configuration of the fireplace has been certified by the Colorado Air Pollution Control Division; and
- (2) An emission certification label is attached to the fireplace.
- (3) Any person who installs or constructs any fireplace shall provide evidence of a certificate issued by the Colorado Air Pollution Control Division for such fireplace.
- (4) Any person who constructs a site-built fireplace shall demonstrate compliance with the certificate, including an inspection by the Building Official of the fireplace after installation.

Section 5. Section 8-7-3, subsections (A), (B), and (D), W.M.C., are hereby AMENDED to read as follows:

8-7-3: WATER TAP FEES AND CREDITS: (1129 1217 1311 1365 1456 1527 1664 1788 2097 2123 2257 2298 2440 2634 2956 3281 3306 3546 3646)

(A) FEE CALCULATION:

(1) An applicant for a water tap shall pay the fees set forth hereinafter, the total of which shall be known as the "Water Tap Fee," or those ~~portions~~ components that are applicable to the type of tap required by this Chapter. The Water Tap Fee or portions thereof are due and payable upon issuance of the water tap utility permit unless earlier paid as provided in Section 8-7-2(C), W.M.C. The Water Tap Fee may consist of the following individual fees:

- (a) Water resources fee, being the share of the cost to provide adequate raw water supply to be utilized by the tap;
- (b) Treated water investment fee, being the share of the utility system related to treating and distributing water to be utilized by the tap;
- (c) Meter connection fee, being the actual City cost for installation of a meter with electronic remote readout device, when applicable; inspection of the tap, service line and meter pit installation; meter testing, when applicable; account and billing activation and other administrative procedures; and
- (d) When applicable, a fire connection fee, being that charge associated with a tap providing fire protection.

(2) Water taps, water tap lines, and meters for the same service shall normally be the same size. If otherwise approved and/or required by the City, the tap and meter may be of different sizes, in which case the fee for the meter size shall be paid. Water taps cannot be issued prior to building and/or tap entitlement approval. Any exceptions must be approved by the City Manager, i.e., conversion from well to the City water system, pursuant to Section 8-7-15, W.M.C.

- (3) The base components of the 2013 water tap fees are as follows*:

Water Resources Fee	\$6,435.00 <u>7,338.00</u>
Treated Water Investment Fee	\$7,880.00 <u>8,987.00</u>
Meter Connection Fee	This connection fee is based on installed meter size and assessed on a per meter basis. See connection fee chart below.
Fire Connection Fee	\$161.00 <u>182.00</u>

~~*On April 1st of each year, the Water Tap Fee and its individual components shall be automatically increased in accordance with the Consumer Price Index (CPI) for the previous calendar year as established for the Denver metropolitan area. The meter connection fee may also be adjusted separately at any time, when necessary, to reflect the full cost of said connection to the City.~~

- (4) The connection fees based on meter size are as follows:

METER SIZE (INCHES)	CONNECTION CHARGE*
5/8"	\$283 <u>321</u>
3/4"	\$283 <u>321</u>
1"	\$226 <u>257</u>
1-1/2"	\$226 <u>257</u>
2"	\$283 <u>321</u>
3"	\$340 <u>386</u>
4"	\$396 <u>451</u>
6"	\$453 <u>515</u>
8"	\$511 <u>581</u>

*Single-family residential connection fees for meters up to three-quarter inch (3/4") include the cost of the water meter, which is supplied by the City. All other connection fees do not include the cost of the water meter, which is supplied by the customer.

(5) Each year, the water tap fee and its individual components in subsection (3) shall be automatically increased in accordance with the Consumer Price Index (CPI) for the previous calendar year as established for the Denver metropolitan area. The meter connection fee in subsection (4) may also be adjusted separately at any time, when necessary, to reflect the full cost of said connection to the City.

~~(5)(6)~~ The water resources and treated water investment ~~portions~~ components of the ~~Water Tap Fee~~ for City-owned facilities may be implemented at rates below one hundred percent (100%) at the direction of the City Manager or his designee.

(B) RESIDENTIAL WATER TAPS: The following regulations apply to residential water taps:

(1) The residential Water Tap Fee is based on a standard 3/4-5/8" meter size ~~(commonly called a 5/8" by 3/4" meter)~~ and is assessed on a per-dwelling-unit basis. One single-family detached dwelling unit served by a standard 5/8" meter has an assumed average annual water usage of one hundred forty thousand (140,000) gallons per year (one (1) service commitment).

(2) The ratio of the average annual water usage of each dwelling unit type to the water usage of a single-family detached unit establishes the service commitment factor (SC factor). The service commitment factors are listed in the following chart:

Residence Type	Single-Family Detached	Mobile Home Space	Single-Family Attached Unit	Multifamily Unit	Attached Senior Housing Unit
SC factor	1.0	1.0	0.7	0.5	0.35

(3) The residential tap fees shall be calculated by applying the respective SC factor to both the water resources fee and the treated water investment fee on a per unit basis, plus the applicable meter connection fee on a per meter basis, plus any applicable fire connection charge. If a tap and meter larger than the standard 3/4-5/8" meter is requested for reasons other than to meet residential fire sprinkler demand for any residential unit, the tap fees shall be calculated using the nonresidential treated water investment calculation and SC factor in subsection (C)(2) below.

(4) No additional tap fees are required for landscaped areas on residential properties that are irrigated by the water tap for the individual unit or units. Tap fees for landscaped areas on or adjacent to residential properties, such as common areas, private parks and play areas, medians, and right-of-way strips, not irrigated by individual units shall be assessed as provided hereinafter under subsections (C) or (D) below.

(5) Tap fees for clubhouses, swimming pools, and other common buildings or structures shall be assessed as provided hereinafter under subsections (C) or (D) below.

(D) IRRIGATION WATER TAPS: The following regulations apply to taps for irrigation:

(1) Separate irrigation taps and meters shall be required for:

- (a) All residential developments, other than a development whose land area consists entirely of single-family detached lots; and
- (b) All nonresidential developments having any irrigated landscaped areas.

(2) Irrigation tap fees are required based on the area and type of landscaping. Landscape types are defined as either high-water, moderate-water or low-water, as determined by the Community Development Department.

(3) An irrigation water tap shall be used only for irrigation purposes. Each irrigation water tap shall be assigned a service address and billing account in the name of the property owner or manager.

(4) The irrigation tap fee consists of the meter connection fee, plus the following square footage fees, based upon landscape type:

- (a) ~~\$1.56~~\$1.61 per square foot for high-water landscaping requiring an annual application of more than ten (10) gallons of water per square foot;
- (b) ~~\$0.78~~\$0.80 per square foot for moderate-water landscaping requiring an annual application of three (3) to ten (10) gallons of water per square foot; and
- (c) ~~\$0.39~~\$0.40 per square foot for low-water landscaping requiring an annual application of less than three (3) gallons per square foot.

Section 6. Section 8-7-7, subsections (A), (E), and (F), W.M.C., are hereby AMENDED to read as follows:

8-7-7: WATER RATE SCHEDULE: (1320 1364 1467 1659 1743 1819 1954 1960 2025 2080 2169 2179 2367 2460 2635 2968 3145 3298 3306 3438 3545 3546 3654)

(A) Except for fire hydrant use for municipal purposes and water used by the ~~Water Utilities Division of the Public Works and Utilities~~ Department, all water delivered from the City water system shall be metered, including water used by the City or departments thereof, and the charge therefor shall be as hereinafter set forth.

(E) CONTINUANCE OF CUSTOMER CHARGES: Monthly customer charges shall be assessed in all cases including where no water is consumed until such time as City personnel are specifically requested to discontinue water service at the meter, pursuant to Section 8-7-~~10~~10, W.M.C.

(F) REBATE: ~~Effective January 1, 2001, a~~ seventy-five dollar (\$75) rebate shall be given once annually to low-income residential users who submit an application on a form prescribed by the Finance Director.

(1) For purposes of this paragraph, "low income" shall be the current federal poverty level, plus ten percent (10%).

(2) The Director of Finance is authorized to prescribe and accept such forms of eligibility as the Director may deem sufficient to demonstrate an applicant's eligibility for the rebate provided for in this Section.

(3) Such rebate will be paid in the form of a credit applied to the water account of the eligible residential user.

Section 7. Section 8-7-13, W.M.C., is hereby AMENDED to read as follows:

8-7-13: DUTY OF CONSUMER: (1311 1936 2956 3306)

(A) It shall be the duty of the water consumer to use all necessary precaution to keep the meter from freezing and from injury and, if the meter shall be injured by freezing or by carelessness of the consumer, then such consumer shall pay all necessary cost of repairs occasioned by such injury, and failure to pay such cost of repairs shall warrant and authorize the City in turning off the water.

(B) No person owning or possessing, or responsible for the maintenance of, the property on which a meter or fire hydrant is located shall obstruct the meter or fire hydrant in any manner so that access to the meter or fire hydrant is prevented. If such obstruction is not removed within the period of time prescribed in the notice required in subsection (C) below, the owner or possessor shall be deemed to have consented to the City's entry onto the property for the purpose of removing the obstruction and gaining access to the meter or fire hydrant. All costs incurred in the removal of the obstruction shall be charged to the water consumer, owner or possessor as prescribed in subsection (D) below. For the purposes of this Section, the word "obstruct" shall include but not be limited to:

(1) Failure to maintain landscaping around the meter pit or fire hydrant so as to provide at least three feet (3') of unobstructed access to the meter or fire hydrant from the public right-of-way and at least five feet (5') of vertical clearance above the meter pit or fire hydrant;

(2) Failure to maintain landscaping that exceeds four inches (4") in height if said landscaping is located within six inches (6") of the meter pit or fire hydrant;

(3) Allowing any landscaping to cover the meter pit lid or fire hydrant; or

(4) Placement of a fence or retaining wall in such a location that the fence or wall will obstruct access to the meter pit or fire hydrant from the public right-of-way.

~~Any consumer who shall move from one (1) premises to other premises within the City that are fitted for the use of water from the City's mains, upon notifying the City of his removal within three (3) days thereof, shall have the benefit of the unexpired term of the permit at his new location.~~

~~(C) All water meters shall be placed and maintained so that the meters are readily accessible to Water Utility personnel, away from trees and bushes and outside of fences.~~

~~(D) No person owning or possessing the property on which a meter is located shall obstruct the meter in any manner so that access to the meter is prevented. If such obstruction is not removed within the period of time prescribed in the notice required in subsection (H) below, the owner or possessor shall be deemed to have consented to the City's entry onto the property for the purpose of removing the obstruction and gaining access to the meter. All costs incurred in the removal of the obstruction shall be charged to the water consumer, owner or possessor as prescribed in subsection (I).~~

~~(E) No person owning or possessing the property on which a meter pit is located shall fail to maintain landscaping around the meter pit to provide at least three feet (3') of unobstructed access to the meter from the public right of way and at least five feet (5') of vertical clearance above the meter pit.~~

~~(F) No person owning or possessing the property on which a meter pit is located shall place a fence in such location that the fence will obstruct access to the meter pit from the public right of way.~~

~~(G) No person owning or possessing the property on which a meter pit is located shall fail to assure that landscape materials taller than four inches (4") are no closer than six inches (6") to the meter pit, nor shall any such person allow any landscaping material to cover any part of the meter pit lid.~~

~~(H)(C)~~ If the City Manager finds that any person has failed to comply with any of the requirements of subsections ~~(C), (D), (E), (F) or (G)~~ of this Section, the City Manager shall notify the water consumer, owner or possessor of the property by hand delivery or certified mail that he shall be required to comply within fifteen (15) days of the date of delivering or mailing the notice. In the event of an emergency or shutoff for non-payment, the City may require immediate compliance and assess all charges and expenses to the property owner as described in Sections 8-7-9 and 8-7-12, W.M.C.

~~(H)(D)~~ If the person so notified fails to comply with the requirements of the notice, the manager may cause the work to be done and charge the costs thereof, together with an amount up to twenty-five dollars (\$25) for administrative costs, to the person so notified. Such costs shall be added to the charges for water service, and failure to pay such cost shall warrant and authorize the City in shutting off the water.

Section 8. Section 8-7-20, W.M.C., is hereby AMENDED to read as follows:

8-7-20: WHEN TAPPING PROHIBITED: (592) ~~Hereafter n~~No water taps upon water mains of the City shall be permitted for domestic purposes unless the property for which the tap is made and the residence thereon shall have bath and toilet facilities within the residence so constructed as to comply with all of the requirements of the City regulating the disposal of sewage.

Section 9. Section 8-7-21, W.M.C., is hereby AMENDED to read as follows:

8-7-21: ACQUISITION OF WATER RIGHTS: (906 917 1311)

(A) ~~From and after the effective date of this Ordinance, n~~No municipal water and sewer service will be provided to any undeveloped tract of land within the City if the owner of such land now or hereafter owns water rights that might be acquired and used by the City, unless the land owner agrees to sell such water rights to the City at a price not to exceed the then prevailing fair market price.

(B) If for any reason the City does not wish to acquire the water rights under conditions of Section 8-7-21(A), W.M.C., the City Manager shall notify the owner of such rights in writing. The owner will then be free to sell such rights on the open market.

~~(C) For the reasons set forth in the preamble of this Ordinance, and because there is daily activity by Westminster and others regarding the purchase of water rights in the open market, with each purchase by some other buyer permanently depriving the City of the water represented by such rights, the City Council declares this to be an emergency ordinance, which is immediately necessary for the preservation of the public peace, health and safety.~~

~~(D)~~—There is hereby imposed upon the owner of any undeveloped tract within the City the affirmative duty to reveal to the City all such water rights as he may own.

~~(E)~~—The provisions of this Ordinance shall be severable.

Section 10. Section 8-7-22, W.M.C., is hereby REPEALED IN ITS ENTIRETY.

Section 11. Section 8-7-27, subsections (B)(1) and (C), W.M.C., are hereby AMENDED to read as follows:

8-7-27: CROSS CONNECTION AND BACKFLOW CONTROL: (1711 2126 3306)

(B) REGULATIONS:

(1) No water service connection shall be installed or maintained by the City unless the water supply is protected as required by State laws and regulations and this Code as required by the City Manager or his designee. Service of water to any premises may be discontinued by the City, pursuant to [Section 8-7-28\(B\)subsection \(E\)](#) of this [Chaptersection](#), if a backflow prevention device required by this section is not installed, tested and maintained, or if it is found that a backflow prevention device has been removed, or bypassed, or if an unprotected cross-connection exists on the premises. Service shall not be restored until such conditions or defects are corrected.

(C) ~~EXISTING-CROSS-CONNECTIONS: No On or before January 1, 1988, existing~~ cross-connections between a public water system and any secondary water system shall be ~~permitted. No person shall permit or maintain a cross-connection between a public water supply and any secondary water system, unless said connection is eliminated~~ or protected by means of an approved backflow prevention device. ~~The following shall install devices on or before January 1, 1988: Sewage Treatment Plants, Hospitals, Mortuaries, and industrial establishments that manufacture materials that can exhibit health hazards.~~

~~(1) Cross-connection control by containment shall be used when the potable water system can be contaminated or polluted by a hazardous substance used within a building or premises. Cross-connection control by containment requires that the service lines used to supply potable water to any premises, location, facility or area shall have an approved backflow prevention device installed upstream of any valves, meters, standpipes, or other mechanical device located on the water service line. Facilities or premises required to have cross-connection control by containment are as follows:~~

- ~~(a) Hospitals, clinics, medical and dental laboratories;~~
- ~~(b) Mortuaries;~~
- ~~(c) Manufacturing and industrial facilities;~~
- ~~(d) All buildings greater than forty (40) feet high;~~
- ~~(e) All facilities which have a service line larger than four (4) inches in diameter;~~
- ~~(f) All premises, public and private, which have irrigation systems separate from the domestic systems, including but not limited to cemeteries, churches, estates, golf courses, parks, playgrounds, schools, and ranches;~~
- ~~(g) All facilities, areas or locations that have pipe arrangements in which piping containing potable water is physically joined to a piping system which contains any substance other than potable water; and~~
- ~~(h) All facilities, areas or locations that have pipe arrangements in which piping containing potable water may be contaminated by any substance which may be forced, back-siphoned, or otherwise diverted into the potable water system.~~

Section 12. Section 8-8-5, subsection (B), W.M.C., is hereby AMENDED to read as follows:

8-8-5: SERVICE AND USER CHARGES WITHIN THE CITY OF WESTMINSTER AND SHAW HEIGHTS; LIEN ON PROPERTY: (1131 1312 1320 1430 1455 1528 1788 1819 1900 1954 2025 2030 2080 2097 2123 2166 2197 2460 2634 2635 2836 2955 2968 3145 3281 3298 3306 3438 3496 3545)

(B) RATE SCHEDULES:

Single-family residential equivalent (SFRE). A single-family residential equivalent is based on a ~~three-quarter inch 5/8" x (3/4") (five eighths by three-quarter inch)~~ water service tap and meter and is equal to one (1) single-family unit which means a building or structure used or designed to be used as only one residential unit (including a detached dwelling [single-family house] and a mobile home); each residential unit in a duplex; and each residential unit having water service separately connected to the water main or private water distribution system in a building or structure with three (3) or more residential units.

Residential single family and single family attached units with other than 3/4" water service taps and meters due solely to meet residential fire sprinkler demand shall be considered one (1) SFRE. All residential 5/8" X 3/4" residential taps and meters installed prior to January 1, 2013 shall be considered one (1) SFRE.

All connections that are not single-family residential units, or are single-family residential units with larger than a ~~five-eighths by three-quarter inch (5/8" x 3/4")~~ ~~(five-eighths by three-quarter inch)~~ water meter service, except as noted above, shall have the number of single-family residential equivalents (SFRE's) determined through the size of the water service taps serving the building, structure, or premise, and in certain cases (determined by the water service tap size) shall use the alternate calculation method, including estimated quantities of flow, BOD, SS, and TKN to be discharged to the system.

The following Sewer Tap Fee calculation method shall be in effect for all tap fee payments made on or after ~~April 10, 2006~~ January 1, 2013:

Sewer Tap Fees shall be based on two (2) of three (3) components:

- The Transport Facilities Fee
- The Treatment Facilities Fee
- The Metro Facilities Fee

The residential Transport Facilities Fee shall be calculated as the base Transport Facilities Fee times the number of units times the service commitment factor associated with the dwelling type as defined below. The non-residential Transport Facilities Fee shall be calculated as the base Transport Facilities Fee times the number of SFRE's.

Residential Connection	Single-Family Detached	Mobile Home Space	Single-Family Attached Unit	Multifamily Unit	Attached Senior Housing Unit
SC Factor	1.0	1.0	0.7	0.5	0.35

The Treatment Facilities Fee shall be calculated as the current base Treatment Facilities Fee times the number of SFRE's.

The Metro Facilities Fee shall be calculated as the current base ~~Metro Wastewater Fee, as same shall be sewer connection charge~~ set by the Metro District, ~~times multiplied by~~ the number of SFRE's.

Reactivation Charge. A Reactivation Charge shall be charged to any reactivated connection that has not registered metered water use for a period of ten (10) years. The Reactivation Charge is due for each SFRE for each year beyond ten (10) years that the connection has been inactive. The Reactivation Charge shall be adjusted as part of the base Sewer Tap Fees to equal the Metro District ~~Reactivation Charge for reactivation.~~

~~2006~~ 2013 base components of the Sewer Tap Fees per SFRE are as follows:

Transport Facilities Fee	\$1,400.00 <u>\$1,594.00</u>
Treatment Facilities Fee	\$1,820.00 <u>\$3,310.00</u>
Metro Facilities Fee	\$1,820.00 <u>\$3,310.00</u>
Reactivation Charge	\$75.00 <u>\$120.00</u> per year beyond 10 years

~~On April 1st of e~~Each year, the Transport Facilities Fee shall be automatically increased in accordance with the Consumer Price Index (CPI) for the previous calendar year, as established for the Denver Metropolitan Area. In addition, at any time, the Treatment Facilities Fee shall be adjusted to reflect the City of Westminster's treatment facilities costs; and the Metro Facilities Fee shall be adjusted in accordance with any changes to the base sewer connection charge set by the Metro Wastewater Fee District.

Tap fees for clubhouses, swimming pools, and other recreation or accessory uses in single-family detached, single-family attached, and multi-family developments are not included in the individual unit Sewer Tap Fees listed above. Tap fees for these uses shall be calculated at the rates listed in the following SFRE Table: ~~below~~.

Water Meter Size in Inches	SFRE
5/8 x 3/4	1.0
3/4	1.9
1	4.5
1-1/2	11.0
2	20.0
3	42.0
4	76.0
<u>6, 8, 10, 12 or larger</u>	<u>Use Alternate Calculation Method</u>

Alternate Calculation Method. ~~A n~~New sewer connections, ~~which serves~~~~erved by~~ multiple new water service taps with a combined service commitment of greater than or equal to two hundred five (205), shall have ~~theits~~ number of service commitments determined in the same manner thatas for connections ~~withfor~~ service taps for water meters six inches (6") or larger are determined.

For ~~water~~-service taps for water meters six inches (6") or larger, the number of service commitments for calculating the Sewer Tap Fee shall be determined from the following formula:

$$\text{SFRE's} = \frac{\text{Flow} \times (F)}{225} \pm \frac{\text{BOD} \times (B)}{0.385} \pm \frac{\text{SS} \times (S)}{0.394} \pm \frac{\text{TKN} \times (T)}{0.0488}$$

Where: flow = estimated flow, ~~GPD~~ in gal/day (peak month); BOD = estimated biological oxygen demand, in lbs/day (peak month); SS = estimated suspended solids, in lbs/day (peak month); TKN = estimated total nitrogen, in lbs/day (peak month).

~~And (F) = fraction of District's capital investment used to treat flow, (B) = fraction of District's capital investment used to treat BOD, (S) = fraction of District's capital investment used to treat SS, (T) = fraction of District's capital investment used to treat TKN.~~

At minimum, the following values shall be used in the above formulas:

<u>TAP SIZE</u>	<u>FLOW</u>	<u>BOD</u>	<u>SS</u>	<u>TKN</u>
<u>6"</u>	<u>46,125</u>	<u>78.86</u>	<u>80.78</u>	<u>10</u>
<u>8"</u>	<u>74,250</u>	<u>126.95</u>	<u>130.04</u>	<u>16.1</u>
<u>10"</u>	<u>136,125</u>	<u>232.73</u>	<u>238.41</u>	<u>29.52</u>

The City shall make the final determination of the estimated flow, BOD, SS and TKN used to determine the number of service commitments for each new connection, which is subject to the above formula.

Following are the fractions of the Metro District's capital investment used for the treatment of flow and loadings, effective ~~April 10, 2006~~ January 1, 2013: Flow (F) = 0.5245543, BOD (B) = 0.2309091, SS (S) = 0.168401, TKN (T) = 0.07625. These fractions may change at any time to reflect changes imposed by the Metro ~~Wastewater Reclamation~~-District or changes in the City of Westminster treatment costs.

$$SFRE's = \frac{\text{Flow} \times (F)}{225} + \frac{\text{BOD} \times (B)}{1.576} + \frac{\text{SS} \times (S)}{1.576} + \frac{\text{TKN} \times (T)}{0.236}$$

At minimum, the following values shall be used in the above formulas:

<u>TAP SIZE</u>	<u>FLOW</u>	<u>BOD</u>	<u>SS</u>	<u>TKN</u>
<u>6"</u>	<u>6,125</u>	<u>323.13</u>	<u>323.13</u>	<u>48.47</u>
<u>8"</u>	<u>74,250</u>	<u>520.17</u>	<u>520.17</u>	<u>78.02</u>
<u>10"</u>	<u>136,125</u>	<u>953.64</u>	<u>953.64</u>	<u>143.05</u>

~~The City shall make the final determination of the estimated flow, BOD, SS and TKN used to determine the number of service commitments for each new connection, which is subject to the above formula.~~

The City shall review applicant's determination of water tap size and may adjust Sewer Tap Fee charges, if the projected water use is more than the maximum service commitment for the corresponding water meter size listed.

Section 13. Specific definitions within Section 8-11-3, W.M.C., are hereby AMENDED to read as follows:

8-11-3: DEFINITIONS: (3391 3659) The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Applicant” shall mean a landowner or agent of a landowner who has filed an application for a ~~grading and erosion control~~ Land Disturbance permit or a Storm Water Management Plan.

“Compliance Date” shall mean the final deadline by which ~~a user an owner or applicant~~ is required to correct a violation of a prohibition or limitation or to meet a stormwater quality standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting an applicable stormwater quality standard.

“Compliance Order” shall mean an administrative order that directs ~~a user an owner or applicant~~ to comply with the provisions of this Chapter, or of a permit or administrative order issued hereunder, by a specific

date. The order may include a compliance schedule involving specific actions to be completed within specific time periods.

“Compliance Schedule or Schedule of Compliance” shall mean an enforceable schedule specifying a date or dates by which ~~a user~~ an owner or applicant must comply with a stormwater quality standard, a stormwater quality requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

“Land Disturbance Permit” shall mean a permit issued by the City allowing an owner or applicant to conduct any significant land disturbance ~~activity equal to or greater than one (1) acre, earthwork involving moving more than two hundred (200) cubic yards or, if grading occurs on a property, that has a slope in excess of eight percent (8%).~~

“~~Sediment/Erosion Control~~ Storm Water Management Plan” shall mean a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

Section 14. Section 8-11-5, subsections (A) and (C), W.M.C., are hereby AMENDED to read as follows:

8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS: (3391 3564 3659)

(A) ~~A land disturbance permit~~ An owner or applicant shall be required to obtain a Land Disturbance Permit prior to conducting any land disturbance activity that:

- (1) Covers an area equal to or greater than one (1) acre, or
- (2) Covers an area less than one (1) acre if the site is part of a larger common plan of development, or
- (3) Involves earthwork affecting more than two hundred (200) cubic yards of material, or
- (4) Involves environmentally sensitive areas, as determined by the City Manager, or
- (5) Involves grading on any property that possesses physical characteristics or features that increase the potential for erosion, such as highly erodible soils, natural drainage channels or swales, or slopes in excess of eight percent (8%).

(C) ~~If the permit is granted, p~~ Prior to the issuance of a Land Disturbance Permit, unless a landowner has entered into a Public or Private Improvement Agreement addressing the same, the landowner shall enter into a land disturbance agreement with the City and provide a financial guarantee for completion of the land disturbance activities, unless ~~either one (1)~~ or both of these requirements is waived by the City Engineer for good cause.

Section 15. Section 8-11-9, subsection (B)(1), W.M.C., is hereby AMENDED to read as follows:

8-11-9: LAND DISTURBANCE PERMIT REMEDIATION PROCEDURES: (3391 3564)

(B) RIGHT OF ENTRY:

(1) The City inspector, or any other authorized City representative, shall have the right to enter the premises of any ~~user~~ owner or applicant to determine whether the ~~user~~ owner or applicant is complying with

all requirements of this Chapter and any land disturbance permit or order issued hereunder. ~~Users-Owner or applicant~~ shall allow the City inspector or authorized representative ready access to all parts of the premises for the purposes of inspection, whether announced or unannounced, sampling, records examination and copying, and the performance of any additional duties.

Section 16. Section 8-11-10, W.M.C., is hereby AMENDED to read as follows:

8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES: (3391 3659)

(A) NOTIFICATION OF VIOLATION: When the City Manager finds that ~~a user~~an owner or applicant has violated, or continues to violate, any provision of this Chapter, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may serve upon that ~~user-owner or applicant~~ a written or electronic notice of violation. The notice of violation may include specific required actions and may require the ~~user-owner or applicant~~ to submit an explanation of the violation and a plan for the satisfactory correction and prevention thereof. Submission of this plan in no way relieves the ~~user-owner or applicant~~ of liability for any violations occurring before or after receipt of the notice of violation. Where the violation is an illicit discharge, the discharge must be immediately corrected. Nothing in this Section shall limit the authority of the City Manager to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(B) CONSENT ORDERS: The City Manager may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any ~~user-owner or applicant~~ responsible for noncompliance. Such documents will include specific action to be taken by the ~~user-owner or applicant~~ to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8-11-10(D) and 8-11-10(E), W.M.C., and shall be judicially enforceable.

(C) SHOW CAUSE HEARING: The City Manager may order ~~a user~~an owner or applicant who has violated, or continues to violate, any provision of this Chapter, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, to appear before the City Manager or designated representative and show cause why the proposed enforcement action should not be taken. Notice shall be served on the ~~user-owner or applicant~~ specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the ~~user-owner or applicant~~ show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fourteen (14) days prior to the hearing. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the ~~user-owner or applicant~~.

(D) COMPLIANCE ORDERS: When The City Manager finds that ~~a user~~an owner or applicant has violated, or continues to violate, any provision of this Chapter, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may issue an order to the ~~user-owner or applicant~~ responsible for the discharge, directing that the ~~user-owner or applicant~~ come into compliance within a specified time. If the ~~user-owner or applicant~~ does not come into compliance within the time provided, storm sewer service may be discontinued, unless adequate Best Management Practices are installed and properly maintained. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and best management practices designed to minimize the amount of pollutants discharged to the storm sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the ~~user-owner or applicant~~.

(E) CEASE AND DESIST ORDERS: When the City Manager finds that ~~a user~~an owner or applicant has violated, or continues to violate, any provision of this Chapter, a land disturbance permit or order issued

hereunder, or any other stormwater quality standard or requirement, or that the ~~user~~owner's or applicant's past violations are likely to recur, the City Manager may issue an order, including a stop work order, to the ~~user~~owner or applicant directing it to cease and desist all such violations and directing the ~~user~~owner or applicant to:

(1) Immediately comply with all requirements; and

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the ~~user~~owner or applicant.

(F) ADMINISTRATIVE FINES:

(1) When the City Manager finds that ~~a user~~an owner or applicant has violated, or continues to violate, any provision of this Chapter, a land disturbance permit, ~~a storm water management plan, or an~~ order issued ~~pursuant to this Chapter~~hereunder, or any other applicable stormwater quality standard or requirement, the City Manager may fine such ~~user~~owner or applicant in an amount not to exceed one thousand dollars (\$1,000) per violation per day.

(2) Unpaid charges, fines, and penalties shall be assessed and accrue interest in accordance with the provisions of Chapter 8 of Title I, W.M.C., entitled "Penalties and Interest," as it may be amended from time to time. The City may also collect unpaid fines and interest by placing a demand on the surety provided with the land disturbance permit.

(3) ~~Users~~Owners or applicants desiring to dispute such fines must file a written request for the City Manager to reconsider the fine, along with full payment of the fine amount, within thirty (30) days of being notified of the fine. Where a request has merit, the City Manager may convene a hearing on the matter. In the event the ~~user's~~owner's or applicant's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the ~~user~~owner or applicant. The City Manager may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(4) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the ~~user~~owner or applicant.

(G) EMERGENCY SUSPENSIONS: The City Manager may immediately suspend ~~a user's~~an owner's or applicant's discharge, after informal notice to the ~~user~~owner or applicant, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons, or which presents, or may present, an endangerment to the environment.

(1) Any ~~user~~owner or applicant notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of ~~a user's~~an owner's or applicant's failure to immediately comply voluntarily with the suspension order, the City Manager may take such steps as deemed necessary, including immediate severance of the storm sewer connection, to prevent or minimize damage to the receiving waters, or endangerment to any individuals. The City Manager may allow the ~~user~~owner or applicant to recommence its discharge when the ~~user~~owner or applicant has demonstrated to the satisfaction of the City Manager that the period of endangerment has passed.

(2) ~~A user~~An owner or applicant that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the

harmful contribution and the measures taken to prevent any future occurrence, to the City Manager prior to the date of any show cause or termination hearing under Section 8-11-10(C), W.M.C.

(H) Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

Section 17. Section 8-11-11, subsections (A), (B) and (D), W.M.C., are hereby AMENDED to read as follows:

8-11-11: JUDICIAL ENFORCEMENT REMEDIES: (3391 3564 3659)

(A) INJUNCTIVE RELIEF: When the City Manager finds that ~~a user~~an owner or applicant has violated, or continues to violate, any provision of this Chapter, a land disturbance permit, a storm water management plan,~~or an~~ order issued pursuant to this Chapter hereunder, or any other stormwater quality standard or requirement, the City Manager may petition the district court through the City Attorney for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the land disturbance permit, order, or other requirement imposed by this Chapter on activities of the user. The City Manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the ~~user~~owner or applicant to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against ~~a user~~an owner or applicant.

(B) CIVIL PENALTIES:

(1) ~~A user~~An owner or applicant who has violated, or continues to violate, any provision of this Chapter, a land disturbance permit, a storm water management plan,~~or an~~ order issued pursuant to this Chapter hereunder, or any other stormwater quality standard or requirement shall be liable to the City for a maximum civil penalty of one thousand dollars (\$1,000) per violation, per day. In the case of an illicit discharge or a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

(3) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the ~~user's~~owner's or applicant's violation, corrective actions by the ~~user~~owner or applicant, the compliance history of the ~~user~~owner or applicant, and any other factor as justice requires.

(4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against ~~a user~~an owner or applicant.

(D) REMEDIES NONEXCLUSIVE: The remedies provided for in this Chapter are not exclusive. The City Manager may take any, all, or any combination of these actions against a noncompliant ~~user~~owner or applicant. Enforcement of stormwater quality violations will generally be in accordance with the City's enforcement response plan. However, the City Manager may take other action against any ~~user~~owner or applicant when the circumstances warrant. Further, the City Manager is empowered to take more than one (1) enforcement action against any noncompliant ~~user~~owner or applicant.

Section 18. Section 8-11-12, subsections (A), (B) and (C), W.M.C., are hereby AMENDED to read as follows:

8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION: (3391)

(A) **LIABILITY INSURANCE:** The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user-owner or applicant who has failed to comply with any provision of this Chapter, a previous land disturbance permit, a stormwater management plan, or an order issued pursuant to this Chapter hereunder, or any other stormwater quality standard or requirement, unless the user-owner or applicant first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the MS4 caused by their illicit discharge.

(B) **PAYMENT OF OUTSTANDING FEES AND PENALTIES:** The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user-owner or applicant who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this Chapter, a previous land disturbance permit, or order issued hereunder.

(C) **WATER SUPPLY SEVERANCE:** Whenever a user-an owner or applicant has violated or continues to violate any provision of this Chapter, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, water service to the user-owner or applicant may be severed. Service will only recommence, at the user's-owner's or applicant's expense, after it has satisfactorily demonstrated its ability to comply.

Section 19. Section 8-12-1, W.M.C., is hereby AMENDED to read as follows:

8-12-1: DEFINITIONS: (2767 3134) The following words, terms, and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Agronomic Rate” shall mean the rate of application of nutrients to plants that is necessary to satisfy the plants' nutritional requirements, while strictly minimizing the amount of nutrients that run off to surface waters or that pass below the root zone of the plants.

“Commercial User” shall mean a person who uses non-potable water in the operation of a business patronized by the public, or who provides services to the public.

“Direct Reuse” shall mean the use of reclaimed domestic wastewater that, after treatment, has not been discharged into waters of the State.

“High-Water Landscape” shall mean landscape that requires greater than ~~nine (9)~~ ten (10) gallons per square foot annually.

“Industrial User” shall mean a person who uses reclaimed water for industrial processes or in the construction process.

“Irrigation System” shall mean the facilities, piping and other equipment used by a landscape irrigation user.

“Landscape Irrigation” shall mean irrigation of areas of grass, trees, and other vegetation that are accessible to the public, including, but not limited to, parks, greenbelts, golf courses, and common areas at apartment, townhouse, commercial/business parks, and other similar complexes.

“Landscape Irrigation User” shall mean a person who uses non-potable water for the purpose of landscape irrigation.

“Low-Water Landscape” shall mean landscape that requires ~~nine (9)~~ three (3) gallons of water per square foot or less annually and is watered using water saving irrigation technologies, such as drip, micro spray, or subsurface.

“Mains” shall mean the main pipes and connections forming a part of the City reclaimed/non-potable waterworks.

“Meter” shall mean the device, appropriate to the premise served, installed to measure the amount of water passing through it, with an accuracy of between ninety-five percent (95%) and one hundred one percent (101%) of actual quantities delivered.

“Meter Service Charge” shall mean the fee for maintaining the meter, reading the meter, periodically billing the account, and processing payments.

“Moderate-Water Landscape” shall mean landscape that requires more than three (3) but less than ten (10) gallons of water per square foot annually.

“Person” shall mean an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

“Point of Compliance” shall mean a point identified by the treater in the non-potable water treatment or transmission system after all treatment has been completed, prior to dilution and blending.

~~“Reclaimed/Non-potable Water” shall mean water used for purposes other than human consumption that is not treated to potable water standards. This includes water from ditches, lakes, ponds, or the reclaimed treatment system.~~

~~“Reclaimed Water” shall mean wastewater that has received secondary treatment by a domestic wastewater treatment facility and such additional treatment to enable the wastewater to meet the standards for approved uses, either restricted or unrestricted use.~~

“Reclaimed Water” shall mean that water that originates from the City’s reclaimed water treatment facility and is distributed through the reclaimed water distribution system for the express purpose of non-potable uses.

“Reclaimed Water Treatment Facility” shall mean a facility that receives wastewater from a domestic wastewater treatment facility with secondary treatment and provides such additional treatment to enable the wastewater to meet the standards for approved uses.

“Restricted Access” shall mean controlled and limited access to the areas where reclaimed water is being used and meets the category 1 standards as defined in the Colorado Code of Regulations (“C.C.R.”) Section 84.7.

“Restricted Use” shall mean landscape irrigation with reclaimed domestic wastewater that meets the requirements of C.C.R. Sections 84.6.B., 84.7, and 84.8.

“Service Commitment” shall mean the average annual water service provided to one (1) single-family detached dwelling unit (currently 140,000 gal./yr.).

“Service Pipe” shall mean a branch pipe with its fittings and connections through which water is taken.

“Street” shall mean any street, avenue, alley, lane or other thoroughfare.

“Tap” shall mean an opening or connection in the mains through which water is taken.

“Transmission System” shall mean the treater’s facilities that transport treated non-potable water between the treater and users.

“Treater” shall mean a person who treats and provides reclaimed water to an applicator/user for the purpose of landscape irrigation, commercial or industrial use. The treater and the applicator/user may be the same entity.

“Unrestricted Access” shall mean uncontrolled access to the areas where reclaimed water is being used and meets the category 2 standards as defined in C.C.R. Section 84.7.

“Unrestricted Use” shall mean landscape irrigation with reclaimed domestic wastewater that meets the requirements of C.C.R. Sections 84.6.A and 84.7.

~~“User” shall mean a person who uses reclaimed/non-potable water for landscape irrigation, commercial, or industrial uses.~~

“User” shall mean the owner of the property upon which the non-potable or reclaimed water is to be utilized for landscape irrigation, fire protection, commercial, or industrial uses.

“User Plan to Comply” shall mean the information and documentation a user of reclaimed water is required to submit to the division under C.C.R. Sections 84.9 and 84.10 of this regulation.

Section 20. Section 8-12-5, subsection (B), W.M.C., is hereby AMENDED to read as follows:

8-12-5: TAP FEE CALCULATION: (2767 3134)

(B) PROVISION OF MATERIALS AND WORK: For all reclaimed/non-potable water taps, the applicant shall furnish all labor and work and all materials as specified. See City of Westminster ~~Utility~~ “Standards and Specifications for the Design and Construction of Public Improvements” for details. The City shall provide the applicant with a list of required materials and approved suppliers at the time of application.

Section 21. Section 8-12-8(A), W.M.C., is hereby AMENDED to read as follows:

8-12-8: COMPUTATION OF RATE: (2767 3134)

(A) The schedule of water rates set forth in Section 8-7-7, W.M.C., shall be applied to reclaimed water used or consumed as determined by the water meter readings ~~that are made obtained~~ by the City, ~~as provided in Section 8-12-5, W.M.C. at eighty percent (80%) of the applicable potable water rate.~~

Section 22. This ordinance shall take effect upon its passage after second reading.

Section 23. The title and purpose of this ordinance shall be published prior to its

consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

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

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

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

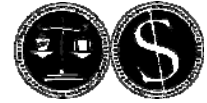
City Attorney's Office



Agenda Item 10 D

Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Councillor's Bill No.24 re Economic Development Agreement with Bradburn Northern Associates, LLC aka Continuum Partners

Prepared By: Susan Grafton, Economic Development Director

Recommended City Council Action

Pass Councillors Bill No. 24 on first reading authorizing the City Manager to enter into an Economic Development Agreement with Bradburn Northern Associates, LLC for the purpose of facilitating a Whole Foods Market in Bradburn Village.

Summary Statement

- Bradburn Northern Associates, an affiliate of Continuum Partners, has secured a long term lease with Whole Foods Market to be built in Bradburn Village.
- Staff is recommending an Economic Development Agreement, to assist with this project, totaling \$800,000.

Expenditure Required: \$800,000

Source of Funds: To be paid with a 50% rebate of building permits, use tax on construction material, furniture, fixtures and equipment, as well as sales tax generated from the store

Policy Issue

Should an Economic Development Agreement be provided to Bradburn Northern Associates, LLC to help facilitate the construction of a New Whole Foods Market?

Alternatives

Do Nothing: One alternative to offering the above business assistance package is to offer nothing to this company. This would be inconsistent with the City’s desire to attract high quality retailers to the City.

Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package is what staff believes is required to make this deal happen.

Provide More: A third alternative would be to provide a greater amount of assistance than recommended. The amount being recommended is consistent with other similar retail developments.

Background Information

The developers of Bradburn Village have signed a long-term lease with Whole Foods Market for a 35,000 s.f. store with an additional 4,000 s.f. mezzanine that will be used for store operations. The cost of construction and tenant build-out is expected to be about \$5.5 million. Annual sales projections are anticipated to be approximately \$21 to \$24 million. The 5 year revenue projection from the project is approximately \$3.8 million. Construction will commence with site work late this summer. The store opening is scheduled for fall 2014.

This new Whole Foods Market will result in the closing of the Whole Foods Market near the corner of Sheridan and 92nd Avenue.

Continuum Partners has requested \$800,000 to defray the cost of road improvements and reduce development costs attributed to Whole Foods Market, which in turn substantially reduces Whole Food’s lease rate with Continuum. Staff recommends the funding of this Economic Development Agreement as follows:

Proposed EDA Funding

<u>Assistance</u>	<u>Approximate Value</u>
Building Permit Fees (50% rebate)	\$18,400
Building Use Tax (50% rebate)	\$41,250
Equipment Use Tax (50% rebate)	\$33,750
Sales Tax Rebate (50% rebate for 3 years up to a total EDA amount of \$800,000)	<u>\$706,600</u>
Total EDA	\$800,000

This assistance package is based upon the City's goals to attract additional sales tax generator and quality businesses to the City. Staff believes that this investment facilitates the completion of the Bradburn Village retail component and attracts a retailer desired by City residents.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Exhibit A – Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **24**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT WITH CONTINUUM PARTNERS FOR THE WHOLE FOODS MARKET

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

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

WHEREAS, Continuum Partners plans to lease space in Bradburn Village in Westminster to Whole Foods Market; and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with Continuum Partners in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of June, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of June, 2013.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

“EXHIBIT A”

ECONOMIC DEVELOPMENT AGREEMENT WITH BRADBURN NORTHERN ASSOCIATES, LLC FOR WHOLE FOODS STORE

THIS AGREEMENT (this “Agreement”) is made and entered into this day of June, 2013, between the CITY OF WESTMINSTER (the “City”), and BRADBURN NORTHERN ASSOCIATES, LLC, a Colorado limited liability company (the “Developer”).

WHEREAS, the City wishes to provide certain assistance to Developer to facilitate the location of a new Whole Foods store in the Bradburn development in the location generally depicted on the Site Plan attached hereto as Exhibit “A” (the “Whole Foods Store”); and

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

In consideration of the mutual promises set forth below the City and Developer agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to Developer an amount equal to 50% of the building permit fees that are imposed by the City pursuant to Section 11-9-3(E) of the Westminster Municipal Code (the “Code”) and/or any other applicable ordinances, rules, regulations or fee schedules of the City and paid in connection with the initial construction and/or installation of the Whole Foods Store and associated improvements within and/or serving the Whole Foods Store (collectively, the “Improvements”). This rebate excludes water and sewer tap fees. The building permit fee rebate is estimated to be approximately \$18,400, and shall be paid to Developer in accordance with Section 5.

2. Use Tax Rebate--Construction. The City shall rebate to Developer an amount equal to 50% of the use tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) imposed by the City pursuant to Section 4-2-9 of the Code and paid on tangible personal property used or consumed in connection with the initial construction of the Whole Foods Store and Improvements. The use tax rebate is estimated to be approximately \$41,250, and shall be paid to Developer in accordance with Section 5.

3. Use Tax Rebate—Furniture, Fixtures and Equipment. For the period commencing on the date of this Agreement and ending 36 months after the earlier to occur of Developer obtaining a temporary certificate of occupancy or a certificate of occupancy for the Whole Foods Store, the City shall rebate to Developer an amount equal to 50% of the use tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) imposed by the City pursuant to Title IV, Chapter 2 of the Code and collected on the purchased furnishings, fixtures, equipment and other tangible personal property subject to the City use tax (excluding tangible personal property described in Section 2 above) for the Whole Foods Store and Improvements. Rebates shall be based on the documentation reasonably prescribed by the City and provided by Developer and/or Whole Foods Market Rocky Mountain/Southwest, L.P. (together with any successors and/or assigns, “Whole Foods”) which illustrates purchases or delivery of any such furnishings, fixtures, equipment or such other tangible personal property that occurred within the City and that such use taxes were paid to and collected by the City. The use tax rebate is estimated to be approximately \$33,750, and shall be paid to Developer in accordance with Section 5.

4. Sales Tax Rebate. The City shall rebate to Developer an amount equal to 50% of the sales tax paid to the City pursuant to Title IV, Chapter 2 of the Code on transactions occurring from, within or in connection with the operation of the Whole Foods Store for the period of time commencing on the date that Whole Foods opens for business to the public in the Whole Foods Store, and ending 36 months thereafter (the “Termination Date”). Developer shall provide timely written notice to the City of the date that Whole Foods shall open or has opened for business to the public in the Whole Foods Store. Such rebate shall be payable from sales tax revenues paid exclusively from, within or in connection with the operation of the Whole Foods Store (i.e., no sales tax revenues paid from other properties or retailers

within the Bradburn development or the City shall be rebated hereunder) and attributable to the imposition of the City's 3.0% general sales tax (excluding the City's .25% open space tax and .6% public safety tax):

- (a) Sales Tax Rebate Amount. Any rebates provided by the City to Developer pursuant to this Section 4 shall be calculated upon sales tax actually paid to the City and imposed on transactions occurring from, within or in connection with the operation of the Whole Foods Store. The City shall rebate to Developer an amount equal to 50% of the sales tax paid.
- (b) Payment. The sales tax rebate amount shall be paid to Developer in accordance with Section 5.
- (c) End of Sales Tax Rebate. The sales tax rebate shall end on the Termination Date, provided any rebate for the calendar quarter in which the Termination Date occurs shall be payable as provided above subsequent to the Termination Date.

5. Rebate Payments. The City shall pay all building permit fee, use tax and sales tax rebates to Developer electronically via wire transfer to Developer's designated financial institution in quarterly payments made within 30 days after the end of each calendar quarter in which such building permit fees, uses taxes and/or sales taxes, as applicable, were collected by or paid to the City.

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

7. Agreement Termination. This Agreement shall terminate and become void and of no force or effect upon the City if Whole Foods has not moved into the Whole Foods Store for the purposes of constructing and installing its interior furniture, fixture and equipment for the Whole Foods Store on or before December 31, 2015.

8. Cessation of Whole Foods Business Operations. Except as otherwise provided in this Section 8, for the period commencing on the date Whole Foods first opens for business to the public in the Whole Foods Store and ending three years after such date, if Whole permanently ceases operation of its business in the Whole Foods Store, Developer shall reimburse the City for any amounts rebated to Developer under the terms of this Agreement, which reimbursement obligation shall be the principal amount of any such rebates only, without interest. Developer shall reimburse the rebated amounts in the aggregate in five equal annual payments, the first such payment due and payable on the date that is one year after the date Whole Foods ceases operation of its business in the Whole Foods Store ("Business Termination Date"). Notwithstanding the foregoing to the contrary, Developer shall have no reimbursement obligation under this Section 8 if (a) a successor user generating materially similar sales tax revenues as Whole Foods generated from its operations in the Whole Foods Store commences operations in the Whole Foods Store within one year of the Business Termination Date; (b) a successor user reasonably acceptable to the City, as evidenced in writing from the City to the Developer, commences operations in the Whole Foods Store within one year of the Business Termination Date; (c) Whole Foods' cessation of business operations in the Whole Foods Store results from a casualty or condemnation of the Whole Foods Store, or any portion thereof, or results from an act of God or other force majeure event; or (d) Whole Foods recommences its operations in the Whole Foods Store within one year of the Business Termination Date.

9. Maximum Rebate Obligation. Notwithstanding any term or provision of this Agreement to the contrary, City's rebate obligations under this Agreement shall not exceed \$800,000.00 in the aggregate.

10. Pledge; Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues

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

11. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 ("TABOR"), and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council; provided, however, the City agrees to use good faith in fulfilling its obligations under this Agreement. Subject to the foregoing, during the term of this Agreement the City Manager is hereby directed to include sufficient funds in the City's annual budgets to meet the City's obligations hereunder.

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

13. No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party (other than successor and assigns), including any agent, consultant or contractor of the parties. Absolutely no third party beneficiaries are intended by this Agreement.

14. Severability. If any term, covenant or provision of this Agreement is found to be illegal or unenforceable for any reason, the same will not invalidate any other term, covenant or provision and all of the remaining terms, covenants and provisions of this Agreement will remain in full force and effect.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. Developer may assign this Agreement without the consent of the City to (a) Daniel J. Murphy, a current employee of Continuum Partners, LLC, a limited liability company; (b) one or more persons being members of Developer; and/or (c) any entity owned or controlled by Developer and/or any one or more of the persons identified in (a) or (b) above. Developer may assign the rebate payment revenues provided for hereunder without the consent of the City as collateral to a lender of Developer or an Affiliate.

[Signature Page Follows]

BRADBURN NORTHERN ASSOCIATES,
LLC

CITY OF WESTMINSTER

Mark G. Falcone
Managing Member

J. Brent McFall
City Manager

ATTEST:

Linda Yeager
City Clerk

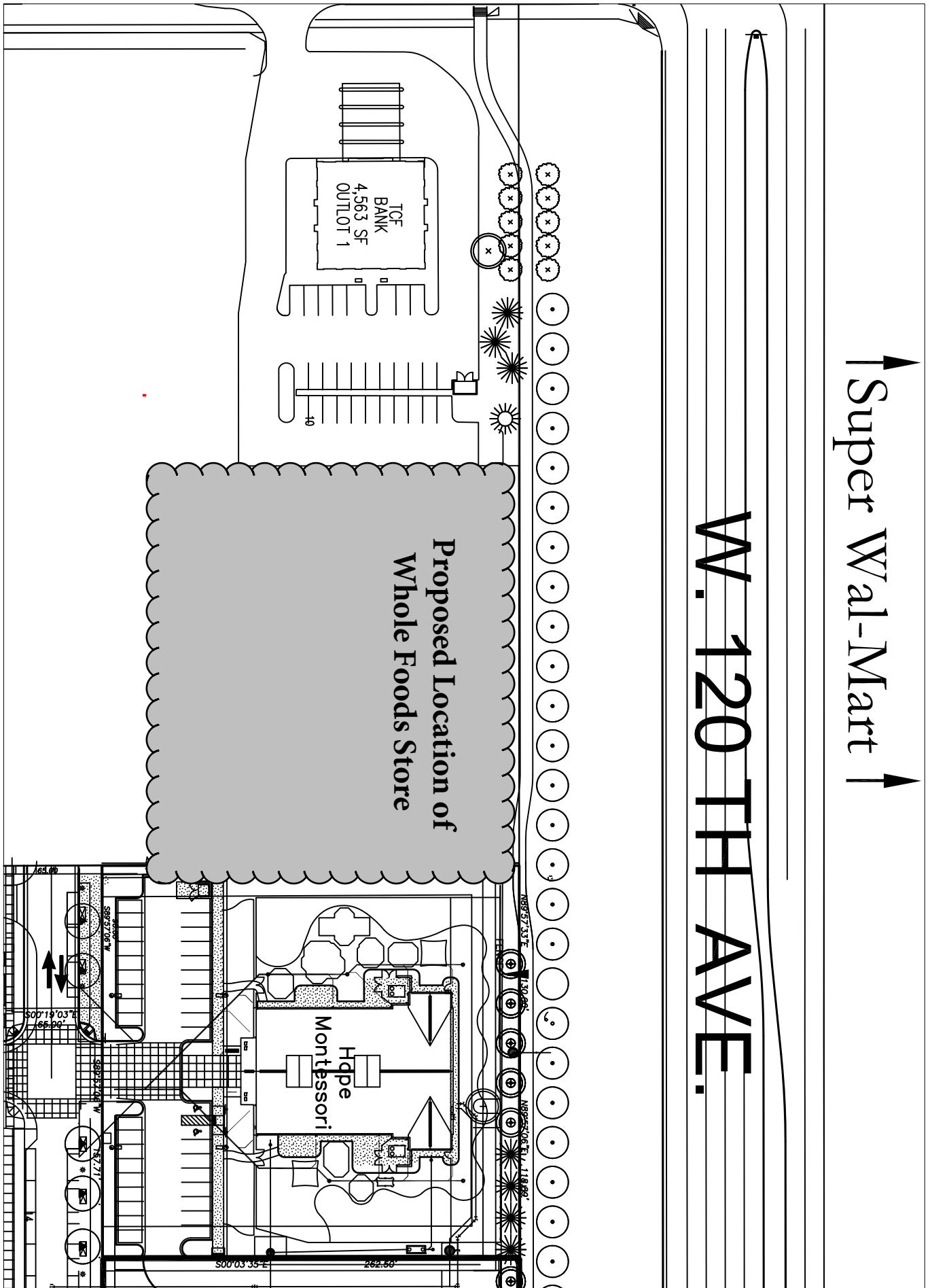
APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No. _____

Exhibit A Proposed Location of Whole Foods Store

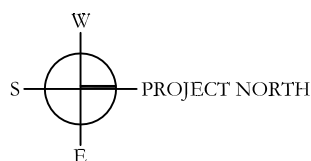
VRAIN STREET



Whole Foods

Date: 30 May, 2013

Scale: N.T.S.





Agenda Memorandum

City Council Meeting
June 10, 2013



SUBJECT: Resolution No. 19 Designating the Official Newspaper of the City

Prepared By: Linda Yeager, City Clerk
Jane Greenfield, Assistant City Attorney

Recommended City Council Action

Adopt Resolution No. 19 designating the Westminster Window as the official newspaper of the City and providing for alternative publication of legal notices, when necessary.

Summary Statement

- The Westminster Municipal Code and state statutes contain numerous publication requirements that the City must observe. Generally, these are published in the Westminster Window.
- Section 17.5 of the City Charter defines publication as “an appropriate insertion in a newspaper published in the English language” which paper has had general circulation at regular intervals in the City for at least two years. Section 1-6-1, W.M.C., requires the City to designate an official newspaper “from time to time” by resolution.
- Occasionally, legal notices need to be published that cannot meet the once-a-week publication deadline of the City’s official newspaper, and adoption of this resolution will allow for timely publication in those instances.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City Council adopt this resolution designating the Westminster Window as its official newspaper, but permitting an alternative publication route meeting the Charter's requirements when necessary?

Alternative

Do not approve the proposed resolution. This alternative is not recommended as there may be times, very occasionally, when due to circumstances beyond the control of the City staff, there is a need to publish a notice to meet certain legal requirements and there is insufficient time to make the deadline set by the City's official newspaper.

Background Information

This City last designated an official newspaper, the Westminster Window, over twenty years ago. The Window is published once a week on Thursday and has a deadline of Monday morning at 9 a.m. for the placement of any legal notices. This has generally worked well for notices of City Council meetings, publication of ordinances, and other statutorily required publications. However, there have been rare occasions when, due to snowstorms, unexpected illnesses of board members, requests for continuances of scheduled quasi-judicial hearings by applicants, etc., the Monday deadline or the Thursday publication date cannot be met.

The major daily newspaper of general circulation in Westminster has a much shorter deadline for the publication of legal notices, ranging from 16 hours for Tuesday through Saturday publication to a day and a half for Sunday or Monday publication. In those instances when the City does not have three days' notice of the need for publication or when a deadline can be met by publication on a day other than Thursday, better customer service could be provided if the City was not forced to delay the publication of required notices, which in turn delay the scheduling of meetings or other public hearings. If Council approves the attached resolution, it will still be Staff's intention to continue to use the Window for all legal publications and notices, and to use this alternative only on the rare occasions when required.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Resolution

RESOLUTION

RESOLUTION NO. 19

INTRODUCED BY COUNCILMEMBERS

SERIES OF 2013

**A RESOLUTION DESIGNATING
THE OFFICIAL NEWSPAPER OF THE CITY**

WHEREAS, the City Charter, the City Code and various Colorado State Statutes frequently require the publication of various legal notices and statements; and

WHEREAS, Section 1-6-1, W.M.C. states that the City Council shall from time to time designate by Resolution the official newspaper of the City of Westminster; and

WHEREAS, the City Council is desirous of designating the Westminster Window as the official newspaper of the City and said newspaper meets the requirements of Charter Sec.17.5; and

WHEREAS, as the Westminster Window is published on a weekly basis and, on occasion, in order to address emergencies and special notice requirements, the City may need to publish notice on a more frequent basis.

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

1. The Westminster City Council hereby designates the Westminster Window as the official newspaper of the City, effective June 30, 2013, wherein legal notices and publications will generally be made.
2. The Council further determines that in the event that a particular notice or publication need of the City cannot be met, given the weekly interval schedule of the City's official newspaper, then the City Manager or City Clerk is authorized to use any other newspaper meeting the requirements of the Westminster City Charter Section 17.5 for its legal publications.

Passed and adopted this 10th day of June, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
Office of the City Attorney